



# Opportunities & Challenges: Foreign Investment under AEC

22 August 2013, Department of Trade Negotiations



# AEC GOALS

## A

Single Market and  
Production Base

- Free flow of goods
- Free flow of services
- Free flow of investment
- Freer flow of capital
- Freer flow of skilled labor
- Priority integration sectors

## B

Competitive  
Economic Region

- Competition Policy
- Consumer Protection
- IPR
- Infrastructure Development
- Taxation
- E-Commerce

## C

Equitable Economic  
Development

- SME Development
- Initiative for ASEAN Integration (IAI)

## D

Integration into the  
Global Economy

- Coherent Approach towards External Economic Relations
- Enhanced participation in global supply network
- FTAs with non-ASEAN

**13 Priority Sectors : E –ASEAN, Electronics, Textiles & clothing, Agro-business, Rubber, Automotive, Healthcare, Fisheries, Wood-based, Tourism, Air transport, Logistics**

Establishment of ASEAN in 1967

# Development of Economic Cooperation in ASEAN

## Liberalization

### Goods

ASEAN Free Trade Area(AFTA) → ASEAN Trade in Goods Agreement (ATIGA)  
Implemented in 1993, eliminating all tariffs in 2010 (ASEAN-6) and 2015 (CLMV)

### Services

ASEAN Framework Agreement on Services(AFAS)  
Implemented in 1995, gradually liberalization until 2015

### Investment

ASEAN Investment Area(AIA) → ASEAN Comprehensive Investment Agreement (ACIA)  
Implemented in 1998, covering liberalization, protection, and promotion of investment

## Economic Cooperation

Agriculture, Forestry, Food Security, Industry, IPR, Infrastructure, ICT (e-ASEAN),  
Consumer Protection, Competition Policy, etc.

# ASEAN Economic Community: AEC

## 1. A Single Market and Production Base

Free flows of goods

Free flows of services

Free flows of investment

Free flows of skilled labors

Freer flows of capital

## 2. A Highly Competitive Economic Region

e-ASEAN (e-commerce)

Taxation

Competition Policy

Intellectual Property Rights

Consumer Protection

Infrastructure Development

## 3. A Region of Equitable Eco. Development

Narrowing Development Gap

Development of SMEs

## 4. A Region fully integrated into Global

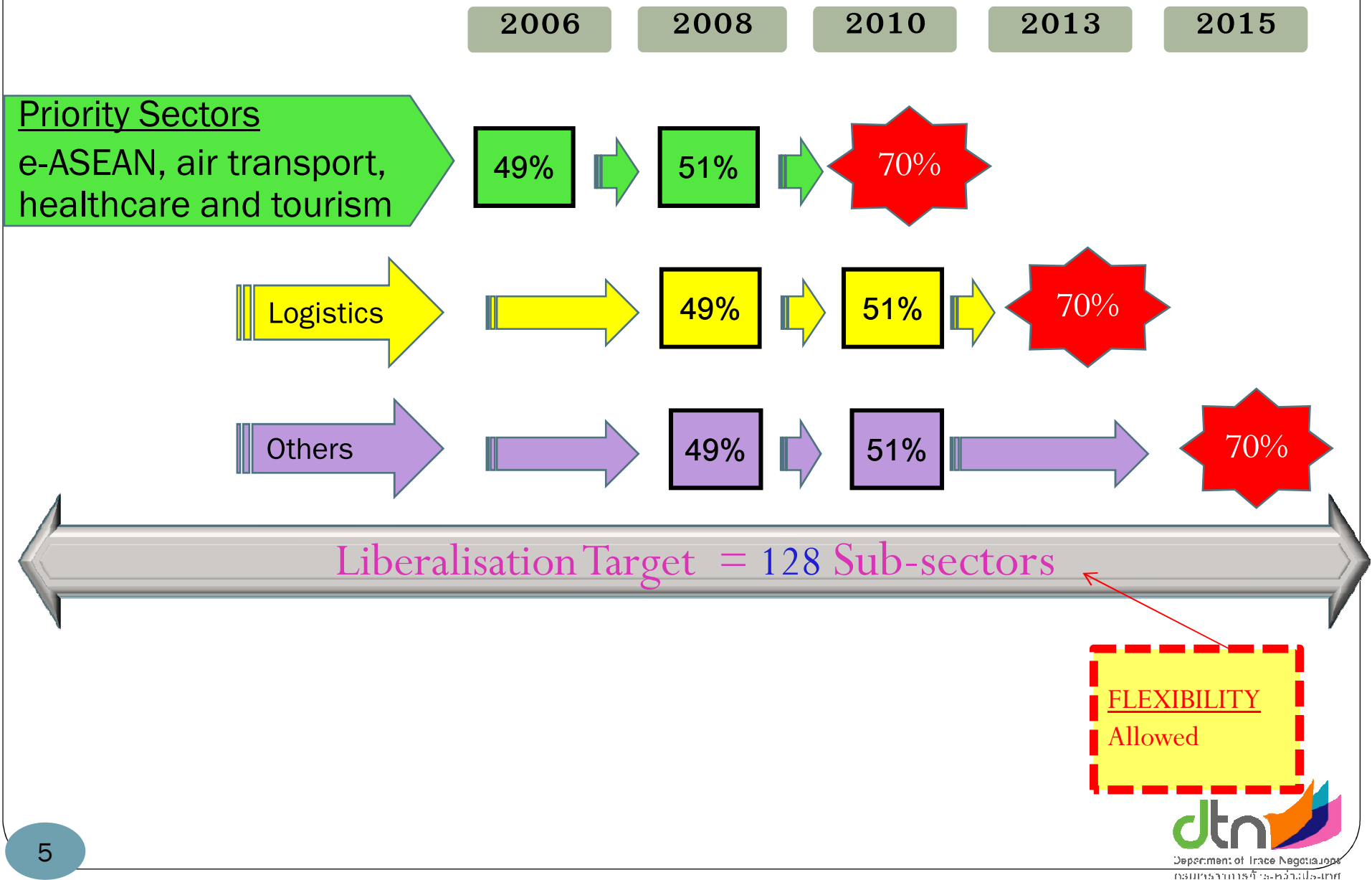
Arrangement of FTAs with non-ASEAN

Involvement in global supply chain



Year  
2015

# Foreign (ASEAN) equity participation up to 70%



## Schedule of Specific Commitments under AfAS

| Packages                      | Substance                                                                                                     |
|-------------------------------|---------------------------------------------------------------------------------------------------------------|
| <b><u>1-7</u> (1995-2009)</b> | Foreign Equity not more than <b>49%</b>                                                                       |
| <b><u>8</u> (2010-2012)</b>   | Allow Foreign Equity up to <b>70%</b> (Healthcare, Tourism) and up to 51% (other sectors)<br>= 80 Sub-sectors |
| <b><u>9</u> (2013)</b>        | + Allow Foreign Equity up to 70% (Logistics)<br>= at least 100 Sub-sectors                                    |
| <b><u>10</u> (2015)</b>       | = 128 Sub-sectors + flexibility                                                                               |

# ASEAN Trade in Services: Work in Progress

- Protocol to Implement the 9<sup>th</sup> Package
- The 9<sup>th</sup> Package of Commitments under the AFAS
- AFAS Enhancement (Trade in Services Agreement)
  - Negotiation Framework

### 3. Free flow of Investment

1. Agriculture
2. Fishery
3. Forestry
4. Mining
5. Manufacturing  
(Industrial)



**Extend non-discriminatory treatment, including National Treatment and Most-Favored Nations to investors in ASEAN.**

**Revise the AIA and draft the new ASEAN Comprehensive Investment Agreement (ACIA)**

**ACIA : ASEAN Comprehensive Investment Agreement**

**Liberalization, Protection, Promotion, and Facilitation of Investment**



# Free flow of investment

## Investment Protection

- Provide enhanced protection to all investors.

### Actions:

- To strengthen among others the following provisions:
  - investor-state dispute settlement mechanism;
  - transfer and repatriation of capital, profits, dividends, etc.;
  - transparent coverage on the expropriation and compensation;
  - full protection and security; and
  - compensation for losses resulting from strife.

# Free flow of investment

## Facilitation and Cooperation

- A more transparent, consistent and predictable investment rules, regulations, policies and procedures.

### Actions:

- Harmonise, where possible, investment policies to achieve industrial complementation and economic integration;
- Streamline and simplify procedures for investment applications and approvals;
- Promote dissemination of investment information: rules, regulations, policies and procedures
- Strengthen databases on all forms of investments
- Strengthen coordination among ministries and agencies concerned;
- Consultation with ASEAN private sectors to facilitate investment; and
- Identify and work towards areas of complementation ASEAN-wide as well as bilateral economic integration.

# Free flow of investment

## Promotion and Awareness

- Promote ASEAN as an integrated investment area and production network.

### Actions:

- Create the necessary environment to promote all forms of investment
- Promote intra-ASEAN investments, particularly investments from ASEAN-6 to CLMV.
- Promote the growth and development of SMEs and MNEs.
- Promote industrial complementation and production networks
- Promote joint investment missions
- Extend the benefits of ASEAN industrial cooperation initiatives in addition to the AICO Scheme to encourage regional clusters and production networks; and
- Work towards establishing an effective network of bilateral agreements on avoidance of double taxation among ASEAN countries.

# Free flow of investment

## Liberalisation

- Progressive liberalisation of ASEAN member countries' investment regime to achieve free and open investment by 2015.

### Action:

- Extend non-discriminatory treatment, including national treatment and most-favoured nation treatment, to investors in ASEAN with limited exceptions; Minimise and where possible, eliminate such exceptions;
- Eliminate restrictions to entry for investments in the Priority Integration Sectors covering goods, and reduce or where possible eliminate restrictive investment measures; and
- Reduce and where appropriate, eliminate other impediments to investment, including performance requirements.

## Reservation List under ACIA

### Sector: Foreigner is not allowed

- Printing of newspaper
  - Rice farming, farming, or gardening
  - Source of Measure
  - Animal Farming
  - Forestry and wood fabrication from natural forest
  - Fishery for aquatic animals in Thai water and within Thailand's exclusive economic zone
  - Extraction of Thai herbs
  - Making or casting Buddha images and monk alms bowls
  - Arms Manufacturing
- 
- Playing Card ➡ Playing cards Act B.E. 2486 (1943)
  - Tobacco ➡ Tobacco Act. B.E. 2509 (1966)
  - Sugar from sugar-cane ➡ Ministerial regulations

**Foreign  
Business  
Act B.E;  
2542**

## Reservation List under ACIA

**Sub-sectors: More than 50% of Thai equity participation is required**

**Exception: Cabinet Approval**

- Carved wood
- Silkworm farming
- Thai silk yarn, weaving Thai silk or Thai silk pattern printing
- Thai musical instruments
- Goldware, silverware, nielloware, bronzeware or lacquerware
- Wood fabrication for furniture and utensil production
- Crockery of Thai arts and culture
- Salt Farming, including underground salt

## **Reservation List under ACIA**

**Sub-sectors: More than 50% of Thai equity participation is required**

**Exception: Certificate from Department of Business Development**

- Rice Milling
- Plywood, veneer board, chipboard
- Lime

# Reservation List under ACIA

## Mining

- Equity participation of up to 60% by foreigner is allowed subject to criteria listed below:
  - Foreigner which is a juridical person of Member State must be registered as a registered ordinary partnership, limited partnership or limited company in Thailand
  - A debt to equity ratio of 3:1 or lower shall be maintained
  - Concessions must be granted by the Department of Primary Industries and Mines, Ministry of Industry as provided by the Mineral Act B.E. 2510 as amended by .....
  - At least two fifths of the member of Board of Directors must be Thai nationals

# Reservation List under ACIA

## Restrictions by Measures

- Minimum capital used at commencement of the business under the list attached to the Foreign Business Act B.E. 2542 shall not be less than that prescribed in the MOC's regulations, which in no case shall be less than three million Baht
- In all other cases, minimum capital used at commencement of the business operation shall not be less than that prescribed in the MOC's regulations, which in no case shall be less than two million Baht
- In order to operate business in Thailand, foreigner shall obtain a license or certificate from Dept. of Business Development, and comply with conditions set forth on the Foreign Business Act B.E. 2542 and subsidiary legislations.
- Foreigner is not allowed to own housing except condominium.
- Land Code

## Reservation List under ACIA

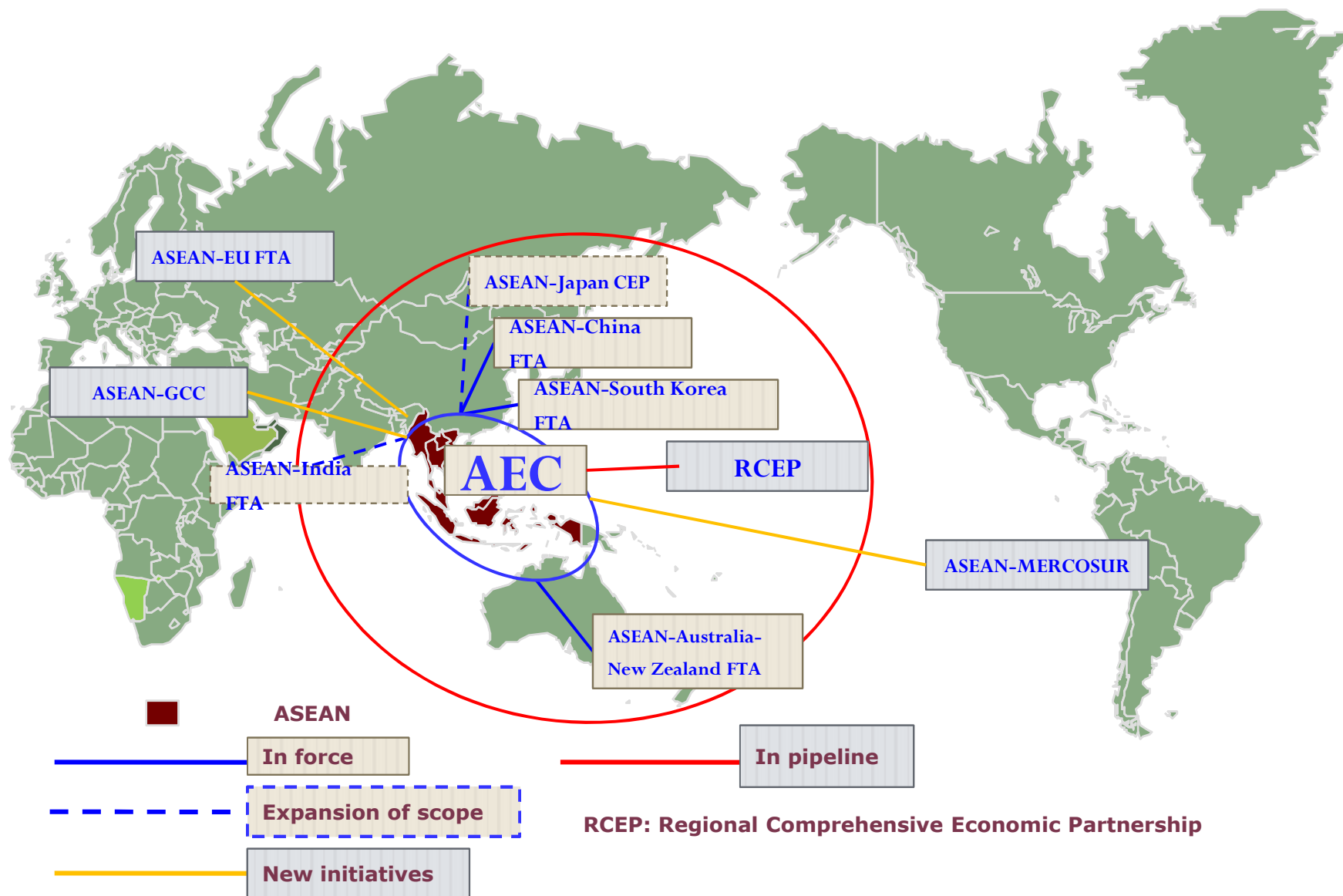
### Restrictions by Measures (continued)

- National Treatment shall not apply to any measure relating to SME
- NT and Senior Management and Board of Director shall not apply to any measure with respect to privatization, or divestment of assets through transfer or disposal of equity interests or assets owned wholly or partially by the government, a state enterprise, a state agency, or a government entity.
- NT shall not apply to any measures relating to portfolio investments.
- NT shall not apply to any measures relating to foreign exchange transactions
- Foreigner is allowed to work in vocations which are not reserved for Thai national.
- Foreigner shall comply with other conditions relating to investment in accordance with national development

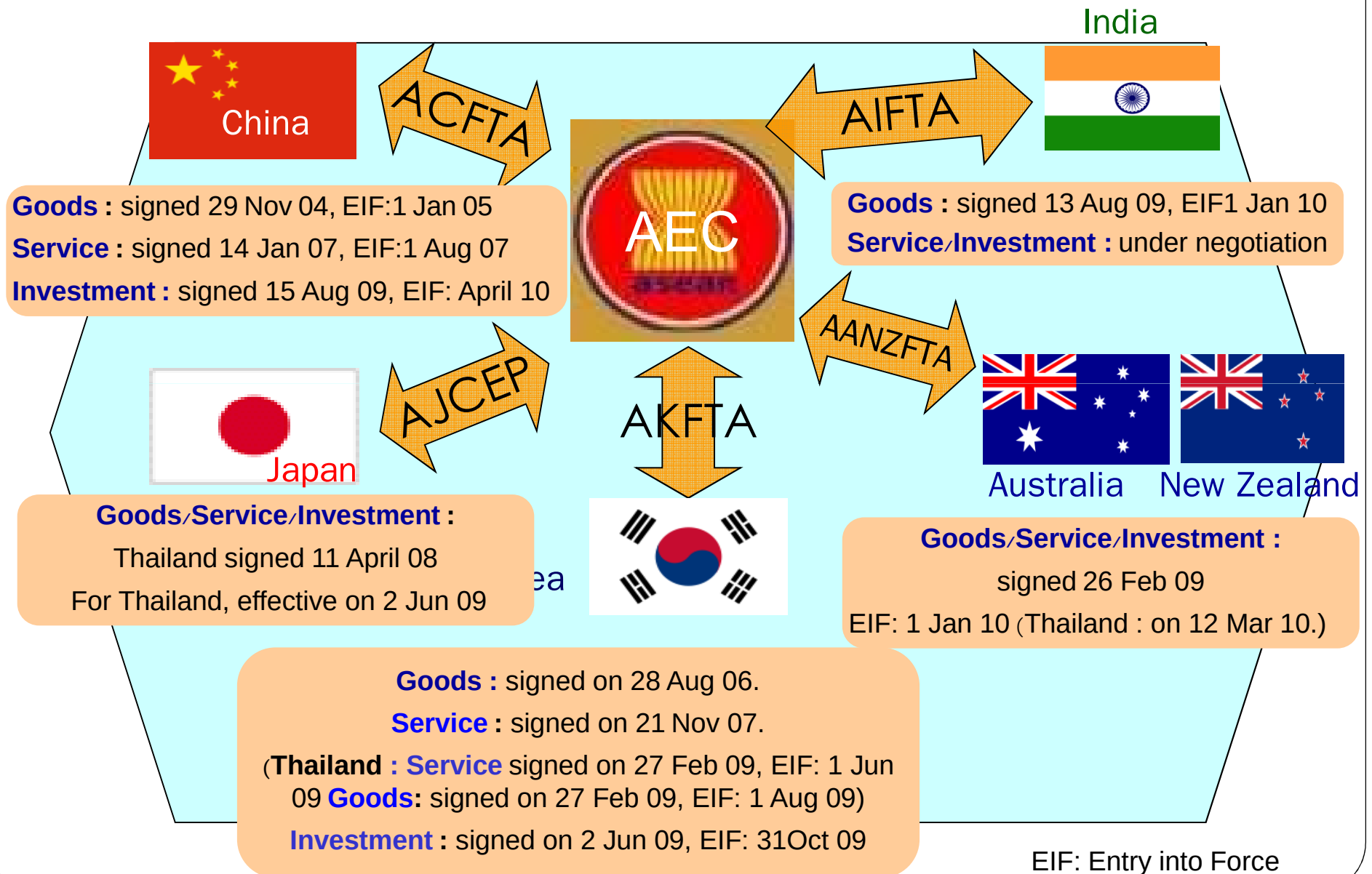
# ASEAN for Business

- Open door policy
  - Greater investment access to industries and economic sectors
  - National Treatment for ASEAN investors
  - Greater transparency, information and awareness of investment opportunities in the region
  - More liberal and competitive investment regimes
  - Lower transaction costs for business operations across the region

# ASEAN External FTA Partners and Enhancing external economic relation



# FTAs b/w ASEAN and DPs – At Present



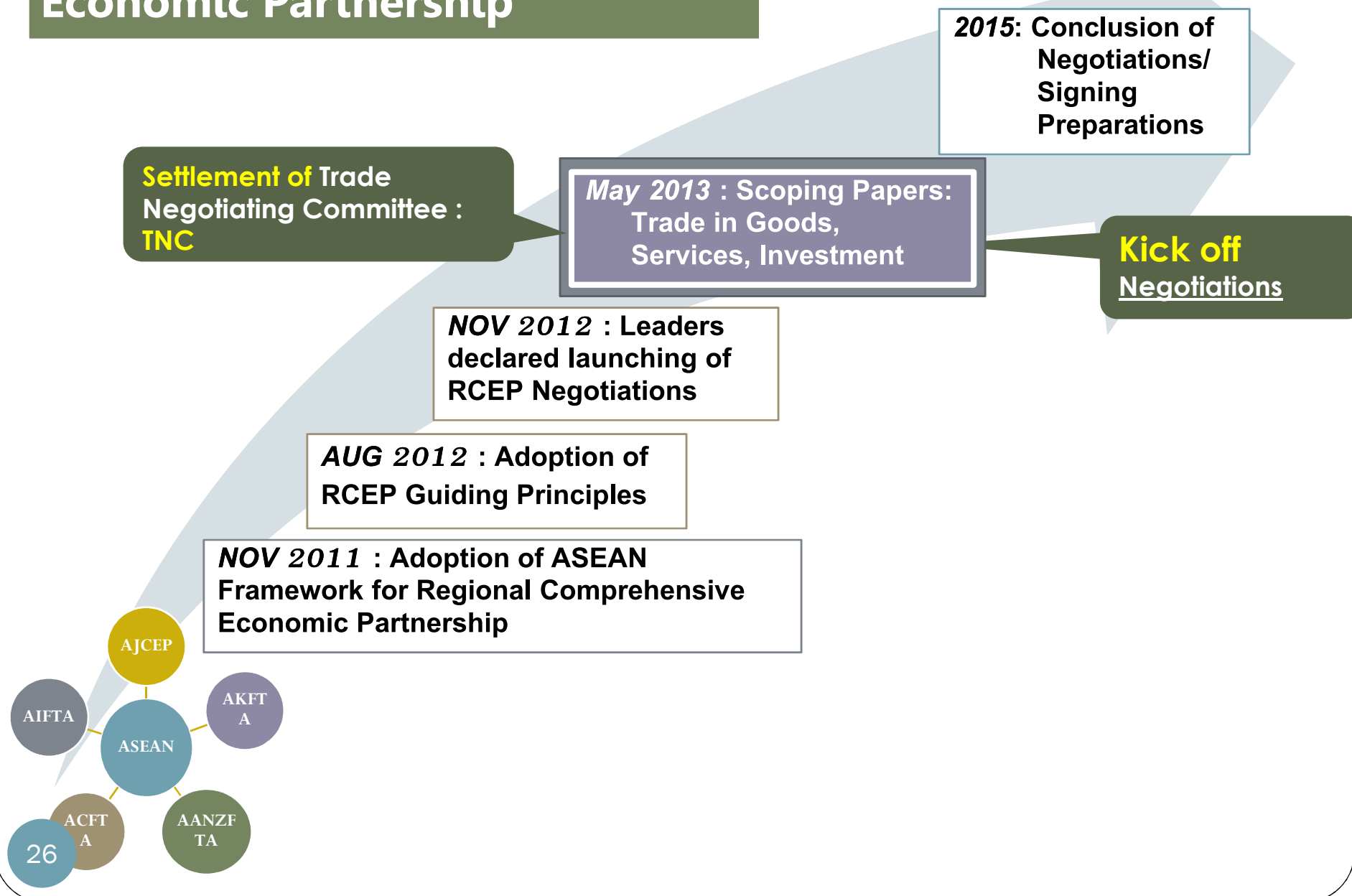
| FTA        | Status/Progress                                                                                                                                                                                |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TAFTA      | <ul style="list-style-type: none"> <li>- Signed Agreement on 5 July 2003</li> <li>- Review</li> <li>- Trade in Services: scoping paper</li> </ul>                                              |
| TNZFTA     | <ul style="list-style-type: none"> <li>-Signed Agreement on 19 April 2005</li> <li>- under negotiations on Market Access</li> </ul>                                                            |
| JTEPA      | <ul style="list-style-type: none"> <li>- Signed Agreement on 3 April 2007</li> <li>-TIS/MNP</li> <li>- Thailand requested more on services incidental to Agriculture (Mode 3 and 4)</li> </ul> |
| Thai-India | <p>TIS: under negotiations (Text, MNP and Schedule of specific commitments)</p> <p>Investment: under negotiations</p>                                                                          |

| FTA     | Status/Progress                                                                                                                |
|---------|--------------------------------------------------------------------------------------------------------------------------------|
| ACFTA   | TIS: 2 Packages of Specific Commitments<br>Investment: No liberalisation                                                       |
| AKFTA   | TIS: 1 Package of Specific Commitments<br>2 <sup>nd</sup> Package is on going<br>Investment: under negotiations on Reservation |
| AANZFTA | TIS: Review Process<br>Investment: Reservation List (on-going process)<br>: Non-Mode 3 investment                              |
| AIFTA   | Under negotiations Under negotiations (TIS and Investment) (Tentatively conclude within 2013)                                  |
| AJCEP   | Under negotiations (TIS and Investment)<br>(Tentatively conclude within 2013)                                                  |

| FTA       | Status/Progress                                                                                                                                                                                  |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RCEP      | <p><u>TIS</u>: Scoping Papers (99% done)<br/>: under negotiations on Text and Approaches</p> <p><u>Investment</u>: Scoping Papers (99% done)<br/>: under negotiations on Text and Approaches</p> |
| TH-EU     | <p>29 Jan 2013: Negotiation Framework</p> <p>1<sup>st</sup> Round Negotiation: 27-31 May 2013</p> <p>2<sup>nd</sup> Round Negotiation: 2<sup>nd</sup> week of September 2013</p>                 |
| Thai-EFTA | Negotiation Framework (on-going process)                                                                                                                                                         |
| TPP       | Internal Study and domestic consultation process                                                                                                                                                 |
| AJCEP     | Under negotiations (TIS and Investment)<br>(Tentatively conclude within 2013)                                                                                                                    |

# **Investment in incoming FTAs**

# RCEP: Regional Comprehensive Economic Partnership



## RCEP: Investment

- modern, comprehensive, high-quality and mutually beneficial
- include promotion, facilitation, liberalisation, and protection

What're implications on:

- Interrelationship : investment and services chapters in RCEP
- Investor-State Dispute Settlement: ISDS
- Ratchet mechanism /MFN : auto or negotiated /Standstill
- Negative/Positive List/Hybrid

## AEC and RCEP : Significance and Impact

|             |                                                               |                                                             |
|-------------|---------------------------------------------------------------|-------------------------------------------------------------|
| <b>AEC</b>  | <b>Populations: 590 M.</b><br><i>(9% of world population)</i> | <b>GDP 1,499 Billion US\$</b><br><i>(2% of GDP World)</i>   |
| <b>RCEP</b> | ประชากร 3,300 M.<br><i>(50% of world population)</i>          | <b>GDP 17,100 Billion US\$</b><br><i>(27% of World GDP)</i> |

- **Flagship of ASEAN**

- ✓ Emerging Regional Architecture
- ✓ A new generation FTA
- ✓ A high ambition agreement

- **The Biggest FTA**

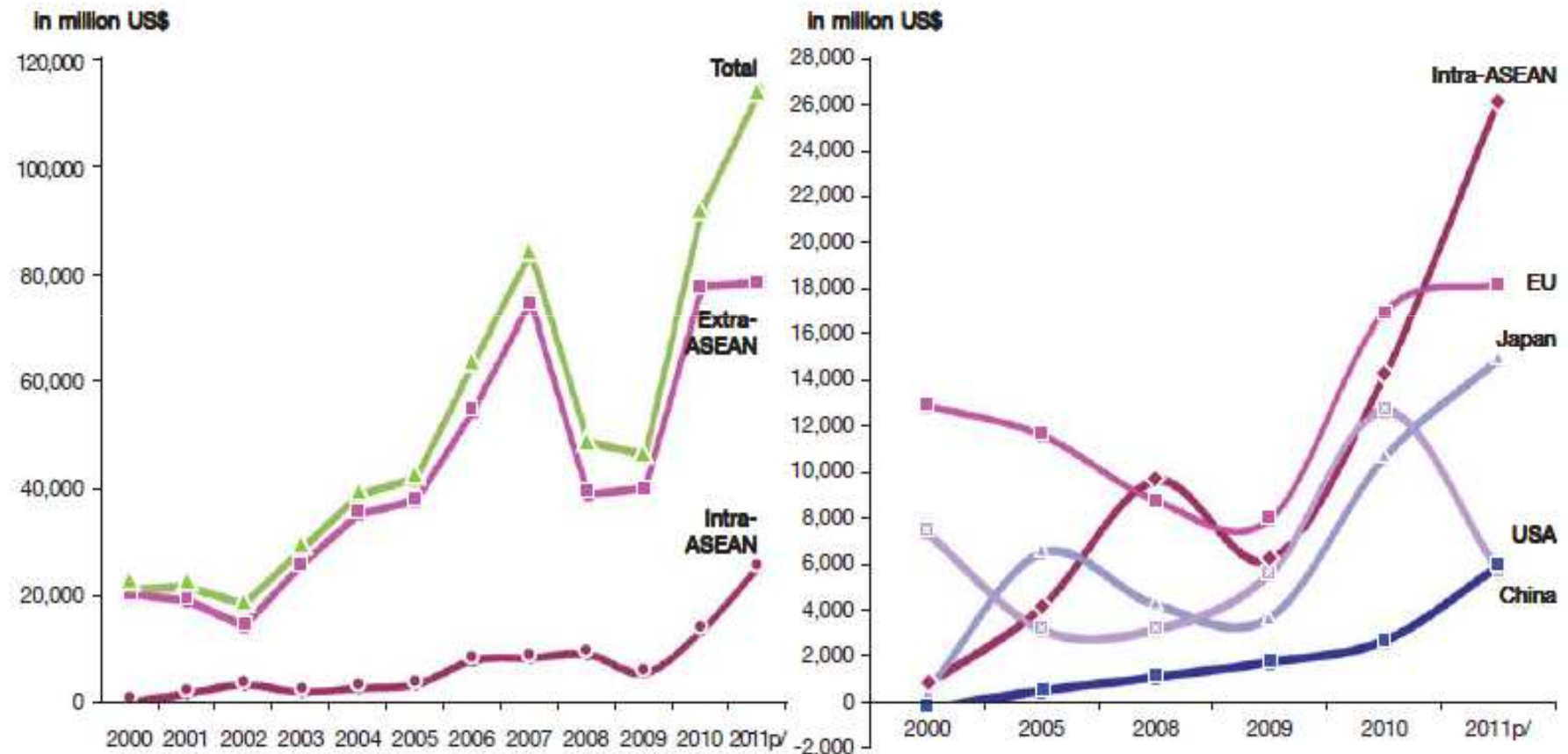
- ✓ Market Size
- ✓ Regional Supply Chain
- ✓ FDI (intra-extra region)

# Thai-EU FTA

Negotiations would cover:

- Liberalisation, Facilitation, Promotion and Protection
- Market access on sectors that benefit to domestic development
- Reduce legal and administrative measures which cause barriers to investment
- Dispute Settlement: International Arbitration
- Rights to maintain any measure to secure financial stability and security
- Etc.

# Investment in ASEAN

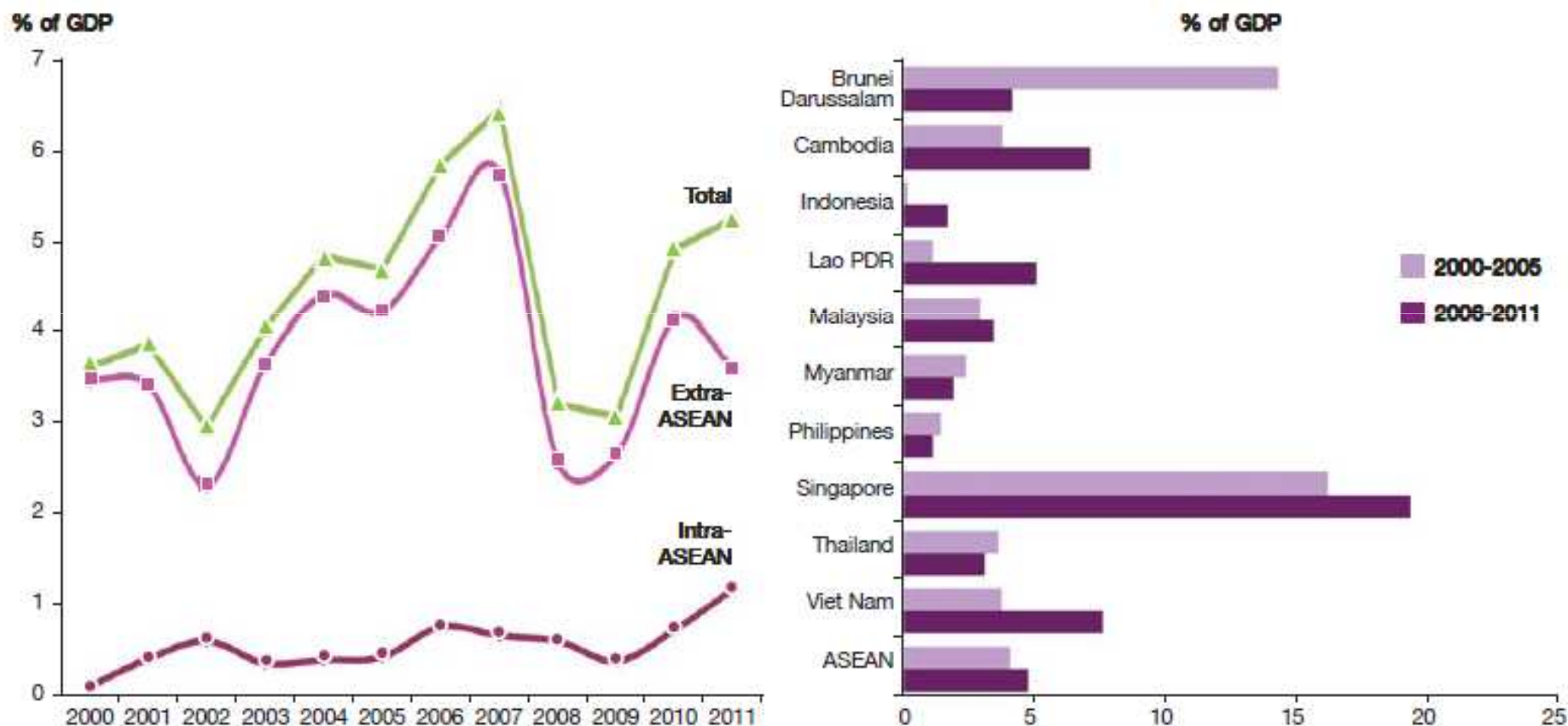


Notes: 2011 data are preliminary figures and exclude Myanmar's data; and Singapore's data on inter-company loan for 2011 with intra-/extra-ASEAN breakdown shown are estimated by the ASEAN Secretariat since the data are presently not available.

Source of data: ASEAN FDI Database

# Investment in ASEAN

## Foreign Direct Investment net inflow to ASEAN and ASEAN Member States



Notes: 2011 data are preliminary figures and exclude Myanmar's data; and Singapore's data on inter-company loan for 2011 with intra-/extra-ASEAN breakdown shown are estimated by the ASEAN Secretariat since the data are presently not available.

Source of data: ASEAN FDI Database

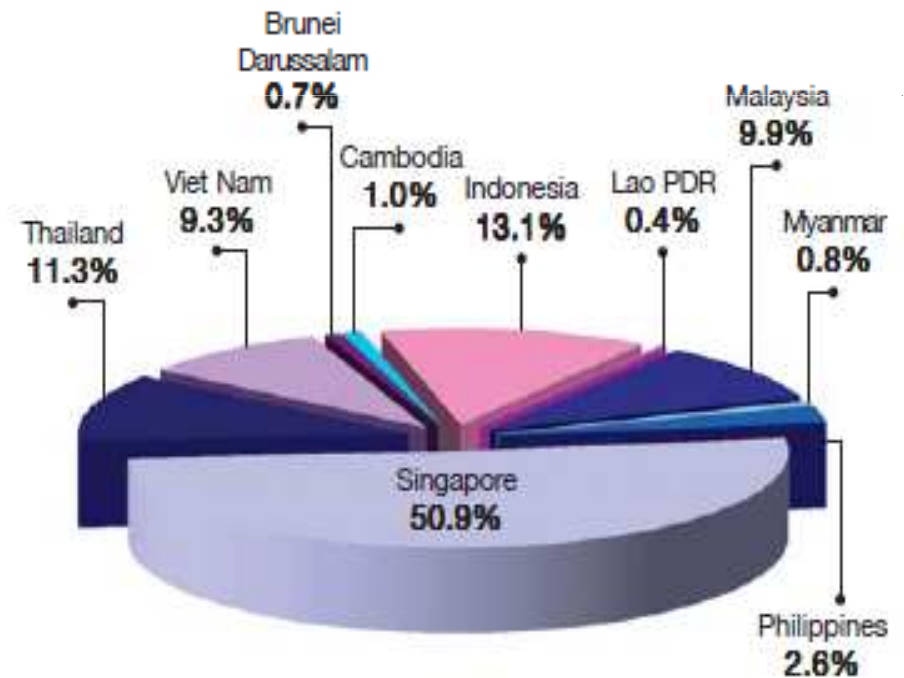
# Investment in ASEAN

Cummulative foreign direct investment net inflow to ASEAN, 2006-2011

by major source country

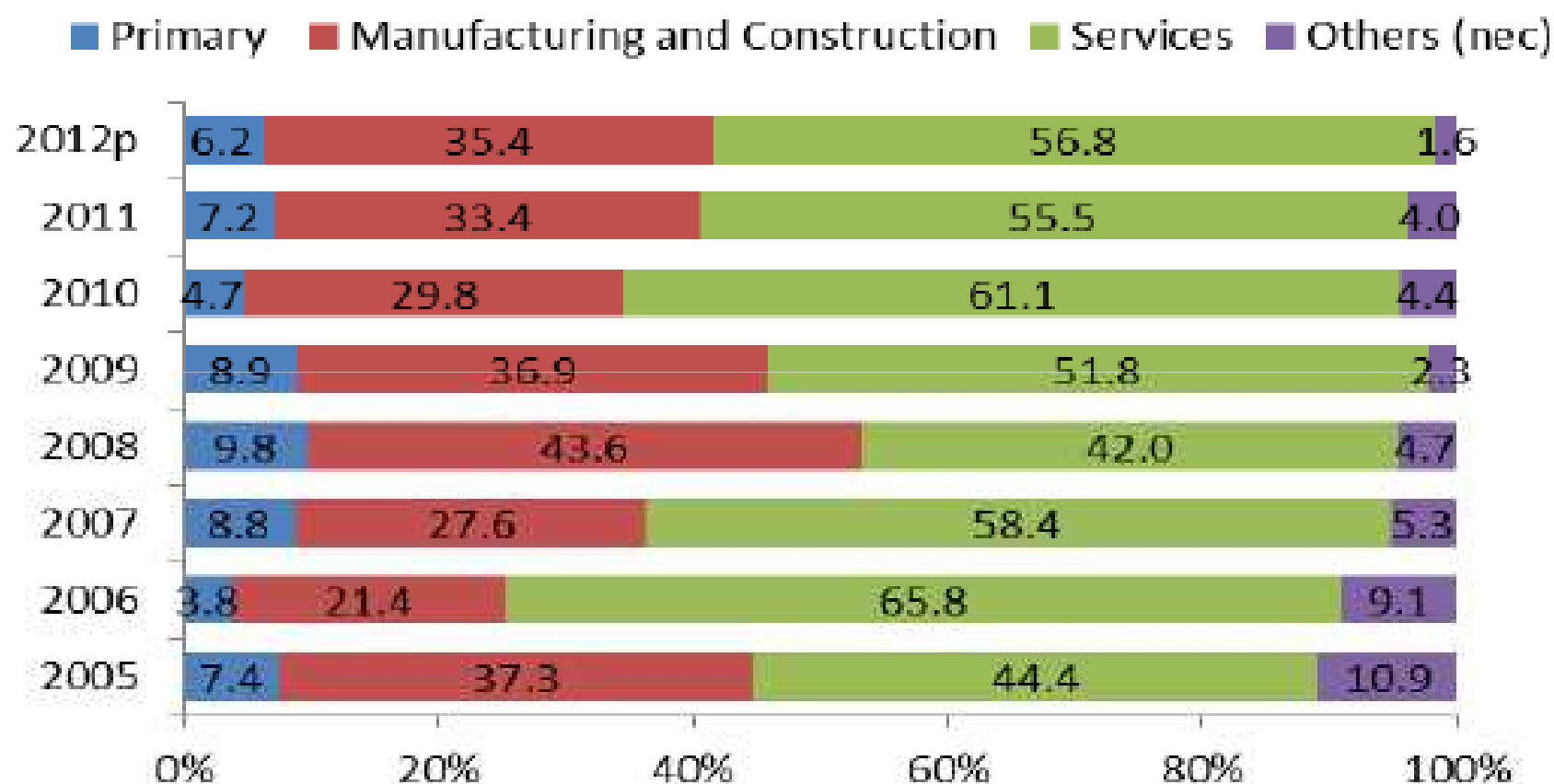


by receiving country



# Investment in ASEAN

**Total FDI inflows to ASEAN by sector (in percent)**



Source: Source: ASEC FDI database, as of 31 May 2013.

Note: 2012 data is preliminary.

# Impact on Trade and Investment

1

- More channels of distribution for Thai products in ASEAN market

2

- Reduce cost of production from lower import tariffs on raw materials and semi-finished products.

3

- Be able to establish business, provide services, and work in ASEAN member countries easier.

4

- Relocate production base to ASEAN member countries, which are relatively advantage in production factors, such as labor, natural resource , etc.

# Impact on Trade and Investment

**1**

- **More intense competition in market**

**2**

- **Low quality products may enter increasingly into Thai market.**

**3**

- **Foreign investors can invest in Thailand as ASEAN investors.**

**4**

- **Thai skilled labors can migrate to other ASEAN countries for higher salaries.**

# Implication on Investment

**Positive**



Thailand can attract more foreign direct investment.

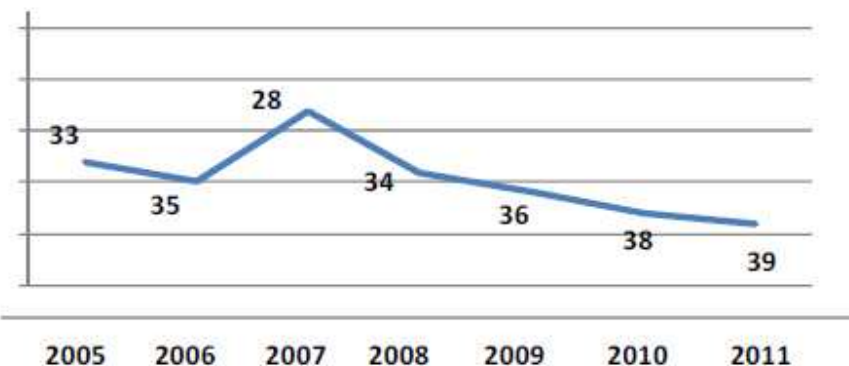
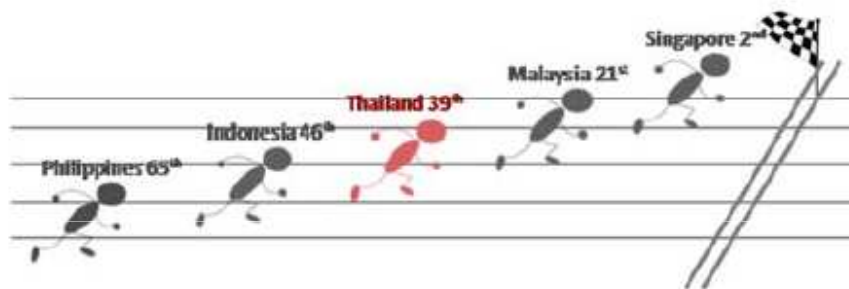
**Negative**



Other ASEAN countries may be more attractive than Thailand.

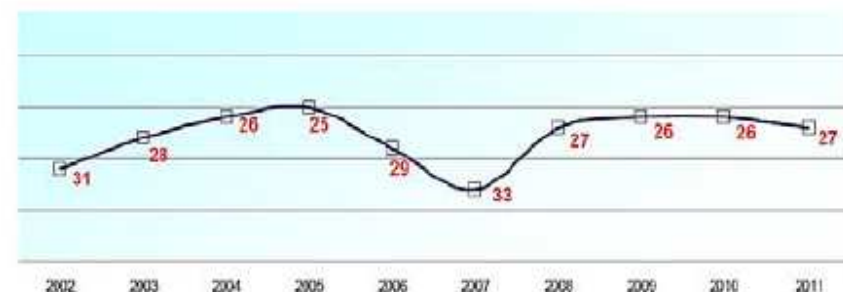
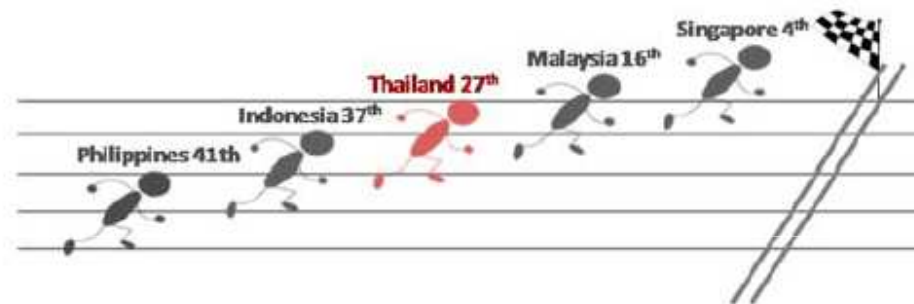
## Thailand is relatively competitive, but declining, compared with ASEAN counterparts

- WEF's Global Competitiveness Index (GCI) 2011-12 – out of 142 economies



Source: Global Competitiveness Report, WEF

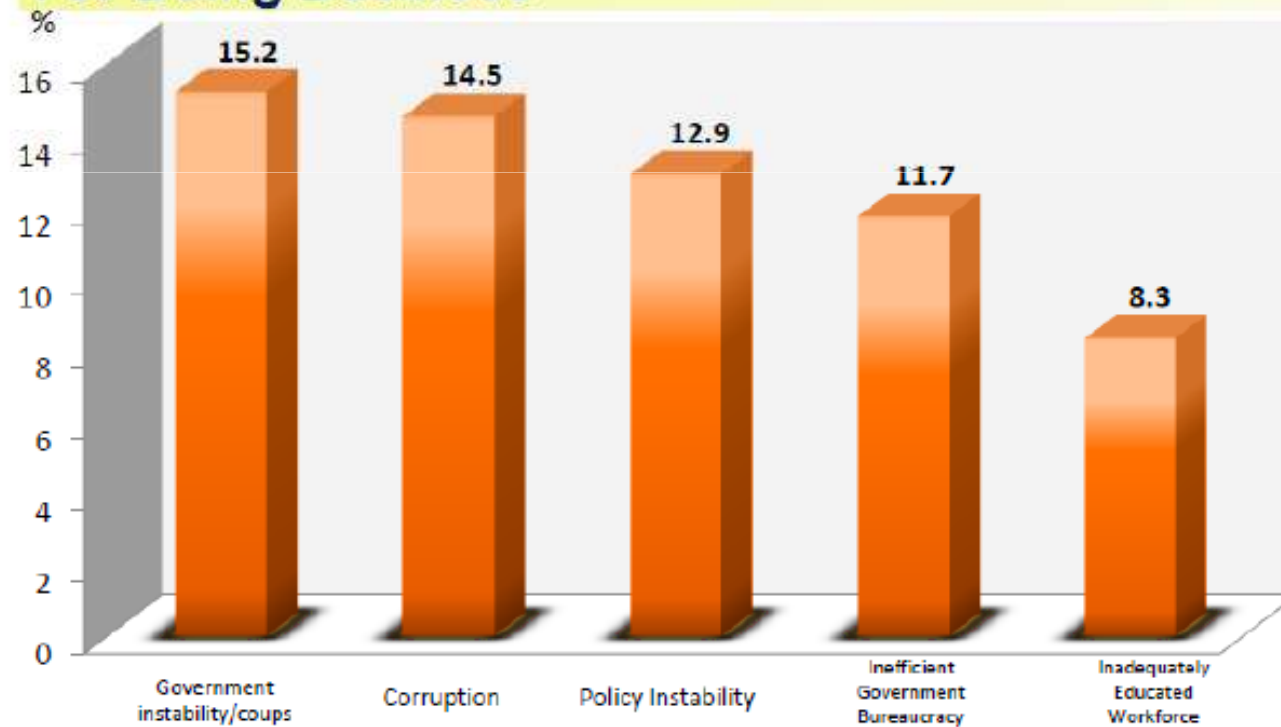
- IMD's Competitiveness Scoreboard 2012 – out of 59 economies



Source: IMD

## Political instability, policy inconsistency and corruption are identified as three key hindrances to business

### The Most Problematic Factors For Doing Business



Source: Global Competitiveness Report, WEF 2011-12

## Recommendations for Thailand's enhanced competitiveness

Enhanced Transparency in  
policymaking and the application of  
rules and regulations

Ease of doing business to improve  
economic and business efficiency

Creating an enabling  
economic/regulatory environment

Strengthening the legal framework  
and law enforcement to protect  
intellectual property rights (IPR)



Strengthening Thailand's Competitiveness

Thank You

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