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ASEM Investment Promotion Action Plan (IPAP) Revisited: Establishing the Groundwork for Regional Investment Initiative

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Abstract

This paper seeks to investigate FDI rule in ASEM, a logical extension of ASEM-IPAP, based on the arguments stemming from the factors hindering FDI flows between the two regions and the impacts of the recent Asian financial turmoil. The barriers to Asia-EU inter-regional FDI are often related to regulatory regimes in Asian countries. However, Asia's future prospects as a destination for profitable FDI remain solid despite the recent financial and economic crisis. Furthermore, it is the EU based multinational firms that express highly favorable attitudes for the Asian countries most affected by the financial crisis.

The ASEM-IPAP has to take into account this new reality and the expectations from both sides. In light of that, the evolution of ASEM-IPAP was viewed through the prism of existing international FDI rules. There will be four directions for the medium- to long-term evolution of ASEM-IPAP: promote the development of a legal environment which is conductive to investment without any legal mandatory rules like EU-MERCOSUR Interregional Framework Cooperation; shape a non-binding regional investment initiative such as the one in place in APEC; frame a binding regional investment agreement similar to NAFTA; and accede to the MAI once the treaty is concluded. Each needs to be assessed carefully to respond to expectations of ASEM members, which may be quite divergent at the moment. But as the process moves on, there is certainly positive, common agreements which could be further developed and enhanced and ultimately result in positive benefits for all ASEM members.

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I. Introduction

ASEM meetings, which have been frequently held since 1996, were initially aimed at developing closer economic and political cooperation. However, as political questions continually confounded reaching consensus,[1] the focus of the talks has shifted largely to economic issues. At its first Economic Ministers' Meeting (EMM), held in Makuhari, Japan on September 27-28, 1997, the participants reached an agreement committing themselves to the Investment Promotion Action Plan (IPAP). The plan envisions active participation by the private sector in attempts to further the influence of the market economy in inter-regional investment. The London Summit (1998, April 3-4) officially adopted IPAP and designated the Investment Expert Group (IEG) to co-ordinate IPAP activities.[2]

This article discusses the factors hindering FDI flows between the two regions, the impact of the recent Asian financial turmoil, and the potential evolution of the ASEM-IPAP as a framework for potential regional investment initiative. While such discussion might be seen as premature, considering the fact that ASEM-IPAP was only recently

1) At the pre-ASEM stage, there was persisting conflict between Portugal and Indonesia over East Timor because Indonesia had annexed this former Portuguese colony in 1975 and subsequent reports of human rights violations followed in the territory. This disagreement continually disrupted ASEAN-EU Ministerial Meetings (AEMM). In addition to human rights violation, Musaki et al.(1998) point out democratization and environmental protection as elements obstructing advancement of political divergence of ASEM.

2) At the London Summit, the Trade Facilitation Action Plan (TFAP) was also adopted but will not be discussed here.

instituted, discussion of inter-regional investment matters prior to the establishment of ASEM-IPAP schedules and work plans seems to be necessary.

This paper is organized as follows: Section Ⅱ overviews IPAP. Section Ⅲ describes current status of Asia-EU Inter-regional FDI. Section Ⅳ identifies barriers to bilateral investment flows, focusing on the obstacles to European investment in Asia. Section Ⅴ investigates the consequences of the Asian financial crisis on European investment inflows in those Asian countries most affected by the crisis. To shed light on the reasons for the current patterns of European investment in the regions, the results of a recent survey conducted by UNCTAD/ICC (1998) will be introduced. Section Ⅵ, the most substantial part of this paper, discusses possible regional investment initiatives at the ASEM level, which would be the logical extension of IPAP. Section Ⅶ concludes.

Ⅱ. ASEM Investment Promotion Action Plan

At the first ASEM Summit in Bangkok in March 1996, the leaders recognized the need to increase European investment in Asia from their relatively low current levels as well as encourage Asian investment in Europe. In response, a Government and Private Sector Joint Working Group was established to draw up an Asia-Europe Investment Promotion Action Plan (IPAP). After two Working Group meetings, a draft plan was completed and was submitted to the ASEM Economic Ministers' Meeting (Japan 1997) for their endorsement. After having been endorsed by the EMM, the IPAP was adopted by the ASEM Leaders during ASEM 2 in London.

1. IPAP Principles, Objectives and Scope

IPAP's basic principles largely derive from the deliberations of the first ASEM Summit Meeting in Bangkok on 1 March 1996. ASEM members committed to:

- Mobilization of business sector resources and ensuring active business/government dialogue and co-operation in all ASEM investment related activities;
- Boosting the scope of the market economy through implementing necessary reforms;
- Recognition of the benefits of an open multilateral trading system;
- Non-discriminatory liberalization and transparency in policy implementation in the trade and investment arena;[3)]

- The concept of open regionalism, whereby economic relations between ASEM partners will be strengthened, while at the same time opening ASEM to trade and investment with the rest of the world;
- All initiatives being fully consistent with, and supportive of, the WTO;
- All initiatives being fully consistent with other multilateral cooperation agreements involving groups of ASEM partners.

The main objective of the IPAP is to generate greater investment flows between Asia and Europe through enhancing the investment climate between and within the two continents. In order to achieve this important objective, several secondary objectives have also been developed.[4]

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3) Non-discriminatory investment liberalization involves the process of reforming investment procedures without discriminating for or against the investment from or by a particular country or group. In other multilateral agreement such as the WTO, such a non-discriminatory process is encouraged but interpreted flexibly to take into account the "special differences" that may exist in certain Member countries due to differing levels of development.

4) These are less important to the purpose of this paper, and thus a brief list of the secondary objectives will suffice: to strengthen business/government co-ordination and co-operation; to enhance Asia-Europe business-related people-to-people contacts; to raise the investment profile of Asia in Europe and Europe in Asia; to build on and create synergy among existing programmes designed to promote Asia-Europe investment activities; to improve the frameworks of investment policies and regulations within ASEM; to create linkages between the business sectors from each region; to establish, if necessary, or enhance information network and information sharing system.

ASEM-IPAP will be implemented through activities that follow a basic criteria in their scope and implementation. First, each activity must have some rationale based on the above-mentioned commitments to be considered as an ASEM project. Second, the same activity must be of concern to investors and have a direct beneficial impact on the investment environment. Third, it should not duplicate other bilateral or multilateral projects or programmes already in place within ASEM. And finally, these IPAP activities must be achievable thus must not be too ambitious or too complex.

2. Two Pillars of IPAP and its Related Activities

A number of activities will be covered under two broad pillars-Pillar 1 "Investment Promotion" and Pillar 2, "Investment Policies and Regulations". The first pillar, which includes activities designed to facilitate and enhance investment and business, requires a strong contribution from the business sector and support from the government. The second pillar, which includes all activities related to the regulatory and legal framework of the government and the investment environment, will obviously entail government contribution, but will also extensively utilize the business sector in a consultive capacity.

Overall, under pillar 1 of IPAP, three main activities are proposed: ASEM Virtual Information Exchange, ASEM Decision-Makers Roundtable to promote partnership and networking and ASEM Business-to-Business Exchange. These activities and their results will be reviewed by the Investment Experts Group. The activities under pillar 2 should address the improvement of investment policies and regulations. Therefore, a High-Level Dialogue on Key Investment Issues will be created for such a purpose. The objectives and coverages of these 4 main activities are detailed in Annex Table A-1.

Ⅲ. Asia-EU Inter-regional FDI Trends

1. FDI from ASEM Member countries

The European Union has consistently been the world's largest supplier of FDI. Total European Union outward FDI stock in 1996 accounted for slightly over 44% of global stock while United States and Japan accounted for 25% and 10%, respectively. Behind this was the expansion of intra-regional direct investment within the region as part of the structural adjustment in response to market integration. More than half of the total European Union FDI inflow has derived from European Union members over the past decades.[5] Taking this

Table 1. Outward FDI from the EU and Asian ASEM Member Countries

(million US$ and percentage)

Country	Flows (Annual average)	Stock
	1991~1996	1996
World(A)	262561	3178169
EU(B)	122634	1404587
B/A	46.71	44.19
Non-Japan Asian ASEM Member Country[a](C)	10276	86731
C/A	3.91	3.04
United States(D)	62685	794102
D/A	23.87	24.99
Japan(E)	21147	330209
E/A	8.05	10.39

Source: UNCTAD (1997), World Investment Report 1997, Own calculation.
a: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Korea, China.

5) UNCTAD(1997, p. 46), World Investment Report 1997.

into account, European Union investment outside of the EU in terms of FDI stock is slightly lower than that of the United States.

Average annual outflows of FDI from the European Union comprised almost half of world average annual FDI flows during 1991–1996; the United States and Japan respectively accounted for 24% and 8% of average annual world FDI flows during the same period.

Excluding Japan, Asia has not been a large source of direct investment due to the current economic development stages of Asia countries.

The share of non-Japan Asian ASEM member country did not exceed 3% in 1996, when measured on an outward stock base, while that of Japan accounted for 10% of the world's direct investment. However, seen in terms of annual average outflows, direct investment from developing Asia[6] has been expanding. Between 1991 and 1996, Japan accounted for 8% of the world's outflow of direct investment, while developing Asia's share amounted to 4%.

When viewed as a whole, the salient feature of the region's direct investment is that overall the developing countries have a strong tendency to invest in neighboring countries, and as a whole the proportion of direct investment within the region is high due to the high share of Japanese direct investment in developing Asia in recent years.

6) Unless otherwise specified, the term 'developing Asia' indicates the same countries as non-Japan Asian ASEM Member countries.

2. FDI in the ASEM Member countries

The EU is the world's largest recipient region of direct investment, receiving 38% of world FDI stock in 1996, compared with 20% going to the United States and 12% to Asian ASEM Member Countries. The same is true in terms of the average annual inflows of FDI over the period of 1991 to 1996, with the shares of EU and Asian ASEM countries at 36% and 19% respectively. China received 57% of the average annual inflows of FDI among Asian ASEM member countries during the same period.[7)]

Table 2. FDI Inflows of EU and Asian ASEM Member Countries

(million US$ and percentage)

Country	Flows (Annual average)	Stocks
	1991~1996	1996
World(A)	242547	3233228
EU(B)	87716	1219179
B/A	36.16	37.71
Non-Japan Asian ASEM Member Country[a](C)	44521	383154
C/A	18.36	11.85
United States(D)	46766	644717
D/A	19.28	19.94
Japan(E)	974	18029
(C+E)/A	18.76	12.41

Source: UNCTAD (1997), World Investment Report 1997, Own calculation.
a: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Korea, China.

Meanwhile, Asian ASEM member countries excluding Japan

7) See Annex table B.1. in UNCTAD(1997), The World Investment Report

Table 3. FDI Inflow into the EU: Share by Home Country

	1985	1989	1994
Home Country			
European Union	37.2	70.7	61.0
Asian ASEM Member Countries	9.9	12.8	6.7
Japan	9.8	12.7	6.6
Non-Japan ASEM Member Countries	0.1	0.1	0.1
United States	35.7	4.1	19.5
Others	17.1	12.5	12.8
Total	100.0	100.0	100.0

Source: EPA (1997).

accounted for only 0.1% of European FDI inflow in 1994.[8] If Japan is included, this figure reaches 6.7%.

The salient feature is that the proportion of intra-regional investment is high due to the progress of market integration in the region. On an inflow basis, the share of intra-regional investment was 37.2% in 1985, and this rose sharply to 70.7% in 1989 as regional markets became much more integrated. Albeit a small decrease, intra-regional investment remained at the high level of 61.0% in 1994.

8) However, in terms of FDI stock developing Asia accounted for almost 4% of EU outward FDI stock in 1993. This figure is almost the same for the share of outward FDI stock from Asian developing countries destined to the EU and in Central and Eastern Europe (Fujita et al., 1997).

3. Asia-EU Inter-regional FDI

Having surpassed Latin America and the Caribbean in the 1980s, developing Asia now receives more FDI than any other regional group of developing countries. The United States, European Union and Japan are the major sources of FDI flows to this region. The three accounted for 48% of inward FDI stock in developing Asia in 1993. Though declining, Japanese investment, both in terms of inward FDI stocks and flows to developing Asia, surpasses that of the European Union and United States. EU FDI stock accounted for 13% of investment in developing Asia, down from 17% in 1985, and putting it behind both Japanese and the US investment. In terms of average FDI flows to developing Asia during 1990-1993, the share of EU accounted for 11%.

Table 4. FDI Inflows and Inward Stocks by the EU, US and Japan in Developing Asia[a]

(million US$ and percentage)

Country/Economy	FDI Inflows(1990-93)		FDI Inward Stocks			
			1985		1993	
	Value	Share of total FDI	Value	Share of total FDI	Value	Share of total FDI
European Union	3,501	10.5	9,058	17.2	29,846	12.9
Japan	5,316	15.9	13,090	24.9	48,607	21.0
United States	3,686	11.0	11099	21.1	32,617	14.1
Triad total	12,502	37.3	33248	63.2	111,070	48.1
All countries	33,473	100.0	52645	100.0	230,933	100.0

Source: EC/UNCTAD (1996), pp.28~29.

a: The developing Asia comprises the following 8 countries: Hong Kong, Korea, Singapore, Indonesia, Malaysia, Philippines, Thailand, China.

Table 4, combined with Table 3, demonstrates that neither Europe nor developing Asia have directed its outward investments significant-ly towards the other.

Ⅳ. Obstacles in Asia–EU Inter–regional Investment

1. Less than optimal investment

EU based multinational firms apparently underestimated the growth potential of the developing Asian countries, and thus lagged behind investment by the United States and Japanese, especially with regard to the establishment of local production facilities. European firms have preferred to focus on investing in other markets, rely more on trade for accessing Asian markets and use neighbouring countries within Europe for cost–based production relocation. Consequently, the trade and FDI involvement of EU multinational firms in Asia was often far below the critical mass beyond which a virtuous cycle of increased trade and investment can come into being.[9] The benign neglect was also encouraged by regional integration in Europe. Successive enlargements and deepening of the Community and free trade agreements with non–member European countries seem to have nourished an inward focus of European Union multinational firms.[10] While lower than is widely seen as optimal, Europe's sluggish investment in Asia has apparently did little to restrain Asian growth.

Meanwhile, Asia's low share in Europe simply reflects the fact that considering its developing stage, Asian firms are more interested in obtaining technology and financing from the European Union than in breaking into the European market.[11]

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9) Fujita et al.(1997).

10) EPA (1997).

2. Regulatory Regime for FDI

A major wave of liberalization in Asia began in the mid 1980s, reflecting the emergence of significantly less restrictive attitudes towards FDI. As a result, FDI policies in Asia are converging around broadly similar international standards.

Nevertheless, the perception of the private sector is that the FDI regimes of several Asian host countries need further improvement, especially when compared with that of other group of countries with different development level such as non-Asian developing countries and countries in transition. Appendix Table A-2 shows a survey result which suggest that regulatory practices prevalent in Asian economies still constitute an obstacle to FDI, with the following outlining the major obstacles:

- It appears to be more difficult for foreign investors to acquire a controlling share in Asian companies. Korea, Malaysia and Thailand are considered to be most restrictive in this respect.
- Foreign investors seem to be constrained in employing foreigners, notably in Japan and the Korea.
- The overall assessment suggests that Korea has still some way to go to liberalize its FDI regime.[12] Such is also the case for India, Japan and Malaysia, although to a lesser extent.

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11) Establishing joint ventures with European investors is therefore a more desirable aim for Asian investors (Chirathivat, 1998).

12) However, Korean government is targeting a more active promotion of FDI since December 1997. For a brief summary of these measures see Annex Table A-4.

3. Factors hampering Asia–EU inter–regional FDI

There are still several obstacles faced by European investors in Asia and by Asian investors in Europe (see Appendix Table A–3). These obstacles seem to differ greatly by country, by business category and by business sector. At least, these are the news generally expressed by the private sector in both Asia and Europe. These tasks have still to be challenged by the future process of ASEM–IPAP. In general, European investors indicated that existing major obstacles to doing business in Asia are still that of a lack of transparency and instability of interpretation of laws, a lack of protection and/or enforcement, generally in reference to intellectual property rights and trade secrets and a lack of control over the business enterprise.

On the other hand, Asian investors faced a different set of problems in Europe. Asian firms most commonly indicate that they see opportunities and priorities at home.[13] However, Asian firms also identify prejudicial treatment, language differences, investment costs, labour issues and distance as obstacles to invest in Europe.

13) In Developing Asia (non–Japan Asian ASEM Member Countries), intra–regional FDI reached 60% in 1994 flow basis (EPA, 1997).

V. Impact of Asian Financial Crisis on EU FDI in Asia

1. FDI inflows in Southeast Asia following the financial crisis

The financial crisis in Asia has involved a sharp decrease in foreign portfolio equity investment as well as private foreign bank lending to the group of countries most affected by the crisis (Indonesia, Korea, Malaysia, Philippines and Thailand). Much portfolio investment is associated primarily with a search for short-term financial gains. Portfolio equity investment has traditionally been volatile. However, FDI inflows in 1997 to the above-mentioned five countries combined are estimated to have remained close to pre-crisis levels.[14] FDI flows are different from that of portfolio equity investment flows and bank lending. Direct investment is by its nature a long-term decision, as investors often endure short-term losses if long-term prospects remain promising.

Exchange rate movements also have implications for the profitability of a given investment. Depreciation[15] lowers the dividends from the

14) Recent FDI and portfolio equity investment flows to the Asian economies most affected by the crisis is reminiscent of their behaviour during the Mexican crisis of 1994-1995. Total portfolio investment flows to Mexico fell from $12 billion in 1994 to $7.5 billion, with portfolio equity investment flows falling from $4.5 billion to $0.5 billion in 1995. In contrast, FDI inflows which had more than doubled in 1994 fell by only 13% in 1995 (UNCTAD/ICC, 1998).

15) Southeast Asian currencies have depreciated by at least 30% against the

affiliate in dollar terms, but at the same time, the cost of making an investment is reduced. If the currency appreciates in the near future, then this latter effect will outweigh any short-term decline in dollar-denominated dividends.[16]

Table 5. FDI inflows into the Asian countries most affected by the financial crisis, 1990-1997

(Billions of dollars)

Country	1990	1991	1992	1993	1994	1995	1996	1997
Actual FDI (balance-of-payments data)								
Indonesia	1.1	1.5	1.8	2.0	2.1	4.3	6.2	4.1[1)]
Korea, Republic of	0.8	1.2	0.7	0.6	0.8	1.8	2.3	3.1
Malaysia	2.3	4.0	5.2	5.0	4.3	4.1	4.7[2)]	3.8[2)]
Philippines	0.5	0.5	0.2	1.2	1.6	1.5	1.4	2.9[1)]
Thailand	2.4	2.0	2.1	1.8	1.3	2.0	2.3	2.5[1)]
Total for the above countries	7.2	9.2	10.0	10.6	10.2	13.7	16.9	16.4[1)]
South, East and Southeast Asia	20.1	21.2	27.7	47.4	55.4	65.5	77.0	80.8[1)]
China	3.5	4.4	11.2	27.5	33.8	35.8	40.2	45.3
Share of the five most affected countries in total South, East and Southeast Asia FDI	35.8	43.4	11.2	22.5	18.4	21.0	21.9	20.3

Source: UNCTAD/ICC (1998)
1) Estimates
2) Not including reinvested earnings

Moreover, the restructuring needs of highly indebted firms boosts their demand for funding. This effect, combined with lower stock prices, provide opportunities for foreign firms and investors to form

dollar since July 1997.

16) OECD (1998), Financial Market Trends, no. 70.

partnerships or pursue M&A activities with regard to the ailing local firm.

Interestingly, however, the value of M&As in the five countries most affected by the crisis taken as a whole decreased by 13% during the second half of 1997 as compared with the first half of 1997 (see Table 6).

This was largely a result of a decline in M&As in the Philippines. On the contrary, The Republic of Korea and Malaysia saw significant increases in M&A activity in the second half of 1997.

Table 6. Cross-border M&A sales in the five Asian countries most affected by the financial crisis, by host country, first and second half of 1997

(US$ million)

	Indonesia	Republic of Korea	Malaysia	Philippines	Thailand	Total
1st half(A)	2187	260	812	2370	906	6535
2nd half(B)	2120	1127	1550	464	500	5761
B/A	96.9	433	52.4	19.6	55.2	88.2

Source: UNCTAD/ICC (1998).

In addition, the need to restore confidence and the shortage of capital for enterprisers in the region, combined with a recognition of the role that FDI can play in maintaining economic growth and development, are leading local governments to liberalize their inward investment regimes (see Appendix Table A-4).

2. Prospects of the region's investment potential

Expectations of continued growth of FDI inflows into Asia are supported by the findings of an UNCTAD/ICC survey.[17] The great majority of respondents (multinational firms) reported that their confidence in the region as an investment destination has remained unchanged in the long-term.[18] Even the short and medium term prospects remain surprisingly healthy. More than one quarter of the responding firms expect to increase their FDI in East and Southeast Asia as a whole in the short-to medium-term. By region or country, investment by North American and Japanese firms hovers around the survey average (19% each); firms from Europe are investing far above average (34%); and investment from developing Asia is distinctly below the survey's average (10%). The high investment plans of European firms may reflect an increasingly active interest in the region.[19]

17) The survey by the UNCTAD Secretariat and ICC, conducted in February 1998, covered 500 multinational firms. A total of 198 firms responded to the survey, for a response rate of 40%.

18) Over four-fifths of all respondents reported that, for them, East and Southeast Asia's longer term prospects as a destination for profitable FDI have remained unchanged. The vast majority of respondents from Europe (86%) and North America (84%) stated that their long-term view of the region remains unchanged (UNCTAD/ICC (1998)).

19) Behind this, there seems to be some underpinning factors. First, a structural change of European industries sees firms following a more global strategy and has thus boosted the continents outward flow of FDI. Second, the smaller fluctuation of European currencies vis-à-vis Japanese Yen has made investing safer. Lastly, in 1993-1994, the governments of major European countries and the European Union launched major export and investment promotion policies targeted at Asian markets. Hence, European firms seems to have been motivated to consider more closely

Table 7. Short-and Medium-term prospects: Firm investment plans by home region of parent company

	Europe	North America	Japan	Developing Asia	Others
Reduce	11%	11%	13%	21%	7%
Unchanged	55%	70%	68%	69%	67%
Increase	34%	19%	19%	10%	27%

Source: UNCTAD/ICC (1998).

Asian markets. For a more detailed analysis of such factors, see Musaki et al.(1998).

Ⅵ. ASEM-IPAP: The Way Ahead

The recent financial crisis in East Asia does not mean that the ASEM-IPAP should scale down its activities, but instead should provide impetus for a future-oriented approach that responds to the real needs of both sides.

Although ASEM-IPAP action programmes are clear and well defined for the moment, members should set their goals beyond the standard exchanges and dialogue between the two regions. It is expected that ASEM-IPAP, during its implementation, will play a key role in identifying bottlenecks to be solved and then suggesting practical solutions. However, lacking a legal framework, the mere implementation of ASEM-IPAP will not likely lead to a considerable increase of inter-regional investment flows between the two regions. Thus, despite the incipient stage of ASEM-IPAP, members need to realize that further enhancement of the goals of ASEM-IPAP need to be explored. If such an approach is taken, ASEM-IPAP could serve as the basis to frame an atmosphere that is much more conducive to FDI within ASEM.

In attempting to build a framework that will boost ASEM investment, it is worthwhile to review the existing international investment arrangements at the bilateral, regional, inter-regional and multilateral levels (see Annex Table A-5).[20] Focus should be given

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20) In order to provide a comprehensive framework for FDI, the proposal has been made to establish such a framework in a multilateral body (the WTO); others feel that a further evolution of the current framework is sufficient. European Union and Asian countries play a central role in these discussions (UNCTAD, 1996b).

only to those investment agreements that hold the prospect to facilitate greater investment flows between two regions, and especially between Europe and Asia.

1. Bilateral Investment Treaties (BITs)

According to Fujita et al. (1997), the most important international FDI agreements continue to be bilateral agreements concerning the promotion and protection of FDI and also double-taxation treaties. A few Asian countries have bilateral investment treaties with European Union members, and this number has increased substantially in recent years.[21] These treaties generally provide non-discriminatory treatment of foreign affiliates and the encouragement and reciprocal protection of investments.[22]

Double taxation treaties also play an important role in facilitating business between countries, and their tax-sparing provisions can help stimulate FDI in developing countries. Most non-Japanese Asian ASEM Members have bilateral tax treaties with the United States and Japan ensuring the avoidance of double taxation. They also have similar

21) See Table Ⅲ-1 and Ⅲ-2 in EU/UNCTAD (1996) for countries included in these two treaties.

22) BITs (Bilateral investment treaties) usually begin with declarations of the importance and beneficial role of FDI for development. While they encourage governments to facilitate and welcome FDI, they avoid, in general, a direct regulation of the right of establishment, referring this matter to national laws (thus implicitly recognizing the right of governments to regulate entry of FDI). Most BITs prescribe national treatment, MFN and fair and equitable treatment, and treatment according to international law. See UNCTAD (1996a) for detail.

agreements with several countries of the European Union. Completing the network of such treaties would encourage FDI flows and corporate business arrangements.

2. Regional Initiatives

At the regional level, the main objective pursued is the liberalization of restrictions to entry and the establishment of FDI, followed by the elimination of discriminatory operational conditions.[23] At this level, FDI liberalization proceeds mainly through the gradual reduction of existing restrictions, a system of reporting on existing regulations and changes to ensure transparency. Furthermore, monitoring mechanisms often follow the implementation of schedules to ensure members are adhering to agreements. Right of entry and establishment is being granted in a number of regional agreements (see Annex Table A-5). In terms of standards of treatment and protection after entry, most regional agreements follow very closely the content and structure of BITs.

The countries involved in most regional agreements share similar

23) Operational conditions often refer to a range of restrictive measures by which foreign firms may be confronted after admission, such as on employment and performance requirements, *i.e.*, conditions imposed on foreign firms concerning their export policies, the local content of their products, training of local labour and other such matters. Even though performance requirements are inconsistent with Article III (National Treatment) and XI (General Elimination of Quantitative Restrictions) of the GATT and are forbidden in paragraph 1 of Agreement on Trade-Related Investment Measures (TRIMs), they have received limited attention at regional initiatives as shown in Annex Table A-5.

levels of development. However, if the two partners are of differing levels of economic development, the question of providing for special treatment to certain partners based on their level of development arises. As in the case of NAFTA, when countries of differing levels of development join in a treaty, the approach tends to be similar to that followed at the multilateral level: some parties are granted exceptions, derogations, safeguards and allowed a extended period of time in which they may phase in their commitments. This provides an interesting insight when one seeks to investigate regional initiative in the ASEM context in that the development stage is quite different among ASEM member countries.

Most regional instruments are legally binding, although there are exceptions, such as OECD Guidelines and APEC Non-Binding Investment Principles. In the latter, the principles stated only call for the member's best efforts and thus nothing more than discretionary application. There is no evidence that investment in developing APEC economies has increased following the announcement of the Principles. Their value appears to be more inspirational and motivational for the APEC process than actually protecting and promoting investment.[24]

When considering enhancing investment inducing measures within ASEM, the real benefits, or lack there of, provided by APEC need to be taken fully into account. That is, while lower standards of reform

24) Messing(1997) criticize 'APEC Non-Binding Investment Principles' harshly: For APEC this was a constructive first step towards investment reform. However, as a non-binding, ministerial statement of mere aspirations to mere principles, unsigned, unratified, unincorporated into national law, unenforceable, and lacking meaningful clauses on national treatment, repatriation and dispute settlement, it will not protect private investors against the risks of unfair, arbitrary and unpredictable treatment.

may be easier for developing countries to attain, such lax standards will not likely suffice to attract the requisite volume of capital. Therefore, it is in the long-term interests of developing countries to prepare to work their way up the graduated liberalization ladder to achieve an investment policy that will attract the optimal level of investment. One potential avenue through which to achieve and display to investors achievement of an enlightened investment policy will be through the Multilateral Agreement on Investment (MAI). Once completed, the MAI will be open to all countries interested.[25)]

3. Inter-regional and Multilateral Level

At the interregional-regional level, the most important effort involving countries from both Asia and Europe takes place at the OECD where negotiations are aimed at a conclusion of the MAI, in the full view of developing countries, and with their direct and indirect participation.[26)]

It is, however, often pointed out that the objectives of developed and developing countries are not compatible, and the interests of

25) There are also WTO related to investment instruments at the multilateral level that concern for development is most apparent, *i.e.*, GATS, TRIPS and TRIMs agreements in which a number of ASEM member countries have to fulfill its requirements.

26) MAI is intended to provide a comprehensive multilateral framework for international investment, with high standards for the liberalization of investment regimes and the protection of investment, and with effective dispute settlement procedures. The main aim is to eliminate discrimination between foreign and domestic investors. For the structure and contents of MAI, see Engering(1996).

foreign investors and host governments may not be harmonized.[27] Nonetheless, it is critical that any initiative to boost FDI within ASEM meets both sets of objectives. If it addresses the needs of both developed and developing countries, this MAI will reflect the most world's highly advanced investment promotion and protection agreement and have the potential to exert a magnetic force that will attract many developing countries, which can accede to it when they are ready and willing.[28]

4. Four scenarios of FDI arrangement in ASEM

The future development of FDI rule in the ASEM process should take into account the lessons of the past. However, reaching some

27) In this respect, Ramaiah(1997) present a good logic for developing country: Investors from industrialized countries want to come to developing countries for three main reasons: to compensate for inadequate return on capital in their home country; to reduce the cost of production combining their capital with the cheap labor of the host country; to utilize the raw materials of developing countries. The host developing countries, on the other hand, are interested in continuous technological development which may help their industrialization and development. But the increase in FDI inflows with the removal of all national constraints, may be in sectors where foreign investment is not desirable. A multilateral framework on investment will not be able to take on board every country's specific circumstances. There is a real risk that a uniform regime will accentuate the negative effects of FDI rather than positive effects. For these reasons, India feels that, *prima facie*, there is no need for a multilateral framework on investment.

28) If this happens, it would avoid the need for more regional investment regimes and lead to the global rule of law for investment.(Massing, 1997).

conclusion based on recent history will be difficult because many FDI agreements have only recently been formulated, have not been fully implemented, and thus the real effect of their application is not yet always clear. However, there could be at least four scenarios for further evolution of FDI arrangement in ASEM:[29)]

① Promote the development of a legal environment which is conductive to FDI without any legal mandatory rules, such as the Interregional Framework Cooperation Agreement between the EU and MERCOSUR;[30)]
② Frame a non-binding regional investment initiative, such as the one in place in APEC;
③ Frame a binding regional investment agreement similar to NAFTA;
④ Upon completion, target ASEM-wide compliance with the MAI.

Each possibility needs to be assessed carefully in the context of the fairly divergent interests within ASEM.

29) I am indebted to Dr. Kwan-Ho KIM(KIEP) for suggesting these possible scenarios.

30) This can be achieved through the extended conclusion of BITs between EU member and Asian ASEM member countries.

Ⅶ. Concluding Remarks

Throughout this paper, the current profile and future evolution of ASEM-IPAP was discussed, based on the arguments stemmed from the factors hindering FDI flows between the two regions and the impacts of recent Asian financial turmoil.

In addition to an overall lack of transparency within much of developing Asia, the barriers to ASEM FDI are also due to the investment laws of Asia being applied and interpreted inconsistently. Asia's future prospects, in the short to medium term as well as in the long term, as a destination for profitable FDI remain solid despite the recent financial and economic crisis. Furthermore, based on the survey results, it is the EU based multinational firms that express the most highly favorable views of the Asian countries most affected by the financial crisis. Such views are apparently based on the still sound Asian economic fundamentals. These Asian countries, suffering from the financial crisis, are increasingly seeking European FDI. Europe, within the ASEM process, should explore these new opportunities, especially in developing Asia to secure its interests and needs.

ASEM-IPAP has to take into account this new reality and the expectations from both sides. In the light of that, the evolution of ASEM-IPAP was discussed and viewed through the prism of existing international FDI rules. There will be four directions for the medium to long term evolution of ASEM-IPAP. Each needs to be assessed carefully to respond to expectations of both sides which may be different at the moment. But as the process moves on, there is certainly positive, common agreements which could be further developed and enhanced to result in positive benefits for both sides.

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Appendix Tables

Appendix Table A-1: IPAP Main activities: Objectives and Coverage

IPAP activities	Objectives	Coverage
1. ASEM Virtual Information Exchange	- to act as a "road map" for business and investment information related to ASEM partners, linking together existing web sites and information resources; - to provide a centralized repository of information on ASEM programmes with links to individual country, business, investment and other relevant information; - to provide databases of companies and investment opportunities in both regions for easy access by potential investors; - to act as a "virtual forum" for ASEM business people to explore business opportunities and to identify and communicate with potential partners.	- basic macroeconomic data; - how to start and operate a business; - basic legal issues; - tax structures; - investment incentive schemes and other investment regulation; - "lists" of service providers such as real estate agents, engineers, lawyers, financiers, business consultants, market researchers, information technology consultants, etc.; - specific investment activities by sector; - costs of doing business, of labour and industrial land; - appropriate government and agency contacts; - business association contacts; - contact information for major financial institutions; - a virtual meeting room where business people can find potential business partners and/or list their particular business interests.
2. ASEM Decision-Makers Roundtable	- to offer "learning" opportunities to Asian and European investors; - to raise awareness about ASEM; and - to provide networking opportunities to business leaders.	Examples of possible case study topics are: - restructuring ASEAN operations to reflect an AFTA environment; - concluding technology transfer agreements in China; - managing human resources in Germany; - establishing a consumer products distribution system in Vietnam; - entering the UK property market.

(Continued)

IPAP activities	Objectives	Coverage
3. ASEM Business-to-Business Exchange Programme	- to create and strengthen long-term relationships; - to develop better understanding of foreign business practices; - to serve as a launching pad for overall European or Asian strategy formulation; - to enhance skill, managerial, and technological potential of partner companies; - to raise the profile of European and Asian businesses in counterpart countries.	- avoid duplication and build on existing EC-Asia exchange programmes; - add value to business: the programme must be of tangible value to the business. This is likely to occur if the Exchange is focused on a business project of short-medium relevance; - duration: programmes should run from two to six months, minimizing disruption to business activity. There has been a concern that existing programmes have been too long.
4. High-Level Dialogue on Key Investment Issues	- to facilitate the free discussion of specific investment issues of common interest. - Investment Experts Group (IEG) under SOMTI, will play a key role in facilitating these discussions.	- existing procedures and mechanisms for the settlement of business disputes, including conciliation, mediation and arbitration; - framework for standards setting, including mutual recognition and certification; - trademarks, copyrights and the protection of intellectual property rights; - the environment for technology cross-flows and obstacles to technology transfer; - ASEM support for ongoing work on investment in other fora, in particular WTO; - possibility to consult on orientations which may arise from an analysis of the investment environment, on a basis of consensus.

Appendix Table A-2: Survey results on the FDI regime in Asia[1)]

Economy	Acquisition of control (A)	Equal treatment (B)	Employment of foreigners (C)	Strategic alliances (D)	Cross-border ventures (E:)	Investment protection (F)	Overall assess-ment (G)
China	6.5	6.8	6.2	5.2	7.0	7.8	6.6
Hong Kong	9.3	8.3	7.0	8.5	9.2	5.1	7.9
India	6.6	7.9	6.5	6.6	5.0	5.7	6.4
Indonesia	6.2	6.1	6.2	7.5	6.8	6.5	6.6
Japan	6.5	4.2	4.1	7.0	7.5	6.9	6.0
Malaysia	4.9	6.2	5.5	7.4	7.0	7.2	6.4
Philippines	6.0	7.0	6.9	7.5	6.8	6.7	6.8
Singapore	8.2	7.8	7.6	8.4	9.1	7.3	8.1
Republic of Korea	4.8	5.1	4.4	5.3	5.0	5.9	5.1
Other developing Asia	6.2	7.5	5.8	6.8	6.3	6.5	6.5
Thailand	5.2	6.6	5.9	7.8	7.4	6.4	6.6
Average, 11 Asian economies	6.4	6.7	6.0	7.1	7.0	6.5	6.6
Memorandum:							
Developed countries[2)]	8.1	6.6	6.9	7.3	8.4	6.1	7.2
Non-Asian developing countries and countries in transition[3)]	7.7	7.2	7.3	5.7	7.4	5.6	6.8

1) Survey results are scaled from 0(least favourable to FDI) to 10(most favourable to FDI) in terms of the items(A)-(G).

(A) Foreign investors may not acquire(0)/are free(10) to acquire control in a domestic company.

(B) Foreigners are not treated(0)/are treated(10) equally to citizens in all respects.

(C) Immigration laws prevent(0)/do not prevent(10) your company from employing foreign skills.

(D) Strategic alliances are not common(0)/are common(10) between domestic and foreign firms.

(E) Cross-border ventures cannot be negotiated with foreign partners without government imposed restraint(0)/can be negotiated freely(10).

(F) Investment protection schemes are not(0)/are available for most foreign partner countries(10).

(G) Average assessment according to criteria (A)-(F).

2) Average for Australia, Canada, France, Germany, Italy, Switzerland, United Kingdom and the United States.

3) Average for Argentina, Brazil, Chile, Colombia, Czech Republic, Egypt, Hungary, Mexico, Peru, Poland, Russia and Venezuela.

Source: EC/UNCTAD (1996).

Appendix Table A-3: Obstacles to Investment Europeans Investing in Asia, Asians Investing in Europe Distribution of Responses by Type of Obstacle

Description	European Respondents	Asian Respondents
Other markets have higher priority	2.13%	38.10%
Lack of familiarity with the region	1.06%	4.76%
Lack of market information	6.38%	3.57%
Cultural differences	6.38%	3.57%
Prejudicial treatment	0.00%	8.33%
Language differences	2.13%	2.38%
Lack of interest by companies from region	0.00%	3.57%
Access to finance	5.32%	2.38%
Legal barriers to market entry	8.51%	5.95%
Transparency of applicable laws	15.96%	1.19%
Equal treatment	6.38%	4.76%
IPR protection legislation/enforcement	12.77%	0.00%
Import tariffs	7.45%	4.76%
Currency repatriation/convertibility	6.38%	0.00%
Investment information	2.13%	0.00%
Partner information	7.45%	2.38%
Taxation	4.26%	0.00%
Local content rules	3.19%	1.19%
Investment costs	1.06%	3.57%
Labour issues	1.06%	5.95%
Distance	0.00%	3.57%

Source: Chirathivat et al.(1998)

Appendix Table A-4: FDI measures adopted since the mid-1997 in the Asian countries most affected by the financial crisis

Country	measures taken
Indonesia	- Eliminated foreign shareholding limit of 49% in firms other than financial firms in September 1997 - Approved full ownership of non-bank financial firms, including insurance companies - Guaranteed existing foreign ownership in financial institutions - Approved wholesaling of their products by foreign manufacturing affiliates or through other foreign firms in November 1997. Retailing through other foreign firms will be allowed in 2003.
Korea, Republic of	- Approved hostile takeovers which will allow foreign investors to purchase up to a third of the shares of Korean companies without approval of the companies' boards. - Eliminated the requirement of government approval for takeovers of Korean companies with assets of 2 trillion won or more, with the exception of defence and key industries. - Approved the establishment of subsidiaries of foreign banks and foreign securities firms in March 1998.
Malaysia	- Relaxed the level of foreign shareholding limits. Currently, there is a 30% foreign equity limit in principle, except for export-oriented industries, high-technology industries and multi media companies with MSC status. Foreign equity participation in telecommunications allowed up to 49%. - Guaranteed up to 51% foreign equity participation in existing insurance companies by current holders. - Fully/majority foreign-owned fund-management companies will be allowed. - Relaxed bumiputera policy. Relaxation of regulations on the release of a 30% share of listed firms owned by bumiputera to non-bumiputera. Approval on a case-by-case basis of acquisitions of bumiputera firms
Philippines	- Raised the permitted level of foreign ownership in existing banks or banking subsidiaries as well as investment firms to 51%. Existing foreign stakes, if higher, will be protected.

Source: UNCTAD/ICC (1998).

Appendix Table A-5: Main Elements in Key International FDI Instruments

Element	BIT	Regional			Multilateral	
		ASEAN	APEC	NAFTA	GATS	TRIMS
Legally binding	×	×		×	×	×
Definition of FDI:						
a) Investment	×	×		×	×	
b) Investor	×	×		×	×	
Investment measures that affect the entry and operations of foreign Investors						
1. Restrictions						
a) Entry and establishment	× (some)	×	×	×	×	
b) Ownership and control						
c) Operational conditions	×	×	×	×		×
d) Authorization and reporting	× (some)	×				
2. Incentives			×	×		×
3. Standards of treatment						
a) National treatment	×		×	×	×	
b) Most favoured nation treatment	×	×	×	×	×	×
c) Fair and equitable treatment	×	×		×		
4. Transfer of funds	×					
5. Protection standards						
a) Minimum international standard of protection	×	×		×		
b) Expropriation	×	×	×	×		
c) Recourse to international means for settlement disputes	×	×	×	×		
6. Transparency			×		×	×
7. Measures dealing with broader concerns						
a) Restrictive business Practices				×	×	
b) Consumer protection and health safety standards						
c) Labour standards						
d) Corporate behaviour			×			

Source: UNCTAD (1996a).

국문요약

본 논문은 ASEM 투자증진실행계획의 연장으로서 ASEM역내 투자규범 정립 문제를 다루고 있다. 아시아-유럽 지역간 직접투자의 장애요인은 대개의 경우 아시아국가들의 제도적 규제, 직접투자관련 법규의 해석 및 적용의 불명확성에 기인하는 경우가 많다. 한편, 최근 아시아 금융위기에도 불구하고, 이들 지역은 투자대상지역으로 여전히 매력을 갖고 있으며, 특히 서유럽계 다국적 기업들은 이들 지역으로의 직접투자에 대해 가장 적극적인 전망을 하고 있다. ASEM 투자증진실행계획은 양 지역의 이같은 현실을 충분히 고려할 필요가 있을 것이며, 바로 이점에서 同 계획이 ASEM지역내 투자규범으로 발전할 가능성을 탐구하고 있다. 이에는 다음 네 가지 시나리오를 상정해볼 수 있을 것이다. 첫째 ASEM역내 회원국간 양자간 투자협정의 확대를 통해 EU-MERCOSUR 지역협력협정처럼 법적 구속력없이 FDI 촉진을 겨냥한 법적 환경을 정비하는 방법, 둘째 APEC형 비구속적 투자협정, 셋째 NAFTA형 구속적 투자협정으로의 발전 그리고 마지막으로 MAI협상 타결시 ASEM차원에서 이를 채택하는 방법이 그것이다. 아시아 및 유럽국가들 간 현재는 이견이 있을 수 있는 양측 입장을 적절히 반영하여 조화를 이루기 위해 상기한 모든 가능성에 대해 신중한 검토가 있어야 할 것이다.

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