

Asian Noodle Bowl of International Investment Agreements (IIAs)

ARTNeT Conference
10 December, 2013
Macau, PRC

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Issues

- Investment is as important as trade (in goods).
- Noodle bowl syndrome of investment is more serious than trade (in goods).
 - It is not the noodle bowl of FTAs, but that of IIAs that creates serious problems.
 - While a large emphasis on the noodle bowl of free trade agreements (FTAs), little attention has been paid on international investment agreement (IIAs).
 - Investor-state dispute (trade: state-state dispute).

Historical perspective

- Originally, the focus has been on investment protection (not investment liberalization). North-South IIAs.
- NAFTA (Chapter 11 Investment) in 1994 (protection + liberalization)
→ The explosion of IIAs
- As of now:
 - There are more than 3,000 IIAs.
 - There are more than 400 claims/cases based on IIAs.

Asia's IIAs

	World total	Asia total	Cross-regional	Intra-regional
Investment treaty	2,850+	1,194	1,048	146
Investment chapter under FTA	200+	61	40	21
Total	3,000+	1,255	1,088	167

Quantitative Analysis

	Total IIAs	BITs	FTAs with Investment		Total IIAs	BITs	FTAs with Investment
PRC	135	129	6	Kyrgyz Republic	28	28	0
Korea	97	92	5	Sri Lanka	28	28	0
India	84	83	3	Australia	28	23	5
Malaysia	70	67	3	Japan	27	18	9
Indonesia	64	63	1	Taipei,China	26	23	4
Viet Nam	59	58	1	Lao PDR	23	23	0
Singapore	53	41	12	Turkmenistan	23	23	0
Uzbekistan	49	49	0	Cambodia	21	21	0
Pakistan	48	46	2	Hong Kong, China	17	15	2
Azerbaijan	45	45	0	New Zealand	11	5	7
Mongolia	43	43	0	Brunei Darussalam	8	6	2
Kazakhstan	42	42	0	Myanmar	6	6	0
Thailand	41	39	2	Nepal	6	6	0
Armenia	36	36	0	Papua New Guinea	6	6	0
Philippines	36	35	1	Afghanistan	3	3	0
Tajikistan	31	31	0	Vanuatu	2	2	0
Bangladesh	29	29	0	Tonga	1	1	0
Georgia	29	29	0				

Intra-Asian IIAs

- PRC (30 intra-Asian IIAs): with almost all Asians (except Nepal)
- India (23 intra-Asian IIAs)
- Korea (22 intra-Asian IIAs)
- Viet Nam (21 intra-Asian IIAs)
- Indonesia (20 intra-Asian IIAs)
- Malaysia (19 intra-Asian IIAs)

Qualitative Analysis of Asian IIAs

- Quality does matter!
- BITsel Index (project of Chinese University of Hong Kong)
 - Coverage: More than 1,500 BITs and more than 100 FTAs with investment chapter.
 - The 11 legal criteria that are used to review IIAs:
 - (1) the definition of investment;
 - (2) admission for foreign investment;
 - (3) national treatment;
 - (4) most favored nation;
 - (5) expropriation and indirect expropriation;
 - (6) fair and equitable treatment;
 - (7) transfer of investment-related funds out of the host state provision;
 - (8) non-economic standards;
 - (9) investor-state dispute mechanism;
 - (10) umbrella clause;
 - (11) temporal scope of application.
 - Indicator between 2.0 (liberal) and 1.0 (restrictive)

Countries' IIAs: Comparison

C	Korea	India	Indonesia	Malaysia
	77	72	61	61
3	1.75	1.82	1.57	1.62
many)	Vietnam 1.90	Switzerland, Mauritius 1.90	Germany 1.90	Saudi Arabia 1.81
garia, xico, ombia, sta Rica 3	Indonesia 1.36	Mexico 1.63	Denmark 1.27	Lebanon 1.36
1	0.23	0.20	0.30	0.29

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https://www.yunbaogao.cn/report/index/report?reportId=5_5925

