

STRUCTURE OF INTERNATIONAL INVESTMENT AGREEMENTS

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Associate Prof Michael Ewing-Chow,
WTO Chair and Head, Trade/Investment Law & Policy
& Geraldine R Fischer, Research Fellow



Value of Common Approaches

- Easier for investors (and lawyers).
- Avoid gaps in drafting by building on previous provisions.
- Common interpretative jurisprudence.
- Reduce Forum Shopping.

Coherence & Consistency

- APEC Dec 2007 Report of 14 regional IIAS highlighted common provisions:
 - NT
 - MFN
 - FET
 - Expropriation
 - Free transfer
 - Consent to Investor-State and State-State Dispute Resolution.
- The US and Japan use Model Templates.
- However, Australia and Singapore have very different IIAs.
- Emerging ASEAN model of an IIA.

Common Objectives

- APEC 2007 found that:
 - Most were intended to protect investments;
 - So as to be indirectly FDI promotional;
 - By being moderately liberalizing.
- However, recent APEC IIAs textually modified FET, MST, expropriation and dispute settlement provisions.
- This has been done to provide more policy space for “public policy” regulatory responses.

FTAs and IIAs

- FTA Investment Chapters also have played a significant role in investment promotion and protection.
- There is also a need to have coherence and consistency between FTAs and IIAs.
- Increasing number of FTAs with Investment Chapters entered into by APEC Member Countries.
 - *Recent FTAs include: ASEAN-AUS-NZ FTA, U.S.-Peru TPA, Japan-India CEPA and Peru-Korea FTA.*

FTAs and IIAs

- FTA and IIAs may cover the same subject matters:
 - Investment;
 - Services (Mode 3); and
 - Dispute Settlement.
- Consequently, there may be inconsistencies as a result of the overlapping obligations and procedural mechanisms.
- It is therefore important to harmonize the different obligations.

Investment and Services

- Services delivered through Mode 3 (Commercial Presence) have an important interaction with investment obligations.
- Two general approaches have evolved:
 - GATS Approach: Services is covered in both the services and investment chapters.
 - NAFTA Approach: Mode 3 is covered only by investment chapter. Clearer separation between investment and services chapters (note: definition of “inconsistency” in jurisprudence).

FTA Type Agreements

Report 2008:

inspired agreements

the List

Interaction Structure because of Negative
Free Out

the Service Chapter may incorporate
elements from both Services and Investment
Chapters
is to Other Chapter Clauses with Services
Chapter Prevailing over Investment Chapter

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_7712

