

*Investment Provisions in Asian
RTAs:
Relevance, Emerging Trends, and Policy
Implications*

by

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**ARTNeT Consultative Meeting on Trade and
Investment Policy Coordination
16 – 17 July 2007, Bangkok**



Context

- Regionalism was the most striking trend of the 1990s
 - EU's Single Market 1992; NAFTA 1994; Mercosur
- Pursued deeper form of economic integration
 - Trade liberalization accompanied by investment liberalization
 - To exploit the potential of industrial restructuring and strengthen overall competitiveness
- RTAs have emerged as major factors in shaping the global patterns of international trade, investment, production and competitiveness
- Asia-Pacific rather late entrant to follow the trend of RTAs but is rapidly catching up
- Also beginning to recognize the potential of deeper economic integration and industrial restructuring

Outline

- Relevance of investment liberalization in RTAs
 - Lessons from EU
- Asian RTAs and Investment
 - Coverage of Investment in Asian RTAs
 - Investment provisions in Asian RTAs
- Investment in ASEAN's RTA
- Investment in India's RTAs
- Policy Remarks

Relevance of Investment in RTAs

- Participation in RTAs promotes attractiveness to FDI due to market extension
 - EU's share in global FDI inflows increased from 30-50%
 - Inflows to Mexico increased from US\$ 12 billion to \$ 54 bn p.a. after joining NAFTA
 - Strong effect of RTA variable in inter-country studies explaining FDI inflows
- More important effect of RTAs in strengthening the overall competitiveness of the region by exploiting efficiency-seeking industrial restructuring
 - RTAs reduce the need for maintain horizontal national operations for MNEs
 - MNEs can restructure operations to assign responsibilities to affiliates to specialize in specific product lines for the regional market
- Major driver of new age RTAs has been the urge to exploit the potential of industrial restructuring
 - EU's Single Market Plan
 - MFN tariffs were already low
 - Proportion of intra-regional trade was quite substantial
 - Driven by objective of strengthening overall competitiveness of EU's industry in the face of competition from the US and Japan by exploiting economies of scale and specialization
 - Cecchini Report as the basis of the Single Market White Paper
 - Estimated gains from efficiency-seeking industrial restructuring

EU and industrial restructuring

- Efficiency-seeking industrial restructuring
 - By EU enterprises:
 - consolidation, refocussing on core competencies
 - Pan European restructuring: e.g. Unilever
 - Restructuring by foreign MNEs in EU
 - Case studies such as Ford, IBM...
- Besides investment liberalization, EU Single market plan was accompanied by several investment facilitation measures
 - Statutes of a European company, *S.E.*
 - European Economic Cooperation Agreement (EECA)
- New Age RTAs are generally accompanied by investment liberalization and facilitation

RTAs in Asia

- RTA formation a recent phenomenon in Asia
 - Rapidly catching up
 - FTAs by Asian countries increase from 35 to 191 between 2000-2006
 - 84 FTAs are with regional partners

Asian RTAs: Emerging patterns

	WTO NOTIFIED		Not Notified		Total: Notified and Not Notified	
	2000	2006	2000	2006	2000	2006
Within sub-region						
Central and West Asia	2	9	8	8	10	17
East Asia	0	1	0	3	0	4
South Asia	0	1	0	5	0	6
Southeast Asia	1	1	0	0	1	1
The Pacific	2	2	0	0	2	2
Across sub-region						
Central and West Asia + South Asia	0	0	0	2	0	2
East Asia + South Asia	0	0	0	4	0	4
East Asia + Southeast Asia	0	3	0	9	0	12
East Asia + The Pacific	0	0	1	6	1	6
Southeast Asia + South Asia	0	0	0	10	0	10
Southeast Asia + The Pacific	0	4	0	2	0	6
The Pacific + South Asia	0	0	0	1	0	1
Regional or Plurilateral						
Asian Bloc	4	4	0	4	4	8
Asian Bloc + Asian Country	0	1	0	4	0	5
TOTAL	9	26	9	58	18	84

Investment Provisions in Asian RTAs

- Early stages of evolution
 - Information available for 56 Asian RTAs
- Investment covered in 26 of the 56 RTAs
 - Recent RTAs/FTAs tend to cover investment
 - Some older ones are being amended to extend the scope to cover investment e.g. India-Sri Lanka FTA
 - RTAs/FTAs involving capital exporting countries tend to include investment
 - Japan, Australia, New Zealand, Singapore..

Investment Provisions in Asian RTAs

- Investment provisions in RTAs: Investment facilitation, protection and *liberalization*
 - BIPAs: only investment protection and facilitation
- Asian RTAs also follow a similar pattern
 - Include provisions of investment liberalization

Key provisions 1

- Definition of investment: generally broad sometimes limited to direct investment
- Treatment of ‘Investors’ or Pre-establishment NT:
 - generally on a positive list basis; some times on a negative list basis
- Treatment of ‘Investments’ or Post-establishment NT:
 - generally on negative list basis

Key provisions 2

- Performance Requirements or Investment Measures
 - Generally consistent with TRIMs
 - Some RTAs follow a TRIMs plus approach
 - An expanded list of prohibited investment measures
 - Another aspect of liberalization
 - Japan-Singapore; Japan-Philippines

Key provisions 3

- MFN, Investment Protection, Promotion and Facilitation
 - Fair and equitable treatment in expropriation
 - Rather cautious approach to regulatory takings
- Dispute Settlement Mechanism
 - Limited provisions for investor-state dispute settlement:
 - Consultations
 - ICSID, UNCITRAL

ASEAN FTA and Framework for Industrial Restructuring

- **AFTA**
 - expedited schedule of liberalization
 - Trade facilitation and MRAs
- **AFAS**
 - Framework for MA and NT for Mode 3
 - ASEAN-X principle for expedited liberalization
- **AICO**
 - Extending AFTA to intra-firm trade w.e.f. 1996
 - In post-2002 phase: CEPT further brought down to 0%
- **ASEAN Investment Area**
 - NT to ASEAN investors
 - Except for industries on temporary exclusion list
 - TEL phased out by 2003 in manufacturing
 - Extended to services as well
- **ASEAN Economic Community**
- **Broader regionalism**
 - ASEAN+1 FTAs; ASEAN+3, East Asia Summit

RTAs in India's Trade Policy

- Regionalism and FTAs became important in the current decade due to their growing importance in world trade
- Focus on FTAs in Asia as building blocs of a vision of a broader Asian grouping
- Outside the region, only partial arrangements for exchange of trade preferences e.g. India-Mercosur, India-SACU, India-GCC, India-Mauritius, India-Chile..

India's FTAs/RTAs in Asia

- Bangkok Agreement (1975): Sri Lanka, China, Lao PDR, South Korea, Bangladesh
- South Asian economic integration
 - India-Nepal and India-Bhutan non-reciprocal FTAs
 - India-Sri Lanka FTA (2000):
 - SAPTA (1995)
 - SAFTA (2004)
- Look East Policy
 - BIMSTEC FTA (2004)
 - India-Singapore CECA (2005)
 - India-Thailand FTA (EHP 2004)
 - India-ASEAN CECA Framework (2003)

Emerging CECA/ FTAs

- Study Process:
 - India-China,
 - India-Malaysia
 - India-Indonesia
- Under negotiations
 - India-South Korea,
 - India-Japan,
- Vision of a broader **Asian Economic Community** built in a phased manner to begin with East Asia Summit Participants:
 - A Regional Architecture to provide a seamless market

Investment in India's RTAs

- India-Sri Lanka FTA is being expanded to cover trade in services and investments
- Most of the recent FTAs/ RTAs are comprehensive and include investment
 - BIMSTEC FA
 - India-Singapore
 - India-Thailand
 - India-South Korea
 - India-Japan

Emerging patterns of Industrial Restructuring

- India-Sri Lanka FTA and Industrial Restructuring:
 - Indian companies shifting production to Sri Lanka depending upon the comparative advantage for exports to South Asia and rest of the world
 - e.g. Tyres industry
 - substantial FDI outflows from India to SL
 - Spurring third country investments in SL
 - Much faster expansion of Sri Lankan exports to India
 - Upgrading FTA to CEPA

Emerging patterns of Industrial Restructuring

- **India-Nepal FTA:**
 - shift of production by Indian companies and foreign MNEs from India for buy-back
 - Dabur, Colgate-Palmolive, Hindustan Lever, Kodak a.o.
- **SAFTA/ BIMSTEC:**
 - substantial potential in increasing intra-regional trade and efficiency-seeking restructuring of industry
 - US\$ 3 billion investment proposal by Tata's in Bangladesh in gas-based power, fertilizer and steel plants in anticipation of regional trade liberalization

Emerging patterns of Industrial Restructuring

- Rationalization of production by Japanese and Korean MNEs
 - Toyota: restructuring Indian and Thai operations; some models sourced from Thailand; gearboxes exported from India
 - Sony: restructuring to source some products from Thailand
 - Honda: Cars versus two-wheelers
 - Hyundai: India, a global and regional hub for compact cars

Emerging patterns of Industrial Restructuring

- Tata Steel acquired NatSteel, Singapore
 - Supply chain integration across Tata Steel and NatSteel plants:
 - pallets to go from India; special steels to come to India
 - Tata Steel also acquires a steel company in Thailand

Concluding Remarks

- New regionalism driven by the urge to exploit the potential of industrial restructuring
- Asia quickly catching up with the trend of regionalism
- An increasing proportion of Asian RTAs include investment liberalization to facilitate industrial restructuring
- Asian RTAs follow a progressive approach to liberalization given the varying levels of development
 - Generally consistent with TRIMs, some have adopted TRIMs-plus approaches
- ASEAN's attempt to deepen regional economic integration through expedited implementation of AFTA, AFAS, AICO and ASEAN Investment Area to facilitate industrial restructuring
- India's case suggests that enterprises respond to the opportunities created by regional economic integration
- Exploitation of potential of industrial restructuring prevented by varying trade and investment rules
- Importance of a broader framework to create a broader regional seamless market for trade and investment
 - Importance of CEPEA within the framework of East Asia Summit



Thank you