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Original Article

The Evolution of ASEAN International Investment Agreements: Insights from the Past and Future Directions

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Abstract: This article examines the evolution of ASEAN's international investment agreements (IIAs), highlighting key milestones, challenges, and the distinctive ASEAN Way of treaty-making. From its initial inward-looking agreements in the 1980s to its contemporary focus on regional integration and global outreach, ASEAN's investment framework reflects a dynamic interplay between regional needs and international best practices. The study traces ASEAN's transition from fragmented protectionist policies to a progressively liberalized and cohesive investment regime underpinned by four guiding pillars: promotion, protection, facilitation, and liberalization. By analyzing historical and modern IIAs, the article underscores ASEAN's capacity to strengthen its position as a global investment hub despite challenges posed by economic crises, geopolitical shifts, and the COVID-19 pandemic. Looking forward, the findings suggest that ASEAN must prioritize harmonizing and modernizing its investment instruments, adapting to evolving global trends, and addressing intra-regional disparities to achieve a resilient and competitive investment framework. These insights offer valuable lessons for policymakers and scholars seeking to understand ASEAN's role in shaping the global investment landscape.

Keywords: ASEAN Way, international investment agreements, ASEAN Economic Community, bilateral investment treaties.

1. Introduction

Since the dawn of the 21st century, the Association of Southeast Asian Nations (ASEAN) has gradually emerged as an investment hub of the world, attracting billions of dollars over the years. According to UNCTAD, between 1990 and 2023, the flow of investments into and out of this region has grown approximately seventeen times and thirty-eight

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times, respectively [1]. By 2014, the FDI flow into this region had already surpassed that of China, making it the largest FDI recipient in the developing world [2]. Despite gloomy economic statistics in the post-COVID era, ASEAN has maintained its dominant position for three consecutive years (2021-2023) [3].

Alongside the surge in investment flows, ASEAN has also established itself as one of the most active players in international investment law, both regionally and globally. ASEAN and its investment regime have undergone a generational transformation, evolving from a closed and isolated economy to an open and integrated one, cementing its prominent role in the global investment landscape. This article seeks to map the evolution of ASEAN's international investment agreements (IIAs),[1] encompassing all IIAs made by ASEAN as a group-from the birth of its first regional investment agreement in 1987 to its most recent extra-regional agreement, the Regional Comprehensive Economic Partnership (RCEP) in 2020. By doing so, it aims to illustrate how ASEAN has become one of the most significant players in international investment. Furthermore, the article serves as a guide to understanding the future trajectory of the ASEAN investment law and policies.

While most studies focus on either intra-ASEAN treaties or extra-ASEAN agreements in isolation, this article aims to provide a comprehensive view of the entire investment regime, addressing a significant gap in the existing literature.

The structure of this article is as follows: Section 2 analyses the evolution of ASEAN's international investment agreements and situates them within a global context. After providing an overview of the ASEAN investment regime, this section examines each stage of its development in detail, focusing on the formation and evolution of treaty provisions signed both collectively by ASEAN Member States (intra-ASEAN) and those signed between ASEAN and external stakeholders (extra-ASEAN). Section 3 forecasts ASEAN's future steps in fine-tuning its sophisticated investment law and policies based on past treaty-making practices. Finally, Section 4 summarizes the entire development process of the ASEAN's IIAs, highlighting its key features.

2. The Evolution of ASEAN International Investment Agreements Within the Global Context

2.1. Overview of the Global and ASEAN Investment Regime

The introduction of the global investment regime was marked by the conclusion of the Bilateral Investment Treaty (BIT) between Germany and Pakistan in 1959. Since then, the increasing number of investment agreements has become a vital scheme in enhancing the relationship between the participating parties and then mutually promoting global economic growth. The development of these IIAs is closely linked to global upheavals. Accordingly, the growth of IIAs can be divided into four stages as follows [4]. First, the stage from the 1950s to 1964 mainly focused on the emergence of IIAs. Despite economic development as the main goal in the post-World War era, the lack of clear protection and Investor-State dispute settlement (ISDS) provisions led to a small number of BITs being concluded. The next stage, from 1965 to 1989, witnessed more enhanced regulations on protection and the emergence of ISDS in IIAs, making them significantly more progressive. Following this trend, the years 1990 – 2007 marked an intensive step in the development of the area as there were precisely 2,663 newly-concluded IIAs all over the world [4]. The most recent stage started in the context of the 2008 Great Recession. The sharp fall in economic

[1] In this article, international investment agreements refer to both agreements exclusively covering investment issues such as bilateral investment treaties (BITs) and treaties with investment provisions such as free trade agreements with investment chapters.

activities forced the states to re-orientate their path, replacing older BITs and moving towards regional agreements.

As a vital part of the world, the growth of ASEAN's IIAs is also tied to global fluctuations. The first stage started with the conclusion of the first agreement containing investment provisions between ASEAN and EU in 1980 and ended in 1990. The second stage, from 1991 to 2007, was associated with establishing the ASEAN Economic Community (AEC) in 2007, marking a massive transformation of the ASEAN from a loosely connected group into a more close-knit community. The third stage began in 2008, coinciding with the global financial crisis, and signaled a significant shift in ASEAN's approach to investment liberalization and protection, reflecting a move toward deeper economic integration and stronger investor safeguards. The most recent stage, which began in 2019, has been largely influenced by the profound economic disruptions caused by the COVID-19 pandemic. A detailed examination of each stage is provided in subsection 2.2.

Within the scope of this research, only agreements that ASEAN entered into as a group shall be examined to best illustrate the region's connectivity and investment landscape. In fact, economic growth has always been of secondary importance since the ASEAN's establishment [5]. Especially after the 1990s financial crisis, the ASEAN Member States have placed more and more emphasis on the conclusion of the cross-regional IIAs to foster a stable and free single market. This created a unified legal framework across the ASEAN region and pushed ASEAN into an ideal investment destination [6]. Therefore, to examine the investment laws and policies of a dynamic economic community, these IIAs binding upon all the ASEAN Member States ("AMS") must be prioritized in the scope of research. Moreover, the IIAs concluded by ASEAN as a group show ASEAN's specificity. None of the treaties so far has been concluded by the ASEAN as a separate legal entity, but by *"all the AMS collectively"* [5, 7] instead. Put differently, all AMS are parties to the treaties; therefore, rights and obligations in these agreements are extended to the individual AMS.

Additionally, it is notable that the ASEAN investment law regime's development has unique characteristics due to the so-called *ASEAN Way.'* In particular, the *ASEAN Way* includes a code of conduct for inter-state behavior as well as a decision-making process based on consultations and consensus. This code of conduct incorporates several well-known principles, such as non-interference in each other's domestic affairs, non-use of force, peaceful settlement of disputes, and respect for the sovereignty and territorial integrity of member states [8]. Accordingly, the ASEAN Way is obviously reflected in ASEAN's IIAs, specifically in the following aspects. First, ASEAN's IIAs respect the right to self-determination of each member state. Second, ASEAN's investment agreements encourage dispute resolution through diplomatic means, such as consultation and reconciliation, rather than through judicial processes like arbitration. Third, ASEAN's investment agreements typically allow member states to establish negative lists for sectors that are not fully open to investment, reflecting mutual respect and maintaining flexibility in commitments. Later in this article, these features will be thoroughly considered.

2.2. Developments in ASEAN Investment Treaty-Making Practices

2.2.1. 1980 - 1990: Early Steps Toward Economic Cooperation

ASEAN member states, still influenced by an import-substitution development model, started to recognize the need for deeper integration to enhance their economic competitiveness. However, this spirit of cooperation was constrained by mutual distrust among members, clearly reflected in protectionist economic policies and competition driven by national interest protection [9]. During this period,

ASEAN countries primarily focused on bilateral cooperation rather than any recognizable multilateral efforts, with only the 1987 ASEAN Investment Agreement (the "IGA") standing out as the regional exception. The IGA was signed to promote intra-regional investment flows but reflected the limits of regional integration at the time. This agreement focused solely on investment protection without setting objectives for market liberalization or creating favorable conditions for intra-regional capital flows. This prioritization of investment protection can be understood in the economic and political context of ASEAN during this period, where the member states were more concerned with safeguarding national interests and avoiding binding commitments to liberalize regional investment policies.

Notably, the IGA imposed stringent conditions for the recognition and protection of investments. Art. II (1) stipulates that investments are eligible for protection only if explicitly *"approved in writing"* and *"registered"* by the host ASEAN member state, which retained full discretion to impose conditions as deemed appropriate. This mechanism has faced criticism from some arbitral tribunals outside ASEAN, which argued that such formalized preconditions neither served the genuine interests of the contracting states nor benefited investors [9]. A relevant case is *Yaung Chi Oo Trading Pte Ltd v. Myanmar*, where the tribunal declined jurisdiction due to the investor's inability to prove that its investment had been formally approved in writing by Myanmar under the IGA. However, at that time, Myanmar had not yet implemented a formal approval process, rendering it impossible for the investor to meet this requirement. Along these lines, when ruling on this part of the IGA, the *Yaung Chi Oo v. Myanmar* Tribunal expressly noted that *"the IGA was thus subject to important limitations in terms of its coverage, as compared with other bilateral and multilateral investment protection treaties."* [10]

In terms of scope, the IGA defined protected investments broadly, encompassing not only FDI but also less stable sources such as debt capital and portfolio investments (Art. I(3) IGA). While this broad approach reflected a desire to diversify forms of capital, it also introduced significant risks to economic stability. Short-term capital flows, such as portfolio investments, are inherently volatile and can destabilize domestic financial markets, particularly during periods of economic crisis. This became a critical lesson for ASEAN countries following the 1997 - 1998 Asian financial crisis.

Moreover, the IGA did not include any provision on *"national treatment"*. This led to a situation where intra-ASEAN investors were not guaranteed equal competitive conditions in the markets of other member states. This reluctance to liberalize investment restrictions highlights ASEAN's cautious stance toward economic integration in 1987 and reflects the weak regional identity in its early stages of integration. The IGA also included several provisions aimed at protecting foreign investments but were vague and lacked clear definitions, creating room for arbitrary interpretations and inconsistent enforcement. While this vagueness was in line with the broader practice of investment treaties during the 1980s, the absence of clear guidelines undermined the effectiveness of the Agreement's protective measures.

Furthermore, rather than focusing on promoting investment within the region, ASEAN countries now place greater emphasis on building investment relations with external countries. This was evident in the increasing number of BITs between ASEAN members and non-ASEAN states, which facilitated a more significant inflow of foreign investments compared to intra-regional investments. As a result, investment flows from outside ASEAN outpaced intra-regional investments, illustrating the phenomenon of *"reverse open regionalism."* [9] While ASEAN was opening its markets to foreign investors, intra-regional cooperation and investment flows remained limited, a situation that hindered deeper economic integration within the region.

Contrary to the dissonance between the ultimate goals of the IGA and its substantive provisions, the agreement can be considered more advanced regarding compliance monitoring mechanisms toward both the Contracting Parties and their nationals. It incorporates both the state-state (SSDS) and investor-state (ISDS) dispute mechanisms, which are not yet ubiquitous during this period, even when compared with the BITs of individual AMS. For example, some BITs at the time only contained SSDS provisions [11], and some only provided judicial access to nationals of the Contracting Parties [12]. Regarding ISDS mechanisms, Art. X (1) of the IGA requires parties to settle any disputes amicably. If unsuccessful, the investors are entitled to pursue arbitration or conciliation proceedings before a wide range of institutions. However, due to the limitations of the substantive obligations, the mechanisms offered no practical usages as there were little to no cases being reported under the IGA [13]. Meanwhile, the SSDS mechanisms were fairly simple, resolving disputes relating to the interpretation or application of the Agreement through report or submission to the ASEAN Economic Ministers (Art. IX). The lack of any official bodies or institutional rules to handle violations of the State, in this case, reflects the *"rudimentary nature"* [9] of ASEAN as *"an interstate negotiating forum to advance economic cooperation"* [9]. More importantly, it evidences the dependence on a conservative, protective pro-State approach, which correlates with the ASEAN Way, yet stands in contrast to the basics of economic cooperation.

2.2.2. 1991 - 2007: Incremental Development

By the late 1980s, the world witnessed the sovereign debt crisis, leading to a reduction in sources of funds. The paucity of opportunities to access private loans forced developing states to head for a new way to obtain enough budget for their economic development policies. Consequently, as Vandevelde said, *"a consensus in the developing world about the desirability of attracting foreign investment through free market policies"* [14] emerged and became a global trend. States gradually stipulated liberalization during the entry and operation of foreign investment throughout the 1990s to attract FDI. Such changes encouraged strong growth in the conclusion of BITs. 1857 BITs were concluded in the 1990s [15], roughly 10 times the total number of BITs (385 BITs) [15] signed in 30 previous years.

The ASEAN region was not outside of the global trend. The launch of the ASEAN Free Trade Area in 1992 formalized liberalization in such regions, leading to an increase in FDI inflows. Despite this establishment, a Member State still regarded another member as a potential rival rather than a fellow in a strongly connected community [9, 17]. However, two giant external shocks - the Asian financial crisis and the rise of China - forced ASEAN to focus on deeply integrating and building a closely unified community between members. Accordingly, aiming at building a more comprehensive and closer form of cooperation, the members of ASEAN established the ASEAN Economic Community (AEC) in 2007, along with the emergence of the ASEAN Charter and the Blueprint for AEC, setting a new tighter legal framework for ASEAN as an international organization with legal characteristics. The events marked a big step to strengthen ASEAN's position in the following stages.

Notably, ASEAN Members concluded two important intra-ASEAN agreements, including the ASEAN Framework Agreement on Services 1995 (AFAS) and the ASEAN Investment Area Agreement 1998 ("AIA"). These two agreements played a role in the investment between ASEAN Members in the late 1990s and 2000s.

The AFAS mainly focuses on expanding the economic cooperation sector between ASEAN Members from goods to services. Notably, as impacted by the global trend, Art. III of the AFAS placed a separate provision on liberalization, which requires ASEAN Members to eliminate and ban discriminatory measures and market access limitations within a reasonable timeframe. The regulation marked

the growing emergence of liberalization in the following IIAs of ASEAN. Not surprisingly, as with the first version, the article on liberalization in the AFAS seemed ambiguous, leading to difficulties for the Parties during the process of operating the liberalization policies in reality.

Meanwhile, the AIA was concluded as the result of the ASEAN consensus to set comprehensive investment relations. While the IGA concentrated on the promotion and protection of investment, the AIA focused on expanding investment liberalization in the ASEAN region. In particular, the AIA established a set of basic principles and precise provisions regarding liberalization within ASEAN to facilitate a free flow of investment. The main differences between the two first intra-regional treaties are summarized in *Table 1*.

Table 1. Main differences between the IGA 1987 and the AIA 1998[2]

Comparator	**IGA**	**AIA**
Objectives	Promotion and protection	Promotion, protection, facilitation and liberalization
Definition of "investors"	Not included	Included
Definition of "investments"	Listing feature (limited)	Excluding feature (broader)
National treatment	Not included	Included
Fair and equitable treatment	Included	Not included
Expropriation	Included	Not included

First, one of the most outstanding features of the AIA was the description of the concept of *"ASEAN investor".* This definition imposed strict conditions for investment compared to the other IIAs, contributing to the impossibility of the AIA during the Asian financial crisis in 1997 - 1998. While the concept of "investor" in the IGA mentions the *"place of effective management"* as a necessary condition for an investment, that of the AIA emphasized the source of equity and local content [10]. In particular, Art. 2 of the AIA stated that *'the Agreement shall cover all direct investments'* apart from the portfolio and other investments governed by other ASEAN Agreements. Second, the AIA expanded the preferential national treatment scheme for the ASEAN and non-ASEAN investors. While the IGA only considered the most-favored-nation (MFN) in the post-establishment phase, the AIA then set a liberal policy on the pre-establishment phase [18]. Moreover, the ASEAN Members expected to successfully expand that national treatment strategy to ASEAN investors by 2010 and to all investors by 2020, on a reciprocal basis [18]. Third, the Participating Parties shall treat other ASEAN and non-ASEAN investors and investments no less favorably than their own in all industries immediately (Art. 7.1 AIA). In reality, it is extremely challenging for the host country to open up all industries with total unbiased obligations for the ASEAN and non-ASEAN investors and investments [19]. Consequently, the 2001 Protocol was issued in which the scope of coverage was limited to only direct investment in certain sectors and services and others agreed upon by the Parties (Art. 1). Besides, notably, while IGA has protectionist features (Art. IV, VI), Art. 7, 8, 11, 14 of the AIA only mentioned the provisions of national treatment, MFN, transparency, and emergency safeguard, which cannot fully protect the investors during the investment stage.

During this stage, the newly concluded Framework Agreements with China, Korea, and India contain fairly similar provisions, especially in terms of investment area and the scheme of nation treatment. The early 2000s' FTAs enabled the Parties to set a reasonable time frame within which the pillars of investment cooperation shall be under negotiation (Art. 5 ASEAN - China Framework Agreement, Art. 2.3 ASEAN -

[2] Source: compiled by the authors

Korea Framework Agreement, Art. 5 India - ASEAN Framework Agreement). Therefore, the Participating Parties expand their chances to establish more all-inclusive provisions, meeting the inherent capacity of each party and era's demands.

In this period, the investor-state dispute settlement mechanisms in IIAs suffered a major blowback compared to previous agreements. More specifically, ASEAN investors faced an unprecedented risk of having their hands tied in case of a treaty breach from an AMS due to the lack of ISDS provisions in the 1998 AIA. They still can be protected, but *"left to the mercy"* [9] of their home countries to initiate state-to-state proceedings under the new treaty. The stark contrast between the procedural provisions of the 1998 AIA and the commitments of liberalization and facilitation of investments stated in the preamble of the AIA itself and the 1992 Framework Agreement on Enhancing ASEAN Economic Cooperation ("1992 Agreement") was described as *"increasingly costly"* to AMS and *"questionable"* [9]. The repercussions of the 1997 Asia Financial Crisis, the increasing rivalry between AMS in the race of FDI attractions, and even the accession of new less developed countries to the Association are some suggestions that are put forward yet fail to address the entirety of the problem. As a result, the vulnerability of both foreign investors and the ASEAN investment law was exposed for nearly a decade, which only ended with the introduction of the 2009 ACIA.

By contrast, there is a ray of hope in the SSDS mechanism. Unlike the IGA, the treaties during this period gradually incorporated more detailed settlement mechanisms. The introduction of the 1996 Protocol on Dispute Resolution Mechanism ("1996 Protocol") was considered groundbreaking as it contains specific provisions guiding AMS on their way to protect their legitimate interests. Art. 2, 3 of the AIA emphasizes non-adversarial mechanisms and the establishment of a formal independent body is only required after these mechanisms fail (Art. 4, 5). Additionally, while previous disputes were directly reported or submitted to the AEM, under new regulations, the AEM only intervenes as an appellate body to issue a final binding decision (Art. 8). This simple yet structural approach, in combination with non-reliance on other international institutions, is expected to deliver fast-track, prompt, and accurate decisions. Unfortunately, this model was just partly reflected in the dispute settlement agreements in the external Framework Agreement. The main difference between the intra-ASEAN and extra-ASEAN mechanisms lies in that the latter relies on the ultimate settlement by a non-appeal arbitral award binding on all parties to the dispute (Art. 12 ASEAN - China Dispute Settlement Agreement, Art. 15 ASEAN - India Dispute Settlement Agreement, Art. 14 ASEAN - Korea Dispute Settlement Agreement). Considering the extra-ASEAN agreements themselves, a consistent and stable pattern without notable deviations can be spotted, demonstrating the solidity of the ASEAN approach toward attracting foreign non-ASEAN investors regardless of the uncertainties within the group.

2.2.3. 2008 - 2019: Regional Integration and Global Outreach in International Investment Agreements

Continuing the wave of economic cooperation and integration established in the previous stage, the following period is characterized by an even stronger shared desire among the AMS for an integrated and liberalized investment region. This trend was in line with the global decline in the number of newly concluded IIAs due to *"ongoing reforms associated with the ascending number of ISDS disputes"* [20], the shift from BITs to regional IIAs, and the increase in the number of BITs terminated or modified [21]. AMS have moved closer together in terms of determination and commitment to create the first ASEAN Economic Community (AEC) Blueprint in 2007, which set out clear objectives to transform *"ASEAN into a single market and production base"* that is *"fully integrated into the global economy"* by 2015 [22]. Subsequently, the AEC

2025 Blueprint, released in 2015, was even more ambitious, setting out ten crucial goals to be achieved by 2025 [23]. These commitments were not constrained by the geographical and political ties between AMS, but they expanded to other countries in the larger region of East Asia and Oceania as ASEAN concluded multiple trans-regional investment agreements as a part of previous framework agreements or as a new treaty (see *Table 2)*.

Table 2: Transition from Framework Agreement to respective FTA/IIA[3]

Framework Agreement	**Respective FTA/IIA**
ASEAN - China Framework Agreement 2002	Yes
ASEAN - India Framework Agreement 2003	Yes
ASEAN - Korea Framework Agreement	Yes
ASEAN - USA TIFA	No

The flaws in the two previous regional agreements and their failure to establish a *"fully liberalized investment zone"* [19] within ASEAN forced AMS to rethink its approach to treaty-making, especially the dispute settlement provisions. The latest 2009 ACIA, which is considered to combine the best of the two previous *"disparate"* [24] treaties, reflecting *"international best practices"* [25], provides the answer. It aimed to create a single, integrated investment area within ASEAN, marking a significant step toward a more open and unified investment framework. ACIA's provisions emphasize progressive liberalization, transparency, and predictability in investment regulations, coupled with enhanced investor protections.

In terms of Investment Protection, ACIA 2009 expanded and clarified the definitions of "investor" and "investment," thereby mitigating risks and reducing uncertainties for investors. These provisions represent an improvement over IGA 1987 and AIA 1998, where definitions were less comprehensive. Another notable advancement in ACIA 2009 was the inclusion of an annex detailing specific procedural requirements for investment approvals, which represents a significant refinement in ASEAN's investment framework. By addressing procedural ambiguities highlighted in disputes such as *Yaung Chi Oo Trading Pte. Ltd. v. Myanmar* [10], the ACIA 2009 enhanced legal certainty and consistency for investors.

Furthermore, in terms of Investment Encouragement and Liberalization, Art. 11, 6, 5(a) of the ACIA 2009 mandated host governments to commit to robust investment protection standards, such as fair and equitable treatment (FET) and most-favored-nation treatment (MFN). ACIA 2009 also stipulates that a Member State shall treat investors from other Member States no less favorably than its investors in similar circumstances, covering all stages of investment. In contrast, IGA 1987 lacked national treatment (NT) provisions and restricted MFN to post-establishment stages. AIA 1998 expanded NT to pre-establishment phases but with significant exceptions [18]. ACIA 2009 thus represented a considerable leap, offering comprehensive NT and MFN provisions applicable at all stages, fostering transparency and fairness among ASEAN investors.

In this period, the dispute settlement mechanism witnessed a positive turn. The *"novel"* [26] right of the host State to submit a claim under the IGA is removed, affirming the exclusive rights of investors as the Claimant in a dispute (Art. 32, 33 ACIA 2009). This shift to a pro-investor approach, which was common in most treaties at the time, is delicately balanced against the AMS's commitments to investment liberalization as it only grants access to arbitration in certain breaches of treaty obligations. Other claims are generally not covered. Interestingly, one can spot the hint of

[3] Source: compiled by the authors.

the ASEAN Way in making these treaties, as the host State sovereignty in taxation claims is significantly restored, the additional option of a regional Arbitration Center, and the requirement for compulsory non-adversarial settlement before arbitration. Besides, concerning the SSDS, the ACIA refers to an updated version of the 1996 Protocol (ASEAN Enhanced Dispute Settlement Mechanism or ASEAN EDSM). It follows the path of a WTO-like mechanism [27, 28] and emphasizes the role of the Senior Economic Official Meetings (SEOM) [29]. Nonetheless, the new ASEAN Protocol is criticized relating to the timeframe of the panel settlement process, the limited power of the ASEAN Secretariat, and the ASEAN EDSM Fund [28], leading to the impracticality of the rules since its birth in 2004 [30, 31, 32].

However, the same level of comprehensiveness was not mirrored in ASEAN-Plus agreements (see *Table 3)*.

Table 3. Comparison of main substantive provisions between ACIA and ASEAN+ Agreement

	ACIA 2009	**AANZFTA 2009**	**AChIA 2009**	**AKIA 2009**	**AIIA 2014**	**AHKIA 2017**
Investment coverage	Subject to admission requirements	Similar to ACIA	Similar to ACIA	Similar to ACIA	Similar to ACIA	Similar to ACIA
National Treatment	Yes	Yes (subject to 5-year Work Programme)	Yes (exclude admission and establishment of investments)	Yes (subject to 5-year Work Programme)	Yes	Yes
MFN	Yes	Yes (subject to 5-year Work Programme)	Yes	Yes (subject to 5-year Work Programme)	No	Yes
FET	Yes	Yes (not more than required under customary international law)	Similar to ACIA	Yes (not more than required under customary international law)	Yes (not more than required under customary internation al law)	Yes (not more than required under customary international law)
FPS	Yes	Yes (not more than required under customary international law)	Yes	Yes (not more than required under customary international law)	Yes (not more than required under customary internation al law)	Yes (not more than required under customary international law)
Expropriation and compensation	Yes	Yes	Yes (compensation is included but exclude "prompt, adequate and effective")	Yes	Yes	Yes (compensation is included but exclude "prompt, adequate and effective")
Prohibition of performance requirements	Yes	Yes	Not included	TRIMS-related (subject to Work Programme)	Not included	Not included
ISDS	Yes	Yes	Yes	Yes	Yes	No

These variations reflect the influence of external partners' economic policies and priorities. The differences in provisions highlight the diverse approaches within ASEAN's IIAs. While ACIA 2009 adopted ambitious goals for intra-regional investment liberalization, focusing on key sectors like manufacturing and agriculture, agreements like AANZFTA and the ACHIA prioritized dispute resolution and regulatory cooperation to align with external partners' interests. The AKIA, meanwhile, took a cautious, phased approach to liberalization, reflecting ASEAN's acknowledgment of varying economic capacities and policy preferences.

Regarding dispute settlement mechanisms, the regulations in the ACIA are reflected quite closely in the three following ASEAN+ agreements in the same year as they were drafted simultaneously with the ACIA [33]. The convergences between these four agreements allow consistent and non-discriminatory treatment of all investors regardless of whether they are ASEAN or non-ASEAN investors. Meanwhile, the DSM in the 2014 ASEAN-India Investment Agreement generally followed the path of the ACIA, with several insignificant technical changes. The most notable one is the omission of the explicit reference to a regional institution in the ASEAN-India agreement, leaving it as *"any other institution if the disputing parties agree"* (Art. 20.7 AIIA 2014).

2.2.4. 2020 - Present: Building Resilient Cooperation Amidst Critical Challenges

The COVID-19 pandemic has substantially changed the global investment landscape. At the national level, new policies aimed at protecting vulnerable domestic production and investment were implemented extensively. At the international level, investment treaties and cross-border negotiations suffered from widespread delays, postponement, and even termination. In other words, the pandemic has severely slowed down the pace of investment treaty-making, leading to the lowest number of IIAs concluded in one year since 1985 [34]. Furthermore, the pandemic is anticipated to have a long-lasting impact on the health of the global investment regime [34]. More specifically, it might lead to a more restrictive approach to national security-related investment, increased competition across industries in terms of foreign investment attraction, a shift to the digital economy, and the accelerating speed of IIA reforms [34]. Nonetheless, COVID-19 also solidifies the global effort to facilitate, promote, and liberalize foreign investment. Some notable regional and trans-regional efforts have transpired into prospecting agreements. At the ASEAN level, a new era of cooperation is on the horizon. While current objectives under the AEC and ASEAN-Plus Agreements were implemented through specific work programs, new and more favorable initiatives and agreements are also under discussion [35]. More importantly, AMS also concentrated on new sectors of cooperation, including healthcare, digital technologies and infrastructures, and Industry 4.0. In combination with these changes is the updated legal framework that is re-tailored to better accommodate the situations of the post-pandemic era and to maintain ASEAN's position as a global investment hub. Therefore, the investment regime in this period can be described as integration with clearer directions and guidance.

Notably, the Regional Comprehensive Economic Partnership (RCEP) was concluded in 2020 in order to deepen ASEAN's relationship with their long-term non-ASEAN partners, including Australia, China, Japan, Korea, and New Zealand, thereby facilitating regional trade and investment expansion and contributing to global economic growth. The RCEP has been considered modern, comprehensive, high-quality, and mutually beneficial [36]. Its provisions are the combination of the current FTA ASEAN+1 and newly emerging and changing realities, creating a dynamic environment to increase the trade and investment activities in the area of Parties. Furthermore, RCEP takes into consideration the variety of

development levels and economic demands of each Party. It provides more flexibility in rights and obligations for the less developed countries such as Cambodia, Laos, Vietnam, and Myanmar [36].

In terms of investment, the RCEP generally follows the previous IIAs concluded in 2009. At the same time, the RCEP provisions contain their outstanding features, showing the contemporary context's characteristics and the radical intentions of the Participating Parties. First, RCEP, through definitions, limits the scope of coverage. The term "investment" is at first likely to broaden the scope of investment as it was defined on a broad asset-based approach, along with a long open-ended list of possible forms of investment (Art. 10.1 RCEP). However, the list was followed by several footnotes in which exceptions are stipulated. This approach, at the same time, supports the Parties to avoid the duplication of assets meant to be excluded and to impose more restrictions on what investments are to be involved. The emergence of *'an order or judgment in an arbitral proceeding'* is undeniably rarely entered into the other previous FTAs and IIAs, but it is not a novelty as that element was mentioned in the 2017 ASEAN-Hong Kong FTA and the 2018 Indonesia - Singapore BIT. Furthermore, regarding the subjects, a natural person covers not only the citizens of a Party but also its residents, and a branch of a juridical person was included but denied *'the right to make any claim against any Party'* under Art. 10.1(f), (g), (i) of the RCEP. The scope of a natural person is specified clearly and broadly. In the meantime, the right of a branch is reduced as compared to the previous IIAs, but this regulation is quite appropriate as it partly prevents the cases under Denial of Benefits provisions from arising out of the RCEP implementation [37].

Second, the RCEP retains autonomy for the Parties regarding the condition of being a covered investment. As usual, a covered investment must be *"admitted by the host Party, subject to its relevant laws, regulations and policies"* (Art. 10.1(a)). This means that each participating party has the right to impose more stringent conditions on how to be an investment governed by the RCEP. Additionally, there is a new twist in the provision on the "covered investment" definition compared to the previous ASEAN's IIAs. In particular, a covered investment can be 'admitted' in various ways (not only in writing) depending on the host country. However, Malaysia, Thailand, Cambodia, Indonesia, and Vietnam specified that only those approved in writing could be regarded as *"admitted"*. Such footnotes show the refusal of those countries to recognize the rights of foreign investors at the pre-establishment stage, which goes against the trend of increasing investors' rights in recent years [37].

Third, the RCEP sets different reference points depending on the Party regarding the provision of Reservation and Non-Conforming Measures. Art. 10.8 of the RCEP states the cases to which the investment protection shall not apply. Such cases are considered majorly similar to the IIAs concluded in the previous stage. Interestingly, in Art. 10.8.1(c), the Participating Countries set different reference points depending on the Party. In particular, for five ASEAN Members, including Cambodia, Indonesia, Lao PDR, Myanmar, and the Philippines, the reference point is set at the RCEP date of entry into effect (Art. 10.8(c)), which means that these countries only consider pre-FTA liberalization [37]. Meanwhile, for the remaining Parties, the point of reference is determined at *"immediately before the amendment"*, which means both pre- and post-FTA liberalization are considered [37]. It can be seen that the provision in particular and the RCEP in general facilitate the participation of the Parties to establish effective regional cooperation in the era of globalization. Accordingly, each Party can obtain its benefits during the process of the RCEP implementation.

Additionally, at first, the RCEP's lack of an enforcement mechanism was surprising [38]. This is even more surprising given that in the beginning, not only was ISDS incorporated in

the treaty, but it was also pushed for further details by China, Japan, and Korea [39]. The once-thought-to-be stable reliance on the ISDS mechanism stretching across the ACIA and its subsequent ASEAN+ agreements was overturned, showing the non-linear and non-retrogressive nature of the evolution of ASEAN IIAs [9]. However, upon closer examination, this trend emerged since the conclusion of the 2017 ASEAN-Hong Kong, China Investment Agreement, in which the rules are to be subsequently negotiated via a *"Work Programme"* (Art. 22 AHKIA). A step back from the consistent drafting of the ISDS clauses in previous agreements implies that ASEAN is far from unity in their investment reform agenda, undermining the accomplishment of the goals in the AEC 2025 Blueprint. Nonetheless, this development may still *"enrich the liberal international order"* [10]. Additionally, the wordings in other chapters of the RCEP suggest an inclination toward SSDS and domestic court. Chapter 19 also resonates with the principles of the WTO DSU, which have been consistent since the last instrument (the ACIA).

3. Future Directions

Looking back on the 50-year process of investment treaty-making, one can easily notice a certain degree of inconsistency, uncertainty, and non-conformity with any specific recognized rules. This feature can be attributed to the uniqueness of the ASEAN Way, the global context, the differences in the legal system, the development agenda, and the approach to international investment of the AMS. Consequently, there have always been impediments to a fully liberalized and integrated economic community. Surprisingly, as of the writing of this article, 92% of the work plans in the AEC 2025 Blueprint, which aims to *"create a deeply integrated and highly cohesive ASEAN economy"* [23], *"reinforce ASEAN centrality"* [23], and *"enhance ASEAN's role and voice in global economic fora"* [23] were implemented successfully or are in progress. The remaining agendas are to be done by the end of this year. Despite the positive numbers, a call for *"more work"* and *"immediate attention"* [23] to strengthen the region's investment environment is now present. Hence, ASEAN should engage in the new process of upgrading its pre-existing investment instruments, specifically international investment agreements, to tackle the current challenges. Based on the findings in the previous parts, ASEAN is expected to initiate negotiations in the following manner:

Enhancing the implementation of non-binding investment promotion tools

This includes advancing existing rules, most notably the 2021 ASEAN Investment Facilitation Framework (AIFF), and introducing more modern instruments. Emphasis should be placed on the relevance between these principles and their existence in the form of legally binding obligations to ensure the practical implementation of such instruments. For example, the measure of streamlining and speeding up administrative procedures and requirements in the 2021 AIFF, which is reported to be recognized by all AMS [3], should be accompanied by the addition or modification of a substantive provision in the respective treaties. Fortunately, the AIFF is an ongoing review exercise [3], thus more easily accommodating the changes in the investment landscape. Moreover, attention to the utilization of growing digital infrastructure and online platforms is critical to reinforce the ASEAN's attractiveness to foreign investors.

Adopting a more holistic and coherent approach to modernizing the intra-ASEAN agreement

The current drafting of the ACIA, despite experiencing four amendments, is insufficient to *"comprehensively"* deliver its objectives. Admittedly, by embracing some of the main features of the ASEAN Way, it is not so straightforward for AMS to change the content of this major agreement. However, a well-rounded and forward-looking mindset is

conscientiously advised to unlock the full potential of ASEAN IIAs. "Forward-looking" means that AMS may lessen the influence of the ASEAN Way to the extent that it does not compromise the core values of the Way, yet enough for an innovative reconstruction of the intra-ASEAN agreement. Furthermore, "well-rounded" means that AMS should take into account all relevant sectors that amplify the development of the investment regime. Practically speaking, discussions regarding the expansion of the scope of the ACIA, the shift to a two-annex negative list, the application of the ratchet mechanism to some AMS, and the timing of the TRIMs-plus commitment prohibiting performance requirements [3] are now concluded in the Fifth Protocol. In the future, AMS may further advance in this direction to remove the sector-based application of the ACIA. Instead, an all-sector investment-based coverage is applied, mirroring the common approach in the majority of BITs and IIAs, not least existing ASEAN+ Agreements. Moreover, as the development gap between AMS narrows, AMS may be more willing to view the other AMS as partners rather than as rivals, which in turn reduces unnecessary competition within the region and makes way for a new level of cooperation.

Recognizing a different mechanism to resolve investor-state disputes in unspecified agreements

The ongoing debate regarding the inclusion of the ISDS provisions in the RCEP reveals a deep-rooted disagreement between its Contracting Parties, especially between the AMS. On the international stage, Thailand and Indonesia have been the most active in raising their concerns over the current ISDS regime. Alternatively, both nations are inclined to the prevention of disputes [40, 41] and/or the promotion of mandatory ADR [41, 42]. Furthermore, from Indonesia's perspective, arbitration is conditional upon the *"exhaustion of local remedies"* and written consent to arbitration [41]. Meanwhile, experiences from Singapore and Vietnam in the negotiations of their investment agreements with the EU suggest the establishment of an International Court System. The options are being explored; however, they can be categorized into the following groups: the reliance on domestic adjudication, the preference for an independent International Investment Court (with an appellate mechanism), or a full review of the current ISDS. Based on past treaty-making practices and the level of exposure to investor-state disputes of AMS, it is unlikely that the pursuit of the Investment Court will be accepted by all Contracting Parties. The recourse to domestic courts, or the SSDS mechanism, is more promising, as seen in most of ASEAN's intra- and extra-agreements. Having said that, the possibility of adopting the current ISDS regime is not completely abandoned. Finally, the conclusion of the dispute settlement mechanism under the ASEAN-Hong Kong, China Investment Agreement, and the RCEP is significant to reaffirm the ASEAN's disposition in this matter, making the negotiations of new IIAs, most recently the ASEAN-Canada Free Trade Agreement [43], more predictable.

Consolidating BITs and regional IIAs to reduce friction between multiple sets of rules

Pertinent to the ISDS provisions, it is noteworthy that the dense network of international investment tools coexisting in the region has caused trouble. Generally speaking, the different standards in the ASEAN+ Agreements and the ACIA, not to mention the individual BITs between AMS and between AMS and external partners, materialize risks to the States. These risks are exacerbated by the common way of drafting that the provisions of a treaty shall not derogate from any right or obligation under another treaty and that the investor is entitled to more favorable treatment in other treaties (Art. 23 AKIA, Art. 23 ACHIA, Art. 44 ACIA). The situation was best illustrated by the case of *Phillip Morris v. Australia* in 2011, in which the Claimant's Hong Kong subsidiary took advantage of the Australia-Hong Kong BIT to submit claims to arbitration [44]. Therefore, following the active modification of the ACIA, AMS are likely to be involved in (1)

the amendment of the current extra-regional investment agreement and (2) the consolidation of smaller agreements at *"national, bilateral, and regional levels of policymaking"* [3]. The journey is challenging, but the sooner ASEAN starts, the better the results will be.

4. Conclusion

This article offers a comprehensive examination of the evolution of ASEAN's investment treaty-making practices. It analyzes the ASEAN Way in drafting, negotiating, and signing treaties while providing the most up-to-date assessment of the investment landscape within this dynamic economic community in Asia. The findings highlight that although ASEAN has adopted the best international practices, it remains firmly committed to its distinctive investment regime, shaped by the region's unique socioeconomic conditions and cultural influences. Notably, the modernization of ASEAN treaties does not follow a straightforward, linear path. Instead, it reflects a dynamic interplay between past and present practices, with elements of earlier agreements still evident in modern frameworks.

Starting with the rudimentary, inward-looking, and protectionist agreement of 1987, ASEAN has progressively removed restrictive elements from its investment instruments, striving toward the establishment of a freer trade and investment area. Throughout this evolution, four key pillars have consistently guided ASEAN's investment framework: i) promotion, ii) protection, iii) facilitation, and iv) liberalization. These principles underpin all actions taken by ASEAN Member States (AMS) in fostering a cohesive and robust regional investment environment.

Looking ahead, ASEAN is positioned to become an even more dynamic and integrated economy, supported by favorable conditions for growth. However, achieving this potential requires an emphasis on reviewing and upgrading the network of investment instruments to ensure coordinated, consistent, and effective outcomes. Lessons from the past remain invaluable-not only for ASEAN but also for other regional organizations seeking to enhance their investment frameworks. Scholars and academics can further investigate these lessons in specific contexts, providing policymakers with essential tools to develop a robust and successful investment regime.

References

[1] UNCTAD Datahub, Foreign direct investment: Inward and outward flows and stock, annually, https://unctadstat.unctad.org/datacentre/dataviewer/US.FdiFlowsStock, 2024 (accessed on: January 2nd, 2025).

[2] ASEAN Secretariat, ASEAN Investment Report 2015: Infrastructure Investment and Connectivity, https://asean.org/wp-content/uploads/2021/09/ASEAN-Investment-Report-2015.pdf, 2015 (accessed on: January 2nd, 2025).

[3] ASEAN Secretariat, ASEAN Investment Report 2024: ASEAN Economic Community 2025 and Foreign Direct Investment, https://asean.org/wp-content/uploads/2024/10/AIR2024-3.pdf, 2024 (accessed on: January 2nd, 2025).

[4] UNCTAD, Reforming the International Investment Regime: An Action Menu. World Investment Report 2015, https://unctad.org/system/files/official-document/wir2015ch4_en.pdf, 2015 (accessed on: January 2nd, 2025).

[5] N. J. Calamita, C. Giannakopoulos, ASEAN and the Reform of Investor-State Dispute Settlement: Global Challenges and Regional Options, Elgar International Investment Law, 2022.

[6] Malaysia Investment Development Authority, ASEAN Becoming a Compelling Investment Destination, https://www.mida.gov.my/mida-news/asean-becoming-a-compelling-investment-destination/, 2023 (accessed on: January 2nd, 2025)

[7] 2011 Rules of Procedure for Conclusion of International Agreements by ASEAN, https://www.asean.org/wp-content/uploads/images/archive/documents/ROP%20for%20Conclusion%20of%20International%20Agreements%20by%20ASEAN.pdf, 2011 (accessed on: January 12th, 2025).

[8] A. Acharya, Ideas, Identity, and Institution-Building: From the ASEAN Way to the Asia-Pacific Way?, The Pacific Review, Vol. 10, No. 3, 1997, pp. 319-346, https://doi.org/10.1080/09512749708719226.

[9] S. Cho, J. Kurtz, International Cooperation and Organizational Identities: The Evolution of the ASEAN Investment Regime, Northwestern Journal of International Law & Business, Vol. 37, No. 2, 2017, pp. 173-212.

[10] Yaung Chi Oo Trading Pte. Ltd. v. Government of the Union of Myanmar, ASEAN I.D. Case No. ARB/01/1, https://www.italaw.com/cases/1173 (accessed on: January 2nd, 2025).

[11] 1978 Thailand-UK BIT, 1978 Singapore-Switzerland BIT, 1975 France-Malaysia BIT, https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping, 2024 (accessed on: January 2nd, 2025).

[12] 1995 Latvia-Vietnam BIT, https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping, 2024 (accessed on: January 2nd, 2025).

[13] ITALAW, https://www.italaw.com/, 2025 (accessed on: January 2nd, 2025).

[14] K. Vandevelde, Sustainable Liberalism and the International Investment Regime, Michigan Journal of International, Vol. 19, 1998, pp. 373-399, https://repository.law.umich.edu/mjil/vol19/iss2/4 (accessed on: January 10th, 2025).

[15] UNCTAD, Bilateral Investment Treaties 1959-1999, UNCTAD/ITE/IIA/2, https://unctad.org/system/files/official-document/poiteiiad2.en.pdf, 2000 (accessed on: January 10th, 2025).

[16] B. Simmons, East Asia, Investment, and International Law: Distinctive or Convergent?, The Korean Journal of International Studies, Vol. 13, No. 3, 2015, pp. 461 - 487, https://www.researchgate.net/publication/291390348_East_Asia_Investment_and_International_Law_Distinctive_or_Convergent (accessed on: January 10th, 2025).

[17] A. Wendt, Social Theory of International Politics, Cambridge University Press, 1999.

[18] P. Nipawan, The ASEAN Way of Investment Protection: an Assessment of the ASEAN Comprehensive Investment Agreement, University of Glasgow PhD Thesis, http://theses.gla.ac.uk/6954/, 2015 (accessed on: January 10th, 2025).

[19] D. S. Jarvis, FDI and Investment Liberalization in Asia: Assessing ASEAN's Initiatives, Australian Journal of International Affairs, Vol. 66, No. 2, 2008, pp. 223 - 264.

[20] P. L. Hsieh, New Investment Rulemaking in Asia: Between Regionalism and Domestication, World Trade Review, Vol. 22, 2023, pp. 173 - 192, https://doi.org/10.1017/S1474745622000362.

[21] UNCTAD, UNCTAD's Reform Package, https://investmentpolicy.unctad.org/uploaded-files/document/UNCTAD_Reform_Package_2018.pdf, 2018 (accessed on: January 10th, 2025).

[22] ASEAN Secretariat, 2014 AEC Blueprint, https://asean.org/wp-content/uploads/2021/08/ASEAN-Economic-Community-Blueprint-2014.pdf, 2007 (accessed on: January 10th, 2025).

[23] ASEAN Secretariat, 2025 AEC Blueprint, https://asean.org/book/asean-economic-community-blueprint-2025/, 2015 (accessed on: January 10th, 2025).

[24] Z. Zhong, The ASEAN Comprehensive Investment Agreement: Realizing a Regional Community, Asia Journal of Comparative Law, Vol. 6, 2011, pp. 1-39, https://doi.org/10.2202/1932-0205.1294.

[25] I. Maxwell, K. Wegner, The New ASEAN Comprehensive Investment Agreement, Asian International Arbitration Journal, Vol. 5, No. 2, 2009, pp. 167-189.

[26] M. Sornarajah, R. Arumugam, An Overview of the Foreign Direct Investment Jurisprudence in Denis Hew, ed., Brick by Brick: The Building of an ASEAN Economic Community, Singapore Institute of Southeast Asian Studies, Singapore, 2007, p. 166.

[27] K. Koesrianti, Rule-based Dispute Settlement Mechanism for ASEAN Economic Community: Does ASEAN Have It?, Hasanuddin Law Review, Vol. 1, No. 2, 2016, pp. 182 - 198, https://doi.org/10.20956/halrev.v1n2.303.

[28] I. Soeparna, Asean Investment Dispute Settlement: A Challenge to the Asean Enhanced Dispute Settlement Mechanism, Chinese (Taiwan) Yearbook of International Law and Affairs, Vol. 37, 2019, pp. 289 - 307, https://doi.org/10.1163/9789004443297_013.

[29] P. R. Vergano, The ASEAN Dispute Settlement Mechanism and Its Role in a Rules-Based Community: Overview and Critical Comparison, Inaugural Conference of the ASIAN International Economic Law Network, University of Tokyo, 2009, pp. 1 - 11

[30] J.W. Koesnadi, J.Shalmont, Y. Fransisca, P. A. Sahari, For More Effective and Competitive ASEAN Dispute Settlement Mechanism,

ECO/WTI Academic Cooperation Project Working Paper Series, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2613871, 2014 (accessed on: January 10th, 2025).

[31] R. Beckman, L. Bernard, H. D. Phan, T. Hsien-Li, R. Yusran, Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanism in ASEAN Instruments, Cambridge University Press, 2016.

[32] M. Ewing-Chow, R. Yusran, The ASEAN Trade Dispute Settlement Mechanism, in Robert Howse, Helene Ruiz-Fabri, Geir Ulfstein, Michelle Q. Zang, The Legitimacy of International Trade Court and Tribunals, Cambridge University Press, United Kingdom, 2018, pp. 365 - 402.

[33] V. Bath, ASEAN: The Liberalization of Investment through Regional Agreements, in Leon Trakman and Nicola Ranieri, Regionalism in International Investment Law, Oxford University Press, United Kingdom, 2013, pp. 182 - 213, https://doi.org/10.1093/acprof:oso/9780195389005.003.0008.

[34] UNCTAD, World Investment Report 2020: International Production Beyond the Pandemic, https://unctad.org/system/files/official-document/wir2020_en.pdf, 2020 (accessed on: January 10th, 2025).

[35] ASEAN Secretariat, ASEAN Investment Report 2020-2021: Investing in Industry 4.0, https://asean.org/book/asean-investment-report-2020-2021-investing-in-industry-4-0/, 2020 (accessed on: January 10th, 2025).

[36] WTO Center, Summary of RCEP, https://trungtamwto.vn/file/20200/summary-of-rcep--viet.pdf, 2020 (accessed on: January 12th, 2025) (in Vietnamese).

[37] H. S. Gao, The Investment Chapter in the Regional Comprehensive Economic Partnership: Enhanced Rules without Enforcement Mechanism, ERIA Discussion Paper Series No. 446, Singapore Management University School of Law Research Paper, 2022, pp. 1 - 27.

[38] A. Lugg, et al., Why is there no investor-state dispute settlement in RCEP? Bargaining and contestation in the investment regime, Business and Politics, Vol. 26, No. 4, 2024, pp. 449–476. https://doi.org/10.1017/bap.2024.8.

[39] B. Townsend, Update on the Regional Comprehensive Economic Partnership agreement – NGO briefing, https://igj.or.id/2015/09/18/update-on-the-regional-comprehensive-economic-partnership-agreement-ngo-briefing/, 2015 (accessed on: January 10th, 2025).

[40] Government of Thailand, Possible reform of Investor-State dispute settlement (ISDS) - Comments by the Government of Thailand, UNCITRAL Working Group III 35th Session, A/CN.9/WG.III/WP.147, https://documents.un.org/doc/undoc/ltd/v18/022/46/pdf/v1802246.pdf, 2018 (accessed on: January 10th, 2025).

[41] Government of Indonesia, Possible Reform of Investor-State Dispute Settlement - Comments by the Government of Indonesia, UNCITRAL Working Group III 37th Session, A/CN.9/WG.III/WP.156, https://documents.un.org/doc/undoc/ltd/v18/075/93/pdf/v1807593.pdf, 2019 (accessed on: January 10th, 2025).

[42] Government of Thailand, Possible Reform of Investor-State Dispute Settlement (ISDS) - Comments by the Government of Thailand, UNCITRAL Working Group III 37th Session, A/CN.9/WG.III/WP.162, https://documents.un.org/doc/undoc/gen/v19/013/91/pdf/v1901391.pdf, 2019 (accessed on: January 10th, 2025).

[43] ASEAN Secretariat, ASEAN, Canada Launch Negotiations for Free Trade Agreement, https://asean.org/asean-canada-launch-negotiations-for-free-trade-agreement/, 2021 (accessed on: January 10th, 2025).

[44] Italaw, Philip Morris Asia Limited v. The Commonwealth of Australia, UNCITRAL, PCA Case No. 2012-12, https://www.italaw.com/cases/851 (accessed on: January 10th, 2025).