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The Hosting of International Production in ASEAN, Post-Pandemic

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EXECUTIVE SUMMARY

- Global foreign direct investments (FDI) flows will likely fall by 30-40% this year, even under the optimistic assumption of an economic recovery in the second half of 2020.
- Non-equity modes (NEMs) of international production are increasing and are expected to increase further in the face of the uncertainties and risks posed by the Covid-19 pandemic.
- Economies that are more dependent on FDI have liberalised their investment environments unilaterally to attract FDI and NEM activities.
- Regional collaborations will greatly enhance ASEAN as a region to stake an early-mover claim on FDI and NEM activities.
- Launching the Regional Comprehensive Economic Partnership-15 (RCEP-15) as soon as possible will ensure that the markets of its members stay open to both trade and investment.
- The Digital ASEAN vision can be facilitated with a swifter and earlier implementation of the next phase in services liberalization, the ASEAN Trade in Services Agreement (ATISA).

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INTRODUCTION

As with practically all countries, the novel coronavirus (Covid-19) pandemic has negatively impacted the growth prospects for ASEAN member states (AMS), with downward revisions in the growth forecasts for all member states, except Brunei.[1] Indonesia, Malaysia, the Philippines, Thailand, and Singapore face negative growth rates for 2020. The forecasts are likely to be revised further downwards later in the year as the negative impact of the economic lockdown in some AMS in the first half of the year emerges. Each AMS is encountering challenges in preserving productive capacity, creating employment and stimulating demand. While a V-shaped economic recovery is forecasted by the IMF and ADB for 2021,[2] much depends on the policies and plans that are or will be put in place to stabilise and stimulate the national economies. AMS are mainly relying on fiscal stimulus; but given their strong participation in international production and global value chains, trade and investment policies are equally important for their economic recovery.

As suggested by the OECD (2020), foreign direct investments (FDI) can be harnessed to facilitate post-pandemic economic recovery.[3] FDI has long been used to boost domestic production capacities, employment, and development through technology transfer. Be that as it may, studies on past crises indicate that foreign-owned affiliates can access the financial resources of parent companies to enhance their resilience during times of crises. Furthermore, non-equity modes (NEMs) of international production, which are contractual arrangements between independent firms which have no equity stakes with each other, can also facilitate recovery by building domestic productive capacity and generating employment opportunities. Given these possibilities, appropriate investment policies can thus play an important role in promoting economic recovery in the AMS.

EQUITY AND NON-EQUITY MODES OF INTERNATIONAL PRODUCTION

Globally, foreign direct investment (FDI) has been on a downward slide since 2015. It fell from USD2 trillion in 2015 to USD1.3 trillion in 2018.[4] The pandemic's negative impact on the 2020 earnings of multinationals (MNCs) will worsen the decline,[5] especially when one considers that more than 50% of global FDI are reportedly financed by reinvested earnings. Both the United Nations for Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD), have estimated that global FDI flows will fall by 30-40% this year, even under the optimistic assumption of an economic recovery in the second half of 2020. This reduction in global FDI implies greater competition for FDI, within ASEAN and among other developing economies.

There are however possible new investment flows coming from the pandemic as relocations from China continue as part of the realignment of supply chains which has been ongoing since the 2018 trade war began between the US and China.[6] MNCs are considering a China-Plus-One strategy to reduce over dependence on China and to diversify risks.

NEMs of international production, which include, for example, contract manufacturing, services outsourcing, contract farming, franchising, and management contracts, are another potential avenue for stimulating economic activities. Unlike FDI, these activities require low upfront capital expenditures, limited working capital, reduced risk exposure and can be flexible in adapting to changes in demand. Heightened uncertainties and risks associated

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with the global pandemic and scarcity of capital increase the relative attractiveness of NEM activities. In addition, the availability of local firms that can offer the same or even better terms of collaboration than the affiliates of MNCs increases the likelihood of NEM arrangements.

In 2010, UNCTAD (2011) reported NEMs generated over USD2 trillion in sales, most of which were in developing countries while global FDI amounted to USD1.24 trillion.[7] Expansion in international production is increasingly focused on asset-light international modes such as licensing and contract manufacturing. In 2019, UNCTAD reported that, globally, the growth of NEM activities has outpaced FDI, based on the relative growth rates of royalties, licensing fees and services trade.[8]

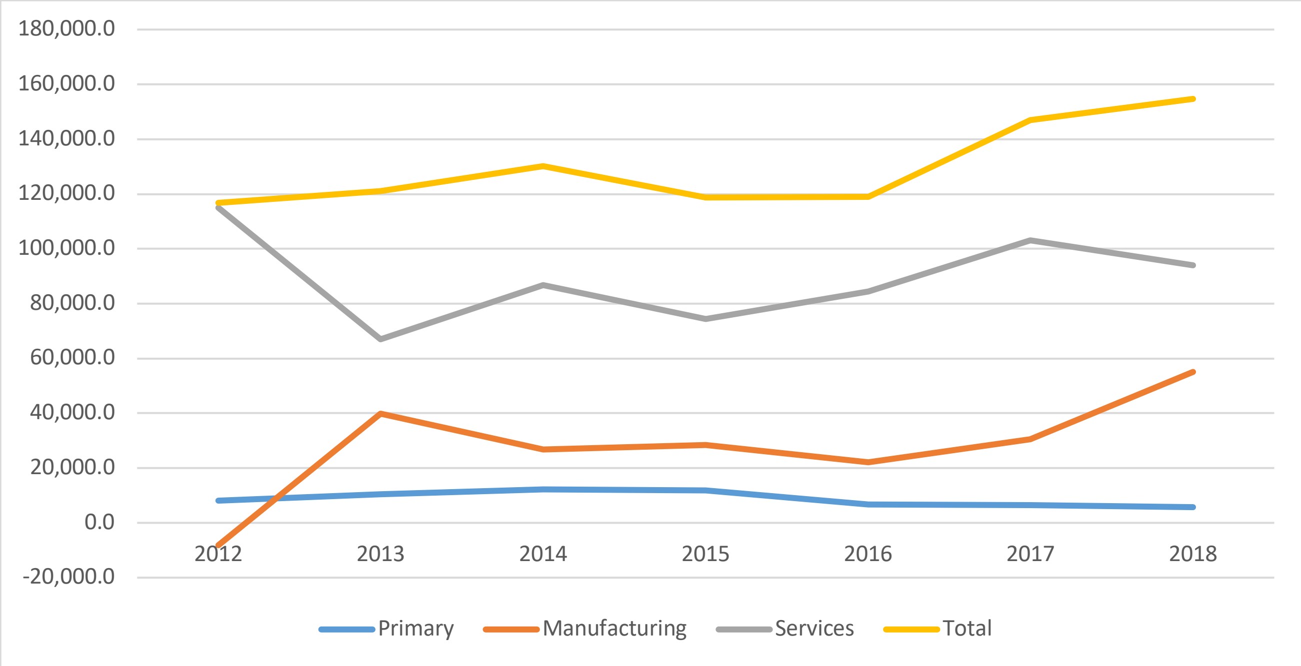
HOSTING FDI IN ASEAN

Total inflows of FDI into ASEAN grew from USD 117 billion in 2012 to USD154.7 billion in 2018 (Figure 1). The increase was moderate from 2012 to 2013, at 3.4 percent, but grew by 7.4 percent in 2014. Subsequently, inflows fell from USD130 billion to USD119 billion. As noted in the ASEAN Investment Report for 2016, falls in FDI in services, cross-border mergers and acquisitions (M&As) and lower intra-company loans contributed to this drop. Inflows stagnated from 2015 to 2016 before recovering in 2017 and 2018. ASEAN as a region attracted 11.5% of global FDI, compared to a share of 7.9% in 2012.

The manufacturing and services sectors continue to be the main sectors attracting FDI inflows, with the services sector predominating for the entire period (Figure 1), as has been the case since 2010.[9] Investments in services fell sharply in 2012-2013 due to the sharp drop in US investments into that sector in ASEAN, but this was compensated for by an overall increase in manufacturing investments; the share of services in total inflows shrank from 76 percent to 55 percent while the share of manufacturing increased from 16 percent to 33 percent.[10]

During the two years of stagnation in total inflows, investments in services grew from USD74 million to USD 84 million and even further to USD103 million in 2017 before falling to USD94 million in 2018. But this is still less than the value of services investments garnered in 2012 (USD115 billion), indicating in general a lacklustre performance of FDI in services for the period.

Figure 1. Inflows of FDI into ASEAN, by major sectors, 2012-2018 (USD million)



Source: ASEAN Secretariat

OECD (2019)'s study on the determinants of FDI suggest the importance of statutory restrictions on inward FDI.[11] Liberalizing these restrictions through FDI reforms by about 10% can increase bilateral FDI inward stocks by about 2.1% on average. FDI restrictions are important policy variables for improving a country's investment climate since governments can amend their domestic regulations if they wish, to attract multinationals into their country.

The OECD FDI Restrictiveness Index is a commonly used measurement which highlights four types of FDI restrictions:

(i) foreign equity limitations;
(ii) screening or approval mechanism;
(iii) restrictions on employment of foreigners as key personnel, and;
(iv) operational restrictions such as restrictions on branching, capital repatriation or land ownership.[12,13]

The index takes a value between 0 and 1 with 0 being completely open while 1 represents completely closed. Although there are ongoing reforms, the ASEAN average for this index, stands at 0.20 in 2018, which is higher than the non-OECD average (0.13) and the OECD average (0.07). This shows that ASEAN, on average, has more restrictive FDI policies than the average non-OECD and OECD country.

The three older AMS, namely the Philippines, Indonesia and Malaysia, have on average more restrictive policies than the CLMV countries, with Cambodia having the least restrictions (Figure 2.). According to OECD (2019), although the data is not in the website,

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Thailand's FDI restrictiveness index is higher than the ASEAN average in 2016 while Brunei has one that is lower than the non-OECD average restrictiveness. Singapore's restrictiveness index is even lower than the OECD average.

It is important to note that ASEAN faces competition both from within the region and from outside the region. The ASEAN average is also higher than the FDI Restrictiveness Index for the developing Latin American countries available in the databank.[14] The Index for Argentina, Brazil, Chile, Colombia, Peru and Mexico is, respectively, 0.031, 0.087, 0.057, 0.026, 0.077, and 0.188, for the same year.

The tertiary sector has more restrictions than manufacturing since the overall restrictiveness index is lower than that for the tertiary sector for all the AMS (Figure 2). This can be attributed to the fact that all of these countries have opened up their manufacturing sector much earlier to embark on FDI-led manufacturing growth, while the tertiary sector remains relatively closed.

Compared with the Latin American countries, Indonesia, Malaysia, the Philippines and Vietnam have more restrictions in all three sub-sectors—electricity, construction and tertiary (Figure 2). In electricity, the two most restrictive countries in Latin America, namely Mexico and Peru, are more restrictive than Cambodia, Myanmar and Vietnam. Likewise, Mexico and Peru have more restrictive FDI policies in construction compared to Cambodia and Vietnam. For the tertiary sector, Mexico and Peru are more open compared to Vietnam and Lao PDR.

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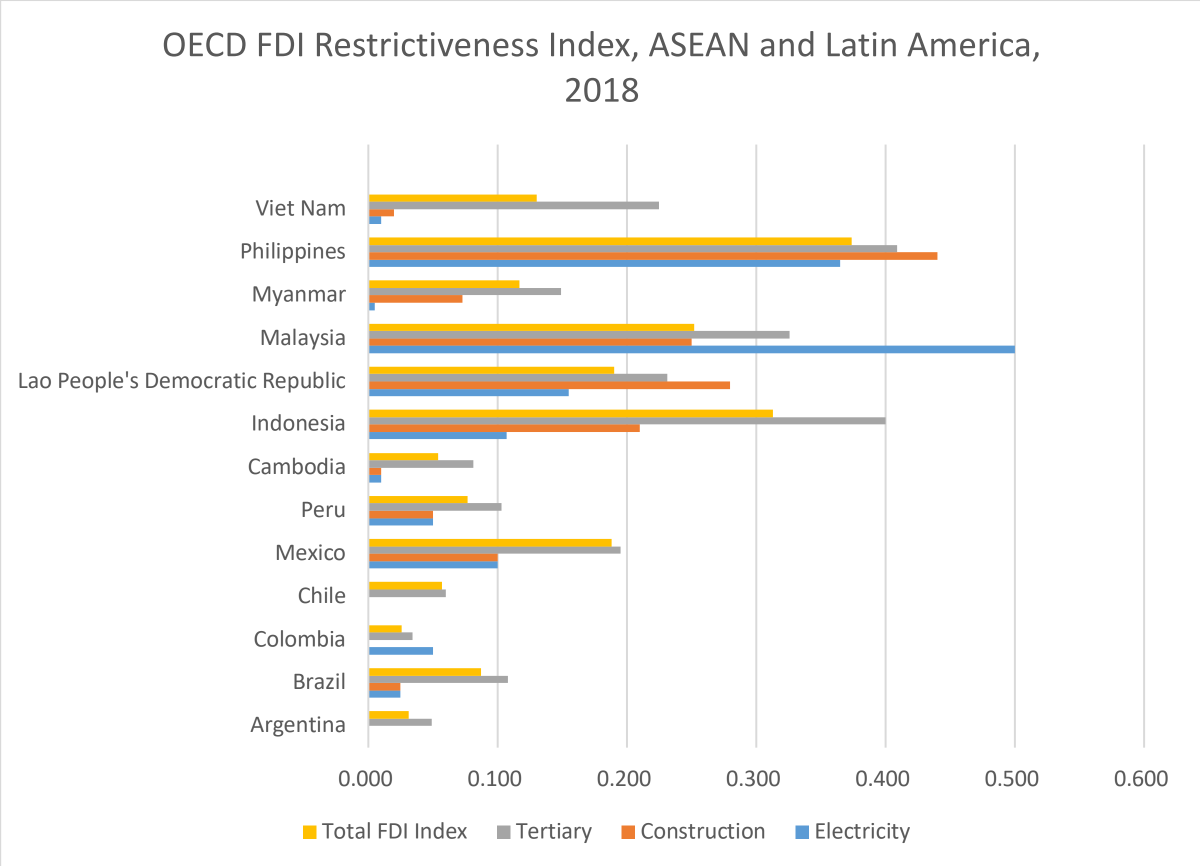
Figure 2. OECD FDI Restrictiveness Index for ASEAN and Selected Latin American countries, 2018



Note: ASEAN (Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Viet Nam), data for Brunei Darussalam, Thailand and Singapore are not available on the website; (0=open; 1=closed)

Source: OECD FDI Regulatory Restrictiveness Index database, www.oecd.org/investment/fdiindex.htm.

The variations in restrictiveness by sub-sectors and countries indicate that the pace of regulatory reform differs by sub-sectors and countries across ASEAN (Table 1). For electricity, Malaysia has the highest FDI restrictiveness index, followed by the Philippines, Lao PDR, and Indonesia. For the construction sector, the AMS with the highest restrictions are the Philippines, Lao PDR, and Malaysia. The Philippines is the most restrictive for the tertiary sector, followed by Indonesia and Malaysia.

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Table 1. FDI Restrictions by Type and Sectors, 2018

Types of Restrictions	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Viet Nam	OECD - Average
Equity restrictions								
Electricity	0.000	0.047	0.075	0.500	0.000	0.250	0.000	0.087
Construction	0.000	0.150	0.250	0.250	0.063	0.375	0.000	0.000
Tertiary	0.048	0.341	0.167	0.205	0.137	0.308	0.142	0.050
Screening and approval								
Electricity	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.023
Construction	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.013
Tertiary	0.005	0.000	0.018	0.082	0.000	0.000	0.052	0.018
Key Personnel								
Electricity	0.000	0.050	0.000	0.000	0.000	0.050	0.010	0.002
Construction	0.000	0.050	0.000	0.000	0.000	0.000	0.020	0.000
Tertiary	0.000	0.050	0.001	0.004	0.000	0.023	0.022	0.003
Others								
Electricity	0.010	0.010	0.080	0.000	0.005	0.050	0.010	0.002
Construction	0.010	0.010	0.030	0.000	0.010	0.000	0.020	0.000
Tertiary	0.028	0.010	0.044	0.036	0.012	0.023	0.022	0.003

Note: ASEAN (Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Viet Nam), data for Brunei Darussalam, Thailand and Singapore are not available on the website.

Source: OECD FDI Regulatory Restrictiveness Index database, www.oecd.org/investment/fdiindex.htm.

Comparing the types of restrictions that prevail in each country, equity restrictions in Malaysia and Myanmar are higher than the OECD average for the electricity sector. It is more restrictive in all AMS for the construction sector, with the exception of Cambodia and Vietnam. The OECD average for construction is in fact 0.000, meaning no restrictions at all. There are equity restrictions for all countries in the tertiary sector, and they are all higher than the OECD average, with the exception of Cambodia.

For screening and approval, the AMS have no restrictions compared to the OECD average of 0.023 and 0.013 respectively for the electricity and construction sub-sectors. Lao PDR, Malaysia and Vietnam have screening and approval restrictions that are higher than the OECD average for the tertiary sector.

In terms of key personnel, Indonesia has FDI restrictions that are higher than the OECD average for all three sub-sectors. In electricity, only Indonesia and the Philippines have higher restrictions than the OECD average. Indonesia, Malaysia, the Philippines and Vietnam have higher FDI restrictions than the OECD average in the tertiary sector.

Malaysia has no other types of restrictions for the electricity and construction sub-sectors while the Philippines has none for the construction sector. For all other countries, the respective restrictions are higher than the OECD average. This is also the case for all AMS in the tertiary sector.

HOSTING NON-EQUITY MODES (NEM) OF PRODUCTION IN ASEAN

Unlike FDI, there are no national nor international databanks for NEMs as its measurement is not explicitly covered in the balance of payments and supplementary statistics, and relevant micro data such as surveys of different sub-sectors do not explicitly capture this information. The ASEAN-Japan Study Centre used a case study approach to estimate the extent of NEM activities in several AMS.[15] The estimated value of NEM activities in exports from the six published reports shows Thailand, Vietnam and the Philippines to be in the lead (Table 2).

Table 2. NEM Activities in ASEAN, 2016/17

AMS	NEM Production (USD billion)	NEM Exports (USD billion)
Cambodia	n.a.	5.6
Lao PDR	n.a.	0.4
Philippines	40	32
Myanmar	n.a.	1
Thailand	n.a.	150
Vietnam	n.a.	70

Notes: n.a.: not available

Source: ASEAN-Japan Study Centre

Since NEMs are essentially a transfer of intellectual property to the host-country firm under the protection of a contract, the state's role is to ensure that the business environment is conducive for private parties to negotiate freely on the terms of their contractual arrangements.[16] Promoting and facilitating NEM activities depend on clear, transparent and stable rules governing the contractual relationships between partners (UNCTAD 2011).[17]

In order to compare the contractual environment in ASEAN, the World Bank's Ease of Doing Business report is used since it includes among the ten indicators used to construct the Doing Business (DB) rankings, an indicator on enforcing contracts which measures the time and cost of resolving a commercial dispute through a local first-instance court and the quality of judicial processes index. This indicator evaluates whether an economy has adopted a series of good practices that promote quality and efficiency in the court system.

For 2020, out of the 190 surveyed economies, the ease-of-doing-business indicators rank the ASEAN-6 (Singapore, Malaysia, Brunei, Thailand, Vietnam and Indonesia) higher than Peru, Argentina and Brazil (Table 3). However, for the enforcement of contracts, only Singapore, Malaysia and Thailand are ranked higher than the best performer from Latin America, which is Mexico. For ASEAN, only Singapore and Vietnam have a higher ranking for enforcing contracts compared to the overall ease of doing business. For Latin America, the ranking for contract enforcement is higher than the overall ease of doing business for four countries, namely Argentina, Brazil, Chile and Mexico. Mexico is only ranked behind

Singapore, Malaysia and Thailand in terms of both ease of doing business and contract enforcement. It also has a long history of hosting US investments.

Table 3. Ease of Doing Business and Enforcing Contracts Rankings, 2020

ASEAN Member States	Doing Business	Enforcing Contracts
Singapore	2	1
Malaysia	12	35
Thailand	21	37
Brunei	66	66
Vietnam	70	68
Indonesia	73	139
Philippines	95	152
Cambodia	144	182
Lao PDR	144	182
Myanmar	165	187
Latin America		
Argentina	126	97
Brazil	124	58
Chile	59	54
Colombia	67	177
Mexico	60	43
Peru	76	83

Source: The World Bank

POLICY IMPLICATIONS FOR ASEAN

Generally, there is considerable overlap with the factors that make locations attractive and conducive to FDI and NEMs. For example, both modes of production require political and macroeconomic stability in the host economies before MNCs will consider entering into either form of production agreements. In particular, continuing and deepening trade and investment liberalization is imperative for drawing in both FDI and NEM activities.

Several AMS have stepped up their initiatives to attract FDI, post-pandemic. Thailand, for example, has relaxed investment conditions temporarily,[18] while Malaysia has offered tax breaks for investments from RM300 million.[19] Regional initiatives can complement national initiatives, given the importance of regional cooperation for facilitating economic recovery.[20]

For hosting international production within ASEAN, given the intense competition within the region as well as outside the region, the regional grouping should prioritise the signing of the Regional Comprehensive Economic Partnership (RCEP)-15[21] as this will keep the region open for investment and trade in an increasing protectionist climate. The RCEP agreement has 20 chapters which regulate among other matters, liberalization in goods, services and investments. This aims to render the region more attractive for hosting international production. The RCEP was to have been signed in February 2020; this has been delayed and should be implemented soonest possible while leaving the door open for India to re-join the agreement at a later date.

In line with the ASEAN 2040 envisioning of ASEAN centrality, deepening integration within ASEAN is essential.[22] It will also enhance the attraction of the region for hosting the reconfiguration of supply chains which are expected to shift towards a regional focus.[23] While ASEAN has by and large removed tariff barriers under the ASEAN Trade in Goods Agreement (ATIGA),[24] the services sector is still relatively closed, as shown by the OECD FDI Restrictiveness Index. Services liberalization is also crucial to facilitate the shift towards a Digital ASEAN, which is another pillar in the ASEAN 2040 vision.

The ASEAN Trade in Services Agreement (ATISA) is the next phase for services liberalization in ASEAN. However, in order to use ATISA to foster greater services liberalization, the ASEAN Economic Community 2025 Consolidated Strategic Action Plan, which was recently updated in August 2018, has to be accelerated.[25] The AEC 2025 Action Plan for Trade in Services, indicates that ASEAN plans to come out with guidelines by 2025, for transitioning from the last package of liberalization (the 10th package) under the ASEAN Framework Agreement on Services (or AFAS 10) to Non-Conforming Measures (NCM) in ATISA.[26] These measures cover the regulatory restrictions used in each country to restrict FDI in their respective services sector. If ATISA is to serve its purpose, these guidelines should be issued sooner rather than later, given the current negative economic conditions.

While the impending listing of NCMs in ATISA will keep investors better informed on the regulatory restrictions in each country, it is unlikely that these investors will read the actual agreements, especially the SMEs, which are the main forms of businesses in the region. The need to enable investors to access information easily has already been recognised, with the launch of the ASEAN Trade Repository (ATR) in 2017. The ATR provides a single point of access to all the trade-related information of AMS.

Developing a web-site that can act as a single point of access to all regulation-related information for establishing commercial presence, in English, and which is updated on a regular basis, can facilitate the dissemination of information. A single-point data information centre will boost transparency, ease access to information pertaining to regulatory related measures and provide investors with cross country comparisons. The latter will exert covert pressure on the AMS to consider carefully the economic justification of each NCM that will be listed in the ATISA. It should also provide information on the investment incentives provided by each AMS for investors to compare. The web-site can be independently hosted like the ATR or grafted onto the current web-site on investing in ASEAN or InvestASEAN (www.investasean.asean.org).

CONCLUSION

Each AMS is using fiscal stimulus for boosting economic growth, post-pandemic. Economies that are more dependent on FDI have also liberalised their investment environment unilaterally. This can attract both FDI and NEM activities. This is important given declining FDI and the increasing importance of NEM activities as a complement or an alternative to FDI.

At the same time, regional collaborations will greatly enhance the region's position in staking an early-mover claim on the reconfigurations of global supply chains stemming from the pandemic as well as the ongoing trade war. National initiatives can be further strengthened with these regional initiatives while regional initiatives need national commitments for successful implementation. Hence national and regional initiatives must go hand in hand.

Further regional liberalization measures will enhance the region's attraction for hosting both FDI and NEM activities. Launching the RCEP-15 the soonest possible will ensure that the members' markets stay open to both trade and investment. To ensure ASEAN centrality, deepening integration within ASEAN is imperative. In this regard, the Digital ASEAN vision can be facilitated with a swifter and earlier implementation of the next phase in services liberalization, the ATISA. Services liberalization will also enable AMS to appropriate the higher value added segments of value chains, which cover services such as design, branding, marketing and R&D.

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[1] ASEAN Secretariat 2020. "Economic Impact of COVID-19 Outbreak on ASEAN". *ASEAN Policy Brief*, April 2020. Brunei's growth outlook for 2020 by the Asian Development Bank, was revised upwards due to expected increases in exports of oil and petroleum with incoming operations of new refineries in this year.

[2] CSIS 2020. "Recession Looms as Growth Prospects Dim". 14 April 2020 https://www.csis.org/analysis/economic-toll-covid-19-southeast-asia-recession-looms-growth-prospects-dim.. <Accessed 1 June 2020>.

[3] OECD 2020. "Foreign Direct Investment flows in the time of Covid-19". 4 May 2020. https://read.oecd-ilibrary.org/view/?ref=132_132646-g8as4msdp9&title=Foreign-direct-investment-flows-in-the-time-of-COVID-19 <Accessed 1 June 2020>.

[4] See UNCTAD 2019. *World Investment Report 2019: Special Economic Zones*. https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2118 <Accessed 27 May 2020>. The negative trend in FDI was attributed to several factors such as a structural shift towards asset-light forms of overseas operations, a decline in the rates of return to FDI and a drop in corporate restructurings leading to less mergers and acquisitions.

[5] See UNCTAD 2020. "G20 Extraordinary Trade and Investment Ministers Telecon. on Covid-19". https://unctad.org/en/pages/SGStatementDetails.aspx?OriginalVersionID=250 <Accessed 27 May 2020>.

[6] See https://www.dw.com/en/after-coronavirus-dont-write-off-china-as-worlds-factory/a-53258107 <Accessed 27 May 2020>.

[7] UNCTAD 2011. World Investment Report 2011: Non-Equity Modes of International Production and Development. https://unctad.org/en/PublicationsLibrary/wir2011_en.pdf <Accessed 6 June 2020>.

[8] UNCTAD 2019. *World Investment Report 2019: Special Economic Zones*. https://unctad.org/en/PublicationsLibrary/wir2019_overview_en.pdf <Accessed 29 May 2020>.

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[9] This is based on the same definition of the service sector as in the ASEAN Services Report 2017 (ASEAN Secretariat 2017). See https://asean.org/storage/2012/05/ASEAN-Services-Report-2017-Final.pdf <Accessed 6 June 2020>.
[10] ASEAN Investment Report 2013-2014. See: https://unctad.org/en/PublicationsLibrary/unctad_asean_air2014d1.pdf < Accessed 6 June 2020>.
[11] See https://www.oecd.org/investment/the-determinants-of-foreign-direct-investment-do-statutory-restrictions-matter.htm <Accessed 6 June 2020>.
[12] For further details, please see https://www.oecd.org/investment/fdiindex.htm
[13] Note that although the index is not a full measure of a country's investment climate as there are other factors such as the size of the domestic market, and other determinants, it has been found to be a critical determinant of a country's ability to attract FDI.
[14] MERCOSUR, the Southern Common Market, represents another experiment in sub-regional integration. MERCOSUR, an acronym for the Southern Common Market, was established as a regional trade agreement in 1991 with four founding nation states: Argentina, Brazil, Uruguay and Paraguay. There are five associate members of this juridical and economic bloc: Bolivia, Chile, Ecuador and Peru. Mexico has observer status.
[15] See https://www.asean.or.jp/en/trade-info/nem_papers/ <Accessed 27 May 2020>. Although there are ten country studies planned, only six are available on-line at time of writing.
[16] See ASEAN-Japan Study Centre 2019. "Non-Equity Modes of Trade in ASEAN: Promoting new forms of trade between Japan and ASEAN – Cambodia". https://www.asean.or.jp/en/trade-info/nem_papers/ <Accessed 27 May 2020>.
[17] Note that there are many factors that can affect inflows of FDI and NEM activities including the economic conditions of source countries. Host economies can only influence the host environment and make it more attractive for hosting.
[18] See https://www.bangkokpost.com/business/1900395/thailand-boi-approves-steps-to-ease-covid-19-impact-accelerate-investment-in-medical-sector <Accessed 6 June 2020>.
[19] See https://www.malaymail.com/news/malaysia/2020/06/05/putrajaya-offers-tax-breaks-for-foreign-investments-starting-from-rm300m/1872819 <Accessed 6 June 2020>.
[20] See ASEAN Secretariat 2020. "Economic Impact of Covid-19 Outbreak on ASEAN". April 2020.
[21] These are the 10 ASEAN+6 members—ASEAN plus Australia, China, Japan, New Zealand, and South Korea. India has withdrawn from the agreement.
[22] See ASEAN Vision 2040. https://www.eria.org/uploads/media/7.AV2040_VOL_1_Integrative_Chapter.pdf <Accessed 6 June 2020>.
[23] See https://www.cnbc.com/2020/05/13/coronavirus-will-undo-globalization-make-supply-chains-regional-eiu.html <Accessed 6 June 2020>.
[24] There is also ongoing effort to identify non-tariff measures (NTMs) in ASEAN, but the removal of these measures can be difficult as regulatory reforms are needed including simplifications in the procedural measures involved in the administration of regulations in each country.
[25] See https://asean.org/wp-content/uploads/2012/05/Updated-AEC-2025-CSAP-14-Aug-2018-final.pdf <Accessed 6 June 2020>.
[26] The ATISA uses a negative list approach, whereby all services sectors are considered as liberalised by default. A State would then list only those sectors/sub-sectors in which it has taken measures that it considers to run counter to the obligations of the agreement (also known as non-conforming measures).

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