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Abstract

While there is an extensive amount of literature on the noodle bowl of agreements in Asia, the majority of studies exclusively focus on trade (in goods). So far, little emphasis has been placed on the proliferation of international investment treaties (IIAs). Given the significance of IIAs, it is ideal to tackle them extensively as well. Investment chapters under free trade agreements (FTAs) and bilateral and plurilateral investment treaties constitute IIAs. There are more than 1,000 IIAs in Asia. The noodle bowl of FTAs usually results in more options for traders and even can bring unexpected preferences for third parties. These outcomes are all welfare-enhancing, but the literature has overemphasized the effect of complicated rules of origins and other issues. On the other hand, the story of the proliferation of IIAs and the investment noodle bowl is totally different, and as such would lead to inconsistency across IIAs and bring legal interpretation problems as well as the proliferation of unexpected investor-state disputes.

This paper aims to provide a detailed reading of recent advances in Asian investment rule-making and a finer appreciation of how rules in Asian IIAs have evolved in response to stimuli. While existing studies mainly deal with the interpretation and application of the IIAs in which the rules are given, this study deals in turn with the development of rules, including investment protection. The main objective of the paper is to describe and provide an exhaustive mapping of the recent Asian experiences in investment rule-making through regional and bilateral agreements, providing a detailed analytical account of key dimensions of investment treaties. This comprehensive study offers insights on the possible make-up of future attempts at embedding comprehensive investment norms into the regional (such as the Trans-Pacific Partnership) and/or WTO architecture.

Keywords: bilateral investment treaty (BIT), free trade agreement (FTA), foreign direct investment (FDI), noodle bowl, investor–state dispute (ISD)

JEL Classification: F21, F 51, F 53 and F 55

1. Introduction

The regulation of international investment is a field of law that has experienced major developments in recent years. While international trade has been regulated since the end of the Second World War—initially by the General Agreement on Trade and Tariffs (GATT) at the global level and by European Community treaties at the regional level—international investment remained largely untouched by international rules until the late 1960s. However, since then the international investment regime has become increasingly dependent upon international treaties. International investment law and policy developed at the global level in the mid-1990s, essentially in the United States (US) and Europe. The groundbreaking North American Free Trade Agreement (NAFTA) of 1994, which included a chapter on investment (Chapter 11), embedded a full set of investment rules within the ambit of trade architecture for the very first time. The period since NAFTA's entry into force has witnessed a literal explosion in the number of international investment agreements (IIAs) involving many countries. IIAs have been concluded primarily between developed and developing countries to protect the former's investors. This phenomenon has also registered an important mutation in the last decade, with a growing number of IIAs concluded among developing countries, characterizing the evolution of emerging economies and the ascendancy of sovereign wealth funds (Chaisse 2011). Since 2000, many Asian countries have developed and reinforced their network of IIAs, making investment a key aspect of their economic pacts with third countries. As of today, more than 2,850 bilateral agreements have been concluded since the early 1960s, most of them in the 1990s (Zhan et al 2012).

The deep changes that have recalibrated the international law of foreign investment take the form of a "treatification" as analyzed by Salacuse (2007). Gradually, customary international law, which was the main instrument to regulate foreign capital, has been replaced by international treaties. The shift from non-written rules to codified and detailed principles reflects the huge development of foreign investment in just about 20 years. Such a "treatification" also means that more foreign investments are protected by international norms and, at the same time, similar norms promote foreign direct investment (FDI). The increasing role of international law and policy in the area of international investment is illustrated by the fact that new claims are being lodged at an exponential rate before the international tribunal.[1] The "treatification" of international investment also results in a significant legalization of cross-border investment activities, which raises many issues of crucial importance for all stakeholders: host countries, investors, and international policy makers. As a result, along with the increase in number of IIAs, the last decade has witnessed an exponential surge of

[1] Investment treaties provide various dispute resolution mechanisms. One of the most important of which is international investor–state arbitration, which entitles an injured investor to sue the host government for damages due to a violation of treaty standards and rights (Salacuse 2010). A supervising body may assist in appointing arbitrators, determining the place of arbitration, determining costs and arbitrator fees, and so forth, and will itself charge a fee for the performance of these functions. The most common supervisory bodies referred to in investment-enabling institutions are the International Centre for the Settlement of Investment Disputes (ICSID) and the International Chamber of Commerce's (ICC) International Court of Arbitration; each body has its own set of arbitration rules (Salacuse 2010; pp. 446–47, n.91). Ad hoc arbitrations most often follow the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

investment disputes between foreign investors and host country governments. Arbitral panels have been charged with the task of applying the rules of IIAs in specific cases, which is not often a straightforward process, given the broad and sometimes ambiguous terms of these arrangements. This new phenomenon of investment litigation has brought about a number of decisions from different arbitral forums, contributing to an investment law regime by giving meaning to its provisions. The cumulative number of treaty-based cases had risen to more than 400 by July 2013, with more than 200 brought before the International Centre for Settlement of Investment Disputes (ICSID). Few disputes involve Asian parties. However, more disputes may arise in Asia in the future, given that many plurilateral IIAs are being negotiated and the level of knowledge of Asian parties (in both public and private circles) on investment rules is still being developed.

However, it is important to note that the network of international investment law is not a system per se. There is no multilateral investment agreement with a unique tribunal in charge of resolving disputes, but rather a patchwork of agreements and provisions that address the regulation of investment.[2] This paper studies the evolving international regime for investment, focusing on Asian experiences, which have not been extensively studied so far. The Asian regime for investment is dynamic and continually growing.

This paper is structured as follows. The next section provides a macro mapping of IIAs in Asia. The section helps to understand the key characteristics of Asian IIAs (e.g., geographical dispersion) and relationship among IIAs (especially among the overlapped IIAs). The third section will analyze quantitatively and qualitatively the recent trend of IIAs in Asia and elsewhere. The fourth section considers the problems associated with the so-called noodle bowl syndrome. It argues that the noodle bowl problem caused by intersected, nested, and overlapped agreements seems to be more serious in the case of investment than in the case of trade (in goods). The fifth section discusses the rise of plurilateral and wider-scope agreements that include IIAs as a major component. This covers both recent Asian and non-Asian cases. The final section concludes.

An important caveat in conducting this research is the availability of data on IIAs (Chaisse and Matsushita 2013). There is no international organization that collects information on Asian international treaties. Also, not all Asian governments publish the results of their negotiations. The United Nations Conference on Trade and Development (UNCTAD) Database of Investment Agreement is mainly used, but this should be complemented by national government sources. In terms of free trade agreements (FTAs), a regional trade agreement (RTA) database constructed by the World Trade Organization (WTO), which includes all notified FTAs, is used. One of the major contributions of this paper is to provide a mapping of Asian practices based on a survey of the various databases. Finally, in this paper, Asia refers to the 48 developing member economies of the Asian Development Bank (ADB), a list of which is provided in Annex 1.[3]

[2] On the attempts at crafting multilateral disciplines on investment, see Sauvé (2006) and Collins (2009).

[3] Apart from the Democratic People's Republic of Korea, all Asian economies are considered in this study and their respective investment treaties analyzed.

2. Proliferation of IIAs in Asia: Salient Characteristics

Understanding Asian rule-making in international investment requires identifying international treaties—either bilateral investment treaties (BITs) or FTAs with investment chapters—that involve at least one Asian economies. If at least one Asian economies is a party to an investment pact, the host economy is likely to be affected by foreign investment and, in any case, its domestic investment policy is subject to international obligations expressed in the investment agreement.

There are several ways in which IIAs in Asia and elsewhere can be categorized. An important distinction is whether an IIA is intra-regional or cross-regional. Intra-regional IIAs refer to agreements exclusive to Asian parties only. Cross-regional IIAs include both Asian and non-Asian members. Asian agreements, then, cover both intra-Asian and cross-regional agreements.

Another important distinction is whether it is an investment treaty or an FTA with a chapter on investment. In addition to investment treaties, FTAs have also become popular means of formalizing international rules on investment, in particular for a country like the US.[4] While the two are essentially similar in the sense that they both attempt to liberalize and protect investment through the legalization of economic relations, there are some technical differences. First, BITs usually have an expiry (e.g., 10 years) while FTAs are perpetual unless contracting parties decide to terminate the implementation under the agreed termination clause. It is easier to consolidate BITs than FTAs because BIT expiry dates make it predictable as to when overlapped or nested agreements will unwind. (For details of overlapped or nested agreements, see Section 4.) Second, most favored nation (MFN) status is usually applicable within the same category of IIAs only. This means that MFN clauses in BITs (FTAs) lead to the transfer of more favorable provisions to BITs (FTAs) with third countries. It must be noted that favorable provisions in BITs do not accrue to FTAs with third countries just as those in FTAs do not accrue to BITs with third countries. In terms of implementing MFN, the two belong to different families, rather than being different in nature. (For the non-applicability of MFN principles, see below.)

So far, more than 3,000 IIAs are in effect (Table 1). There are, approximately, 2,850 BITs concluded worldwide. Asian countries have concluded 1,194 BITs. Thus, nearly one-third of BITs in the world involve at least one Asian entity. Likewise, around 220 FTAs in the world are on notification basis and some FTAs were established without notification. If it is deemed that the majority of them have investment chapters, there are thus 200 or so FTAs with investment chapters). In Asia, there are 61 FTAs with an investment chapter that have come into effect since 1959. Thus, there are, in fact, a huge number of IIAs in Asia.

[4] See Schott and Muir (2012).

Table 1: Characteristics of Asian IIAs

	World Total	Asia Total	Cross-Regional	Intra-Regional
Investment Treaties	2,850+	1,194	1,048	146
Investment Chapter under FTAs	200+	61	40	21
Total IIAs	3,000+	1,255	1,088	167

FTA = free trade agreement, IIA = international investment agreement.

Source: Authors' compilation.

However, there are many Asian IIAs concluded with leading capital-exporting countries such as the US or Western European countries. The majority of IIAs in Asia fall under cross-regional IIAs where a non-Asian party is the capital-exporting country. This implies that the treaty might rather reflect the interest and bargaining power of the capital-exporting country. In order to refine the contribution of Asian countries to international investment rule-making, it is necessary to narrow the analysis to those IIAs that have been concluded among Asian countries only, which are thereby classified as intra-regional IIAs. Narrowing the analysis to pure Asian IIAs also help to identify Asian countries that play a leading role in the development of investment rules in Asia.

There are 146 intra-regional BITs currently in force, while there are 41 intra-regional BITs that have been signed but have not yet entered into force. In addition, there are 24 intra-regional FTAs in Asia with investment chapters, all of which have entered into force. Thus, in total, there are 187 intra-regional IIAs in force (a total of 208 if IIAs "signed but not yet in effect" are included). This great number of IIAs forms the core of the Asian noodle bowl of investment treaties. The data in Annex 2 represent a wealth of information, in terms of Asian investment treaty practices.

It is safe to consider that BITs are the principal devise to regulate international investment at the global level. As aforementioned, there are around 2,850 BITs in the world, but the number of FTAs with investment chapters is at most about 200. Even if we limit our analysis to Asian IIA practices only, the picture does not change much. There are 1,194 BITs and 61 FTAs with investment chapters in Asia.

However, if we limit our analysis to intra-regional IIAs only, some interesting observations can be made. While there are 146 intra-regional investment treaties, there are 24 that are intra-Asian FTAs with investment chapters (Table 2). Thus, we can say that investment chapters in FTAs play an increasingly important role in investment rule-making in Asia. This is because Asian countries attempt to regulate and deregulate intra-Asian economic activities, including both trade and investment, using the so-called modern FTAs, which go beyond tariff liberalization. At the same time, we should also note that some Asian countries hesitate to include investment chapters in FTAs. Note that all 24 Asian FTAs were concluded after 2001 (Figure 1).

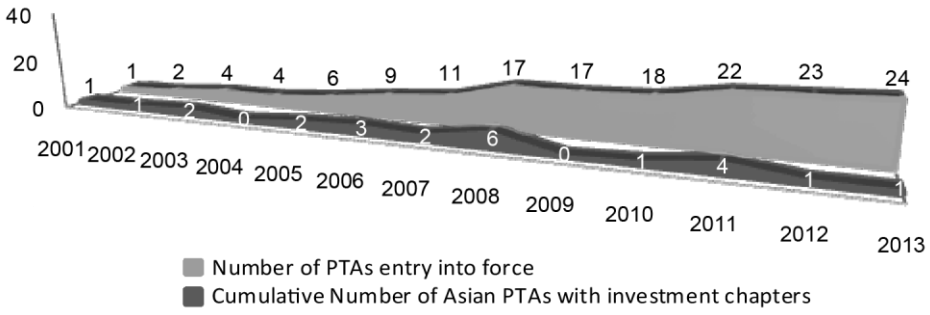
Table 2: Intra-Asian FTAs with an Investment Chapter

IIAs	Date in force
New Zealand–Singapore	1 Jan 2001
Japan–Singapore	30 Nov 2002
PRC–Hong Kong, China	29 June 2003
Singapore–Australia	28 Jul 2003
Thailand–Australia	1 Jan 2005
India–Singapore	1 Aug 2005
Republic of Korea–Singapore	2 Mar 2006
Trans-Pacific Strategic Economic Partnership	28 May 2006
Japan–Malaysia	13 Jul 2006
Pakistan–PRC	1 Jul 2007
Japan–Thailand	1 Nov 2007
Pakistan–Malaysia	1 Jan 2008
Brunei Darussalam–Japan	31 Jul 2008
PRC–New Zealand	1 Oct 2008
Japan–Indonesia	1 Jul 2008
Brunei Darussalam–Japan	31 Jul 2008
Japan–Philippines	11 Dec 2008
New Zealand–Malaysia	1 Aug 2010
Hong Kong, PRC–New Zealand	1 Jan 2011
Australia–New Zealand (ANZCERTA)	1 Jan 1989 (investment Protocol in 2011)
India – Malaysia	1 July 2011
India - Japan	1 Aug 2011
ASEAN Comprehensive Investment Agreement (ACIA)	1 March 2012
ANZTEC	10 Jul 2013

ANZTEC = The Agreement between New Zealand and the Separate Customs Territory of Taipei,China, Penghu, Kinmen, and Matsu on Economic Cooperation, Penghu; ASEAN = Association of Southeast Asian Nations, FTA = Free Trade Agreement, PRC = People's Republic of China.

Source: Authors' compilation.

Figure 1: The Increase of Asian FTAs with Investment Chapters



FTA = free trade agreement.
Source: UNCTAD Database of Investment Agreements, WTO regional trade agreements database, and national Ministries of Foreign Affairs public information.

The increase of Asian FTAs with investment chapters also raises an important issue in terms of connections with existing IIAs. Indeed, the MFN treatment provisions in existing treaties may give rise to the so-called free-rider issue that arises when benefits from customs unions, FTAs, or economic integration organization agreements are extended to nonmembers. In order to avoid this outcome, many IIAs exclude the benefits received by a Contracting State Party to a regional economic integration organization (REIO) from the scope of MFN treatment obligations through a REIO exception. Virtually all IIAs include a carve-out from the MFN principle (Table 3).

Table 3: Non-Applicability of the MFN Principle to FTAs

France 2006 Model BIT Art. 4	India 2003 Model BIT Art. 4	ASEAN Comprehensive Investment Agreement 2012 Art. 6
This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.	(3) The provisions of paragraphs (l) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from: (a) any existing or future customs unions or similar international agreement to which it is or may become a party, or (b) any matter pertaining wholly or mainly to taxation.	3. Paragraphs 1 and 2 shall not be construed so as to oblige a Member State to extend to investors or investments of other Member States the benefit of any treatment, preference or privilege resulting from: (a) any sub-regional arrangements between and among Member States; or (b) any existing agreement notified by Member States to the AIA Council pursuant to Article 8(3) of the AIA Agreement.

ASEAN = Association of Southeast Asian Nations, BIT = bilateral investment treaty, FTA = free trade agreement, MFN = most-favored nation.

Source: Model BITs from national government websites.

A considerable number of existing IIAs cover, at least, specific types of regional integration that are expressly mentioned in the agreement. But some countries extend the scope of the REIO exception to similar arrangements. For instance, the India model agreement[5] refers to "any existing or future customs unions or similar international agreement to which it is or may become a party" (Article 4). The French model agreement refers to a "free trade zone, customs union, common market, or any other form of regional economic organization" (Article 4). Such provisions allow France or India to enter into new FTAs with investment chapters without the obligation to extend the benefits to countries with which they were bound through a BIT. In this regard, one might also assume that some countries may be tempted to negotiate investment agreements in the context of an FTA in order to isolate the newly negotiated treaty from other BITs. Pakistan, for instance, seems to favor negotiations of investment within FTAs in order not to be subject to full MFN applicability under other BITs.

In this light, the 2012 ASEAN Comprehensive Investment Agreement (ACIA) MFN exception is, logically, more limited. ACIA Article 6 only applies to "any sub-regional arrangements between and among Member States; or (b) any existing agreement notified by Member States to the AIA Council pursuant to Article 8(3) of the AIA Agreement." The effect of such a provision is to maintain the applicability of the basic MFN for the benefits of the members. Of course, in the context of a regional integration scheme such as ACIA, members have an interest to be granted better treatment than one of them would grant of a third country through an IIA in the form of a FTA or a BIT.

3. Quantitative and Qualitative Analysis of Asian IIAs

The section looks at the investment agreements concluded by the 48 ADB developing member economies. In order to ease the analysis of the huge number of treaties, four main groups of Asian countries are distinguished to reflect their respective role and importance in Asian investment rule-making.

3.1 Quantitative Ranking

First, there is a group of 13 ADB economies that had not concluded a single investment agreement as of April 2013. Bhutan, Cook Islands, Fiji, Kiribati, the Maldives, the Marshall Islands, the Federated States of Micronesia, Nauru, Palau, Samoa, Solomon Islands, Timor-Leste, and Tuvalu have so far been reluctant to engage in international investment rule-making.

Second, a group of eight ADB economies has signed a limited number of IIAs. Indeed, Tonga, Vanuatu, Afghanistan, Myanmar, Nepal, Papua New Guinea, Brunei Darussalam, and New Zealand have each signed less than 10 IIAs (Table 4).

Third, a group of 14 ADB member economies have signed between 10 and 40 IIAs. This group comprises Hong Kong, China; Cambodia; the Lao People's Democratic Republic (Lao PDR);

[5] See Chaisse, Chakraborty, Mukherjee (2013).

Turkmenistan; Taipei,China; Japan; Australia; the Kyrgyz Republic; Sri Lanka; Bangladesh; Georgia; Tajikistan; Armenia; and the Philippines.

Table 4: IIAs Signed by ADB Member Economies

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

BIT = bilateral investment treaty, FTA = free trade agreement, IIA = international investment agreement.

Source: UNCTAD Database of Investment Agreements, WTO regional trade agreements database and National Ministries of Foreign Affairs public information.

Finally, there is a group comprising the frontrunners, which are the economies that have concluded more than 40 IIAs: Thailand, Kazakhstan, Mongolia, Azerbaijan, Pakistan, Uzbekistan, Singapore, Viet Nam, Indonesia, Malaysia, India, the Republic of Korea, and, at the forefront, the People's Republic of China (PRC).[6] It is within this last group that most of our micro-analysis will be based. Logically, the great number of IIAs they have concluded reflect a very active investment diplomacy, which also means that there are bound to be a great number of third countries and have granted rights to a great number of foreign investors.

If we limit our analysis to intra-regional IIAs, some interesting observations can be made. One is that the PRC is the Asian leader in investment rule-making because it has BITs or FTAs with almost all ADB developing member economies except Nepal. The PRC (30 Asian IIAs), India (23 Asian IIAs), the Republic of Korea (22 Asian IIAs), Viet Nam (21 Asian IIAs), Indonesia (20 Asian IIAs), and Malaysia (19 Asian IIAs) have the greatest number of IIAs in force, which are also diverse in their forms. These are the big players that will be at the core of the substantive analysis in this section. These frontrunners' treaty practice is not only important in quantitative and qualitative terms, but crucial in light of one of the key IIAs provisions, which is MFN treatment. This provision plays a significant role when a country is bound by a great number of investment treaties. The case of the PRC is very important as the MFN provision found in the PRC's IIAs may, to some extent, represent an embryonic Asian multilateral agreement on investment.

One can also discern some patterns for each country in terms of the distinction between BITs and FTAs. For instance, Singapore is a major user of FTAs to regulate investment as it already has seven such instruments. Then come New Zealand and Japan with six FTAs covering investment issues.[7] A majority of Asian countries have so far been reluctant to incorporate investment negotiations into their trade agreements. Virtually, all the FTAs concluded by India and the PRC ignore investment matters.

One can also observe that some countries have had difficulties in ratifying a BIT earlier signed. This is the case of Cambodia, Tajikistan, Viet Nam, and Malaysia, each with six BITs that have not yet come into force. On the top of this list is Pakistan, which has signed eight BITs that are yet to enter into force.

3.2 Qualitative Ranking

All IIAs enshrine a series of obligations on the parties to ensure a stable and favorable business environment for foreign investors. These obligations pertain to the treatment that foreign investors are to be afforded in the host country by the domestic authorities. Meanwhile, such "treatment" that encompasses many laws, regulations, and practices from public entities also

[6] Following the policy of opening implemented by the PRC more than 30 years ago and the admission of the PRC into the World Trade Organization, the PRC is now concluding a different generations of IIAs, the most recemt granting full jurisdiction to International Centre for Settlement of Investment Disputes (ICSID). See Willems (2011).

[7] For Japanese treaty practice, Shotaro Hamamoto, A Passive Player in International Investment Law: Typically Japanese?, in Vivienne Bath & Luke Nottage eds., Foreign Investment and Dispute Resolution Law and Practice in Asia, London, Routledge, 2011, 53-67.

significantly affect foreign investors or their investments. Thus, analysis of the quality of investment treaties is important to provide a clearer view of their likely impacts.[8] Not all investment treaties are drafted similarly as many of their provisions may vary significantly in terms of scope of application and likely economic impact (Chaisse and Bellak 2011).

The Bilateral Investment Treaties Selection Index (BITSel Index)[9] provides extremely detailed support to understand national treaty practices. In light of the great number of BITs in which different provisions and their different wordings would give birth to a broad kaleidoscope of legal obligations and, hence, regulatory effects, the BITSel Index, which is based on the 11 most important elements found in most existing BITs.[10] The BITSel Index has a scale from 1.0 (restrictive) to 2.0 (liberal).

The data for the top five Asian frontrunners—Indonesia, Malaysia, India, the Republic of Korea, and the PRC—have been extracted to shed light on the substance and quality of these respective treaties (Table 5).

Table 5: BITSel Quality Indicator

	PRC	Rep. of Korea	India	Indonesia	Malaysia
BITSel number of IIAs	84	77	72	61	61
BITSel quality indicator: average	1.58	1.75	1.82	1.57	1.62
Strongest treaty and coefficient	Germany (1.90)	Viet Nam (1.90)	Switzerland, Mauritius (1.90)	Germany (1.90)	Saudi Arabia (1.81)
Weakest treaty and coefficient	Bulgaria, Mexico, Colombia, Costa Rica (1.36)	Indonesia (1.36)	India (1.63)	Denmark (1.27)	Lebanon (1.36)
Coefficient of variation	0.31	0.23	0.20	0.30	0.29

IIA = international investment agreement, PRC = People's Republic of China.

Source: Data from BITSel Index, elaboration by the authors.

[8] "While the treaties continue to govern the same key aspect of investment, they have morphed over the 40 year period to include different types of clauses. We need to take into account the heterogeneity in order to better understand the motivations of states." Jandhyala et al. (2010).
"While it should be recognized that a BIT could be an important commitment device, the nature of the commitment can vary enormously depending on the terms of the BIT. Too much attention has been placed on whether or not a BIT exists, than on the strength of the property rights actually being enshrined in these agreements". Hallward–Driemeier (2003).

[9] BITSel (2013), Version 4.00. Avaialble at www.cuhk.edu.hk/proj/BITsel

[10] These include (i) the definition of investment, (ii) admission for foreign investment, (iii) national treatment, (iv) most favored nation, (v) expropriation and indirect expropriation, (vi) fair and equitable treatment, (vii) transfer of investment-related funds out of the host state provision, (viii) non-economic standards, (ix) investor-state dispute mechanism, (x) umbrella clause, and (xi) temporal scope of application.

The results are stunning as the strongest average quality indicator belongs to India (1.82), which is far more significant than those of countries with relatively weaker investment treaties such as Indonesia (1.57) and the PRC (1.58). Less surprisingly, the Republic of Korea ranks second (1.75) while Malaysia is third (1.62). These average values are based on a relatively high number of treaties and confirm the significant gap among the top 5 in terms of rule-making: not all Asian investment treaties are similar. India is inclined to grant quite significant rights to foreign investors, although it has signed fewer treaties than the PRC. Conversely, the PRC has signed more treaties, but their average quality is among the lowest of the top five.

Of course, these averages also depend on the partner countries. Treaties are, by definition, the result of negotiations and reflect the consensus that the two sides reached after exchanging their goals and visions. In view of this, we can take a closer look at the BITsel and see what treaties for each country in the top five stands at the extreme (most robust or weakest protection) of the national practice.

In the case of the PRC, the treaty with the greatest quality was concluded with Germany (1.90). This confirms the fact that the PRC truly entered a new generation of investment treaties, with greater rights and access to investor-state dispute settlement (ISDS), only after 2005 and the treaty with Germany represents a milestone. At the other extreme, the PRC concluded a series of relatively weak treaties with Bulgaria, Mexico, Colombia, and Costa Rica. One can further fine tune the analysis and note that there is a significant difference between the IIAs concluded before and after 2005. In the wake of the PRC–Germany BIT, the PRC further negotiated treaties, which were rather more favorable to foreign investors. This generation provides broader and more substantive obligations with regard to the treatment of foreign investment. Post establishment national treatment—albeit with sectoral reservations in some cases—and no substantial restrictions on the ability of foreign investors to challenge host country measures in international arbitration are standard in this category. The PRC's "new generation" of BITs concluded since the beginning of this century seems to belong in this company. As a result, these post-2005 IIAs obtain a score of 1.65, while prior to 2005 the score is only 1.55.

In the case of the Republic of Korea, the treaty with Viet Nam is one of the strongest (1.90). At the other extreme, there is the agreement between the Republic of Korea and Indonesia (1.36). India concluded more than a dozen treaties with rather high quality, for example with Switzerland and Mauritius, giving it a score of 1.90. On the other hand, a relatively weak treaty was concluded between India and Mexico (1.63). Indonesia ranks fourth among Asian countries in terms of number of investment treaties. However, it has a rather low average quality. In this light, it is interesting to note that the Germany–Indonesia treaty provides a very high level of protection (1.90), much higher than the Indonesian average. However, on the other hand, the Indonesia–Denmark treaty offers an example of a rather weak treaty (1.27). Last but not least, Malaysia, whose economic policy is deeply intertwined with politics, has concluded a rather strong treaty with Saudi Arabia (1.81). However, the treaty between Malaysia and Lebanon scores poorly (1.36).

The next step is to calculate the coefficient of variation, which is a better measure of heterogeneity. The number itself expresses the relation of the standard deviation (a measure

for the dispersion of the data) to their mean. If the coefficient of variation is lower than 0.5, the mean value is a good representation for all data. For Malaysia, it is 0.29. What does it tell us? Returning to our example, the 0.29 average for Malaysia means that the variation in the provisions is 29%. As all the coefficients of variation are well below 0.5 for each BIT, the mean is a good representation for all the single BIT provisions. What does the coefficient of variation say in comparison to other countries? The one for the PRC is 0.31 so the heterogeneity of BITs is slightly larger for PRC BITs than for Malaysian BITs. While the mean value of each country tells us how investor-friendly its BIT provisions are, the coefficient of variation tells us how heterogeneous they are. The key advantage of the coefficient of variation is that it is directly comparable across countries. If we have a coefficient of variation of country A at 30% and country B at 60 %, we can say that the heterogeneity of country B is twice as large as that of country A.

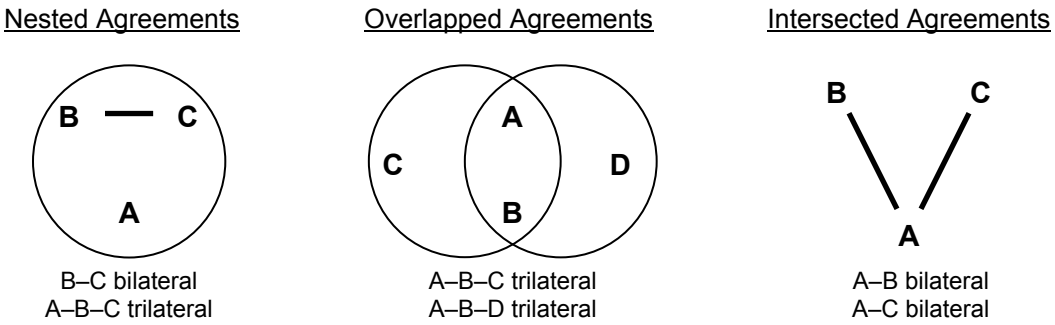
At this stage, two lessons are important to mention. First, there is a significant discrepancy among Asian treaty practices and also among individual treaty practices for a particular country. Second, although this paper focuses on the broad analysis of Asian investment treaties, it also underlines the need to more carefully look at the key provisions found in each investment treaty, which will be addressed in a second paper.

4. Asian Noodle Bowl of IIAs: Investment and Trade Compared

In considering the noodle bowl of IIAs, it is interesting to note there are many common member agreements in Asia. There are three types of common-member agreements: overlapped, nested, and intersected (Figure 2). The first type is a 'nested' agreement in which the membership of a small agreement is a subset of the members of a larger agreement. The second type is an intersected agreement in which one country has different agreements with different partners. The third type is an overlapped agreement, which have features of both nested and intersected agreements.[11]

[11] Suppose there are two trilateral agreements that include both Country A and Country B, and each agreement also includes a third country—Country C for the first agreement and Country D for the second agreement (Figure 2). In this case, trade between Countries A and B faces the problem similar to nested agreements, while trade between A and B and C and trade between A and B and D is faced with the problem similar to intersected problems.

Figure 2: Three Types of Common-Member Agreements



Note: A, B, C and D represent countries. Bilateral agreements are represented as a line and plurilateral agreements are represented as a circle.

Source: Authors' illustration based on Hamanaka (2012).

4.1 Nested IIAs: The Inconsistency Problem

There are many overlapped and nested IIAs in Asia. This is especially true for the relationship between plurilateral IIAs (plurilateral FTAs with an investment chapter) and bilateral agreements. While the there are some concerns with regard to nested and overlapped agreements in the case of trade, little attention has been paid to a similar problem with regard to investment. (For the details on the rise of plurilateral IIAs in Asia, see Section 3.)

In the case of trade, however, the negative impacts of nested and overlapped agreements seem to be marginal, especially for problems associated with rules of origin (ROO). While the concerns are sometimes exaggerated, nested or overlapped agreements usually give traders more options: traders can have preferential access if their goods satisfy the ROO set by either of the nested agreements. The trader can choose the most beneficial agreement to get maximum benefits. And, in fact, FTAs are widely used by traders when there is a meaningful margin of preference. As the majority of Asian trade is already conducted under zero-MFN tariff status, there is no need to use FTAs in many circumstances. In addition, it is important to note that the use of FTAs is not compulsory for traders.

However, in the case of investment, nested agreements may cause uncertainties. This is especially true for procedural issues of investor-state disputes. While overlapped or nested IIAs may give investors more options on dispute settlements, confusion may occur if the necessary procedures stipulated in the overlapped or nested IIAs are inconsistent with each other. On the one hand, if the IIAs stipulate that a domestic court or international arbitration *can be used*, such would lead to multiple options, which is not necessarily a good thing; on the other hand, if they stipulate that a domestic court or international arbitration *shall be used*, there would be a conflict between the two, which is, again, not a good thing.

Suppose a situation wherein a plurilateral IIA requests investors to first use a domestic court to settle the issues, while a nested or overlapped bilateral IIA would allow investors to directly submit the issue to international arbitration. A concrete scenario of this kind is emerging with the Trans-Pacific Partnership (TPP), which involves, so far, four Association of Southeast Asian Nations (ASEAN) countries: Viet Nam, Singapore, Malaysia, and Brunei Darussalam. Investors from one of these countries may lodge a claim against another under TPP ISDS rules and also under ACIA, which incorporates different rules of procedure. One can add another layer to this scenario since Malaysia and Viet Nam concluded a bilateral investment treaty in 1992, which offers a third instrument to Vietnamese and Malaysian investors to bring a claim against the host state. When thinking of the key objective of IIAs, which is to promote and protect investment, one might wonder what this complex multilayered regulation of FDI between two countries can add. Some may argue that it is good investors are given choices among, at least, three forum. Some may rather look at the risks taken by the host state, which through inconsistent treaty practices over time, may have to face various claims under different rules.

Another possible inconsistency between overlapped and nested IIAs relates to the substance of rules (not procedures). Here, again, the investor is likely to simply opt for MFN, but at an earlier state the host country administration may have difficulties in determining the substantive requirements in its treatment of foreign investors. Suppose a situation wherein a plurilateral IIA lists several prohibited performance requirement measures and states that there is no limitation to introduce other performance requirement measures, while a (nested) bilateral IIA includes a longer list of prohibited performance requirement measures. In such a case, it is not easy to foresee which set of rules prevails. One can, however, assume that the host country always treats foreign investors in the best way it can. In short, while nested agreements give traders more options, the effective rules that restrict states' behavior and policies become unclear if two or more IIAs are nested.

4.2 Intersected IIAs: Treaty Shopping Problems and Unexpected Use of Agreements

Since a large number of agreements are signed in the world and in Asia, intersected agreements are a common phenomenon. The issue of intersected agreements occurs if one country signs an agreement with two different partners separately. It is very unrealistic to assume that those agreements have similar legal regime on FDI. Thus, the issue of intersected agreements is aggravated by the indefinite number of agreements involved. If one country signs 10 agreements with 10 different partners, all those agreements constitute an intersected agreement problem. In the case of nested agreements, the number of the concerned agreements is relatively limited.

What is the problem of intersected agreements? Why is a certain country signing different types of agreements with different partners so problematic? What is the point of differentiating partners and having different types of agreement with different partners? In order to tackle these questions, there are two inter-related issues to be considered: (i) treaty shopping and (ii) unexpected use of agreement. Given the number of agreements involved, the problem of treaty shopping becomes serious in the case of intersected agreements. While the

problem of nested agreements is limited to the choice among a limited number of agreements that include the same parties (trilateral A–B–C agreement versus bilateral B–C agreement), there are so many options in the case of intersected agreements if treaty shopping becomes in issue.

However, treaty shopping is relatively less serious in the field of trade (in goods). This is mainly because there is an established concept of ROO for goods trade. It is natural that an export from Country B to Country A uses an A–B agreement to secure preferential access. There is still a possibility that an A–C agreement could be used for export from Country B to Country A, depending on the ROO stipulated in the A–C agreement. However, this certainly leads to more options for traders: a trader in Country B can use both an A–B agreement and an A–C agreement. Some may argue that the unexpected use of agreement (use of an A–C agreement by a trader in Country B exporting to Country A) could be problematic. Such an unexpected use of agreement by traders leads to uncertainty from a policy perspective, but this essentially increases business opportunity. Moreover, an agreement's "leaky" ROO that leads to an unexpected way of using the agreement simply reduces the discriminatory effects of FTAs and is thus welfare enhancing.

In the case of investment, treaty shopping problems seems to be more serious than in the case of goods because the origin of investor and investment is more ambiguous. IIAs usually employ a very broad definition of investment and qualification for investor is usually not demanding. Moreover, one should note that investors are mobile. This is especially true for multinational corporations (MNCs). Thus, MNCs have a temptation to partially (re)locate its base, so that their investment assets are best protected, by selecting the economy that has a favorable IIA with the hosting country of its investment. In short, treaty shopping leads to more legal options for investors. Why is this a problem? This is because IIAs usually involve investor-state dispute mechanisms under which a state could be sued by an investor. The uncertainly with regard to the origin determination (of firms) and the mobility of firms may lead to an unexpected investor-state dispute, which is not favorable for governments. Interestingly, even a firm in the third country without an IIA with the concerned country may file a claim against it.

In 2010, Australia introduced plain packaging for all tobacco products (drab dark brown with no trademarks) (Table 6). The purpose of the new bill is to discourage smoking initiation and implement the Framework Convention on Tobacco Control (FCTC) as imposed by the World Health Organization (WHO). However, this regulation, which aims at protecting consumer health is being challenged by Philipp Morris Incorporation (PMI) before an international tribunal for an alleged breach of the Hong Kong, China–Australia BIT. How did we reach the question whether Australia's plain packaging legislation violates a Hong Kong, China–Australia BIT? Actually, PMI launched proceedings via an Asian subsidiary although it is an American company based in Virginia. Indeed, the US–Australia FTA does not have ISDS and would not allow PMI to sue Australia for a breach of US–Australia FTA.

Table 6: Australian Tobacco Regulation Timeline

April 2010	Australia announces plans for plain packaging; consultation papers, draft legislation
22 June 2011	PMI serves Notice of Claim to Australia to initiate negotiations before arbitration
21 November 2011	Tobacco Plain Packaging Act 2011 and Trademarks Amendment (Tobacco Plain Packaging) bill receive final legislative approval; PMI announces it will pursue remedies via the Hong Kong, China–Australia BIT and domestically in Australian courts
20 December 2011	PMI files writ against Australia government
March 2012	Ukraine complains to WTO
1 July 2012	Tobacco legislation in force
October 2012	Australia High Court rejects PMI's claim
February 2013, July 2013, October 2013	Future arbitration hearings

BIT = bilateral investment treaty. Source: Authors' compilation.

As one can imagine, Australia never intended to give up its regulatory power to address health issues in the 1996 BIT concluded with Hong Kong, China. Equally unanticipated was the idea of a claim brought by an investor formally registered in Hong Kong, China but which is known as a powerful American MNC. Of course, one must expect a sovereign state such as Australia to anticipate such developments. However, one also perceives the considerable challenges raised by MNCs and their capacity to opportunely relocate to new jurisdictions to benefit from more favorable rights. One can also observe the policy ramifications since the potential use of investment arbitration to challenge tobacco regulations has become a source of controversy in TPP negotiations (Voon and Mitchell 2011).

The dispute between PMI and Australia is generating considerable debate. However, the practice known as investment structuring can be conducted. Investment structuring consists in giving the adequate legal shape and structure to an investment. For instance, a US company wishes to contract with the Government of Pakistan to build, operate, and maintain a power plant in Pakistan. Though Pakistan has not entered into an investment treaty with the US, the company may gain treaty protection under the Pakistan–Switzerland BIT by operating its investment through Switzerland. Its Swiss operations may also be protected by the Switzerland–Pakistan IIA. According to Clayton–Utz, "[there] may be circumstances where the host State of your investment has not entered into an investment treaty with your home State, be it Australia or another country. The good news is that you may still be able to obtain investment treaty protection. This may be achieved by structuring your investment through a third country that has entered into an investment treaty with the host State. In this way, you can make use of the protection available under that investment treaty to protect your investment in the host State." Clayton–Utz (2011).

It would be difficult to assess the amount of FDI that has been adjusted through legal investment structuring but it is important to understand that this kind of legal service is very basic and provided by law firms from Hong Kong, China to Zurich, and including Tokyo, Singapore, and New York. It may lead to two opposite conclusions. The first would be to say that the concept of nationality is dead and irrelevant in the globalized economy. It is a tempting conclusion, which was partly predicted by Karl Polanyi *Great Transformation* (Polanyi 2001). However, one must also agree that states retain some power to legitimately control the actions of large MNCs. In this regard, the current investment scenario obliges states to find new tools to better anticipate the future application of their IIAs, especially intersected IIAs.

The problems caused by common-member agreements differ from goods to investment. First, the status of nested and overlapped agreement brings more options to traders of availing tariff preferences, though this may lead to inconsistency of regulation in the case of international investment. Second, in the case of intersected agreements, the unexpected way of using FTAs basically reduces the negative aspect of FTAs, such as exclusiveness. In the case of investment, intersected IIAs would lead to unexpected investor-state disputes.

5. The Recent Phenomena: The Rise of Plurilateral Agreements with Wider Scope

As mentioned in the introduction, a major trend of international investment rule-making is the increasing regionalization of negotiations. If the core of international investment regulations remains based on BITs and bilateral FTAs, it is important to underscore the current negotiations of broader pacts that involve more than two countries and cover great number of economic areas. The rise of plurilateral agreements with wider scope is likely to produce greater economic effects while certainly spreading the basic principles of foreign investment protection to most Asian economies. While the rise of plurilateral IIAs may alleviate the problems associated with the noodle bowl of IIAs, it may also intensify the problems by creating more common-member agreements.

In this connection, three determinants are assessed to play a major role in Asian rule-making. First, there are three Asian plurilateral agreements, either recently concluded or currently under negotiations, that deal with investment matters and illustrate the regionalization of investment law: ACIA, Regional Comprehensive Economic Partnership (RCEP), and the PRC–Japan–Republic of Korea Trilateral Investment Treaty. Second, the current TPP negotiations may soon result in one of the most ambitious investment treaties ever negotiated, which may have the potential to absorb all Asian investment treaties. Third, an exogenous parameter is the EU decision to expand into investment negotiations and replace the negotiating role of EU Members States. Virtually all Asian countries already bound with many of the 27 EU Member States are going to be affected.

5.1 Intra-Asian Plurilateral IIAs

The most important intra-Asian plurilateral IIA is the ASEAN Comprehensive Agreement, which is a milestone for ASEAN integration (5.1.1.). Beyond ACIA, which is already in force, other regional initiatives have also been taken (5.1.2.).

5.1.1 The ACIA

ACIA was signed by the ASEAN Economic Ministers (AEM) on 26 February 2009. It consolidated two existing agreements: the ASEAN Investment Area (AIA) of 1998 and the ASEAN Agreement on the Promotion and Protection of Investments of 1987, also known as ASEAN Investment Guarantee Agreement (IGA). Beyond the mere consolidation of earlier regional pacts, ACIA is an enhanced agreement that encompasses four pillars: liberalization, facilitation, protection, and promotion. It also contains new features to further promote and encourage FDI inflows into ASEAN.

In terms of liberalization, ACIA enshrines provisions, which accommodate the expansion of scope of this Agreement to cover other sectors in the future, such as the Article 3(3) (f) "services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying; [Reaffirm our vision stated in AIA] and (g) any other sectors, as may be agreed upon by all Member States".

ACIA has an expanded scope as it covers both FDI and Portfolio investment (compared with AIA [FDI only]). Also, the benefits of ACIA are extended to ASEAN investors and foreign-owned ASEAN-based investors. Interestingly, ACIA remains flexible as it has a more comprehensive Modification of Commitments under Article 10, which includes clear procedures on the modification of commitments and the inclusion of provision for compensatory adjustment to ensure balance of benefits.

In terms of protection, ACIA has more comprehensive and clear provisions and, thus, ensures better protection. ACIA Annex 1 details the "approval in writing" while Annex 2 clarifies the key concepts of expropriation and compensation: fair and equitable treatment (Article 11.2 on inclusion of "for greater certainty provision). Also, Article 14.5 clarifies that the issuance of compulsory licenses must be in accordance with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and is excluded from expropriation provision. As a result, ACIA accommodates the balancing of protection of legitimate regulation against investors' interests.

ACIA was signed in response to the competitive global environment for FDI with the aim of creating a freer and more open investment regime based on international best practices. In this light, it is worth noting that ACIA provides a more comprehensive dispute settlement mechanism. ACIA ISDS has many provisions and answers many of the concerns parties had. First, in order to ensure genuine claim (and avoid treaty shopping), the scope of coverage has been clarified (Article 29). The incurred loss or damage is regulated (Article29.1). No claim against own-state can be made under ACIA (Article 29.2). Second is the promotion of alternative dispute settlement: conciliation (Article 30), consultations, and negotiation (Article

31). Third is greater transparency and detailed procedures of ISDS (Article 32 and Article 41). Fourth, a mechanism for state-to-state dispute settlement (Article 27), the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, was enacted in 2004.

5.1.2 Other regional initiatives in Asia: RCEP and CJK Trilateral Investment Treaty

There has long been a debate between the PRC and Japan on the "appropriate" membership of Asian economic cooperation bodies. The PRC prefers the ASEAN+3 framework (EAFTA), while Japan insists upon the inclusion of Australia, New Zealand, and India (CEPEA). To avoid being involved in the political rivalry between the two powers, in 2011 ASEAN proposed RCEP, under which the modality of economic interaction in East Asia could be discussed by going beyond membership problems. All partners that have FTAs or EPAs with ASEAN members—which includes the PRC, Japan, and the Republic of Korea, as well as Australia, New Zealand, and India—are involved in RCEP.

Officially, the RCEP will aim at creating a liberal, facilitative, and competitive investment environment in the region. Negotiations will cover the four pillars of promotion, protection, facilitation, and liberalization. In this connection, the RCEP Working Groups in Goods, Services, and Investment were established by the ASEAN Leaders during the 19th ASEAN Summit to consider the scope of the RCEP and the ASEAN Economic Ministers have accepted their recommendations as detailed in the Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership (RCEP). However, no progress had been made as of July 2013.

The ASEAN-PRC FTA came into force in 2005, while its investment chapter became effective in 2010. However, this is not an ambitious agreement, covering only the protection of investment. Meanwhile Japan's EPAs with individual ASEAN members include relatively sophisticated investment chapters that cover both the protection and liberalization of investment. However, the Japan–ASEAN EPA was signed in 2008, but investment chapter is still under negotiation. If Japan–ASEAN EPA's investment chapter simply consolidates Japan's EPA with individual ASEAN countries, it would become a relatively comprehensive one. However, there is a possibility that ASEAN as a bloc will exercise its bargaining power to lower the level of ambition. In any event, the modality of the future investment chapter for the Japan–ASEAN EPA would likely to affect the investment chapter of RCEP.

Another important development that seems to have important implications for the investment chapter of RCEP is the PRC—Japan–Republic of Korea trilateral investment treaty recently signed after 9 years of negotiations. The trilateral investment treaty is not that ambitious because it covers the protection of investment only (liberalization is not covered) and its list of prohibited performance requirement measures is limited. The dominant argument in Japan is that if the trilateral FTA among the PRC, Japan, and the Republic of Korea is to be pursued, its investment chapters should be more ambitious.

Thus, it is difficult to foresee at this stage the modality of the investment chapter of RCEP, mainly, because of the disagreement between Japan and the PRC with regard to the level of

ambition. Perhaps, from the PRC perspective, the trilateral investment treaty is a done deal, upon which the investment chapter of a trilateral FTA should be based. From the Japanese perspective, however, upgrading the investment discipline is a necessary component of the trilateral FTA.

5.2 Cross-regional plurilateral IIA: the TPP

The TPP is a 21st century FTA designed to change FTAs and the problems associated with them by making them more useful in spreading liberalization globally by "multilateralizing regionalism."[12] The TPP's potential for successfully achieving such a goal is partly due to the nature of the partners, given their diversity and geographical spread linking both sides of the Pacific,[13] and partly due to the intended nature of the deal in achieving an all-new type of FTA design. In the view of leading authors, the definition of a "high-quality, 21st century" FTA means that means that such an agreement should combine three key features.[14] First, a "high-quality, 21st century" agreement should have a comprehensive scope. Second, it should have substantial depth that includes cooperation and integration components among members. Third, it must contain a set of shared values, ideology, or norms among participants.[15]

The TPP is important for the future of trade and investment regulation because it may represent the first concrete effort to sort out some of the negative effects (i.e., stumbling blocks) created by overlapping FTAs. Having said that, the evolution of the TPP could either strengthen or fracture current trading regimes. The specific architecture of the agreement,[16] including the elements of various negotiating chapters, is critical to realizing high-quality outcomes. In the short period of negotiations under review (March 2010–July 2013), three key features of TPP regulation on foreign investment have emerged. First, the dynamic character of the negotiations have progressed quite regularly while incorporating new countries. Second, the level of US leadership is obvious in both the form and substance of the TPP. While exerting this leadership in a group of 11 countries, half of which are emerging economies, the US also has isolated the largest emerging economies: the PRC, India, and Brazil. Third, in light of the previous points, the TPP represents a major FTA that illustrates the regionalization of investment rule-making and probably represents a benchmark for state-of-the-art international law for foreign investment.

If the TPP reflects US investment rule-making practice, the EU seems to be willing to negotiate new investment treaties largely inspired by this US practice. To these current developments, one should add the start of the Trans-Atlantic Trade and Investment Partnership (TATP) announced by President Obama in his 2012 State of the Union address. These new

[12] As early as 2006, Richard Baldwin argued that since the "spaghetti bowl's inefficiencies are increasingly magnified by unbundling and the rich/poor asymmetry, the world must find a solution. Since regionalism is here to stay, the solution must work with existing regionalism, not against it. The solution must multilateralize regionalism." See Baldwin (2006).

[13] The TPP countries currently are Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, New Zealand, Malaysia, Peru, Singapore, United States, and Viet Nam.

[14] See Lim, Elms and Low (2012) and Lewis (2011).

[15] See Elms and Lim (2012).

[16] For example, how will the TPP relate to existing FTAs between TPP negotiating parties, such as the US-Australia, US-Singapore or Singapore-Australia FTAs?

negotiations may well confirm the global adoption of a NAFTA-like mode of investment regulation. The current paper focuses on Asian rule-making in international investment but will also point at the relevant time to possible interaction with developments elsewhere in the world that may affect various Asian economies.

In fact, the June 2012 leaked draft of the TPP investment chapter, which was largely unchanged as of April 2013, resembled in large measure the more recent US IIAs rather than the 1995 text of NAFTA Chapter 11. In a nutshell, the TPP investment chapter does not provide major innovations in terms of treaty drafting. However, the TPP crystallizes innovations since 2001 in terms of NAFTA interpreting notes and NAFTA case law. The normative quality of the TPP, however, places the agreement among the most detailed and important investment treaties. In this light, it is possible to return to the question raised in the introduction of whether the TPP will strengthen or fracture current regimes.

As these investment treaties were negotiated in the context of an agreement of great economic significance, including a broad MFN provision, if the TPP negotiations proceed successfully, then, as a broad FTA, the TPP will presumably supersede NAFTA and other existing IIAs where there is overlap. Interestingly, the TPP may be read as a strengthening, or a de facto renegotiation, of NAFTA and many other agreements such as the ASEAN–Australia–New Zealand FTA (2010). The TPP is even more clearly a strengthening of investment disciplines for some developing countries such as Viet Nam and Malaysia, which have not previously been bound to the US.

Last but not least, TPP membership is open to new members willing to sign up to its commitments under the sole condition that it is accepted by the current TPP members. The absence of geographic or economic conditions gives the TPP a significant attractiveness. Japan made an official announcement in joining TPP negotiations on 15 March 2013. And the list of prospective members is long, including the Republic of Korea; Thailand; Taipei,China;[17] the Philippines; the Lao PDR; Colombia; and Costa Rica. Should all of these economies join the TPP and ratify, among other provisions, the investment chapter, this would no doubt signify an embryonic version of a long-awaited multilateral agreement on investment.

5.3 Exogenous parameter: the European Union shift

In the EU, the Treaty of Lisbon extended the Common Commercial Policy to FDI in 2009 (Articles 206 and 207 TFEU) (Chaisse 2012). Albeit subject to unanimity, the EU competence, which will soon be implemented (and affect all third countries) is broad and exclusive,[18] thereby enabling it to conceive what could be the main features of a new model of European investment agreement.

[17] Taipei,China President Ma Ying-jeou said his government will work hard to create the conditions for Taipei,China to participate in the US-led TPP at an appropriate time. Lee Shu-hua and Y.F. Low. 2013. *President Pledges to Create Conditions for TPP access*. 21 March 2013.

[18] The EU now holds exclusive competence over FDI, which is interpreted to include the classical standards of investment protection. However, the absence of a definition of FDI in the Treaty still leaves scope for disagreement. For further discussion, see Chaisse (2012).

The EU is by far the leading foreign investment power. At the end of 2010, EU outward stock of FDI in Asia represented EUR574.9 billion, which is equivalent to 14% of all EU outward stock of FDI and is the amount of FDI affected by the change in FDI competence (Eurostat, European Commission, July 2013).[19]

The shift from national to supra-national level is, in itself, a major legal development. The EU is likely to employ its significant bargaining power when negotiating IIAs to improve, for instance, the standards of investment protection or to develop new forms of all-encompassing agreements.[20] Neither the 2008 Economic Partnership Agreement with the Caribbean Forum of African, Caribbean, and Pacific (CARIFORUM) states,[21] nor the 2010 signed agreement with the Republic of Korea addresses the core investment protection issues of minimum standards of treatment, expropriation, and compensation. Nor do they provide recourse to investor-state arbitration procedures. The latter outcome reflects the legal situation prior to December 2009 and the shared competency, or "mixed competence,"[22] between Member States and the EU in matters of investment regulation.

As stated by the Commission, "a comprehensive common international investment policy needs to better address investor needs from the planning to the profit stage or from the pre- to the post-admission stage. Thus, our trade policy will seek to integrate investment liberalization and investment protection."[23] The most important change to benefit EU investors might be the shift from post-establishment to pre- and post-establishment rights granted to foreign investors, which represent the two main approaches to the admission of foreign investment that can be recognized in the BITs. "Entry" provisions erode the host state's control over the admission of foreign investment into its territory.[24] They may affect the capacity of the host state to prioritize certain investments over others, and undermine its negotiating power vis-à-

[19] In Asia, the most important destinations for outward stocks of EU-27 FDI were Singapore; Hong Kong, China ; and Japan. Together, they accounted for half of the EU-27's positions in Asia in 2010. The relative importance of the PRC as a destination for EU-27 FDI has grown steadily in recent years, and outward FDI stocks in the PRC reached EUR75.1 billion by the end of 2010, which was higher than in the Republic of Korea, India, and Indonesia, which are the next largest partners. Virtually, all these EU FDI in Asia (and FDI currently made) are going to see their legal protection modified as a result of current negotiations.

[20] The "negotiation mandate" for EU FTAs with Canada, India, and Singapore was approved by the General Affairs Council on 12 September 2011. This confidential document confirms the trend that the EU will negotiate broad encompassing FTAs to replace narrow and conventional BITs. Chaisse (2012).

[21] See http://www2.parl.gc.ca/Content/LOP/ResearchPublications/2010-56-e.htm - fn5

[22] On the concept and implications of mixed competence, see Lavranos (2010).

[23] EU. 2010. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, Toward a Comprehensive European International Investment Policy. Brussels. 7 July 2010. p. 5.

[24] In its 2010 communication, the Commission points out that the existing European BITs relate to the treatment of investors "post-entry" or "post-admission" only. This is perfectly true and implies that Member States' BITs provide no specific binding commitments regarding the conditions of entry, neither from third countries regarding outward investment by companies of our Member States, nor vice versa. But the European Commission observes that "gradually, the European Union has started filling the gap of entry or admission through both multilateral and bilateral agreements at the EU level covering investment market access and investment liberalization," and illustrates this in a footnote because at the multilateral level the General Agreement on Trade in Services (GATS) provides for a framework for undertaking commitments on the supply of services through a commercial presence (defined as mode 3 in GATS Article I). At the bilateral level, the EU has concluded negotiations with the Republic of Korea on an FTA, which includes provisions on market access for investors and establishments.

vis incoming investors, which in turn is crucial for negotiating terms and conditions that maximize the investment's contribution to sustainable development. As of 5 July 2013, there were eight Asian partners with which the EU was negotiating new trade agreements that will reflect the recent changes in EU FDI competence. Annex 3 summarizes the state of EU negotiations with Asian economies.

6. Conclusion

This paper provides a framework of analysis to understand investment rule-making in Asia. Several important issues can be summarized. First, as in the rest of the world, the regulation of international investment is a field of law, which has experienced major developments in Asia, especially in the last decade. Second, there are currently 146 intra-regional BITs in force, and there are 41 intra-regional BITs that have been signed but have not yet entered into force. In addition, there are 21 intra-regional FTAs in Asia that have investment chapters, which have all entered into force. Thus, in total, there are 187 intra-regional IIAs in force (208 intra-regional IIAs if "signed but not yet in effect" IIAs are included). This large number of IIAs forms the core of the Asian noodle bowl of investment treaties.

Third, out of the 48 ADB developing member economies, 13 comprise a group of frontrunners that have concluded more than 40 IIAs. This group consists of Thailand, Kazakhstan, Mongolia, Azerbaijan, Pakistan, Uzbekistan, Singapore, Viet Nam, Indonesia, Malaysia, India, the Republic of Korea, and the PRC. Last but not least, although investment rule-making has undergone profound changes in recent years (e.g., treatification, legalization, and proliferation); it is very likely to continue to evolve just as quickly. In this regard, a major trend of international investment rule-making is the increasing regionalization of negotiations, which will have an impact on Asian regulations. If the core of international investment regulations remains based on BITs and bilateral FTAs, it is important to underscore the importance of ongoing negotiations of broader pacts, which involve more than two countries and cover a number of economic areas.

The rise of plurilateral agreements with a wider scope—such as ACIA, "ASEAN plus" agreements, RCEP, and TPP—is likely to produce greater economic effects while spreading the basic principles of foreign investment protection to most Asian economies. It also suggests that research and policy efforts should increasingly focus on these new instruments.

References

R. Baldwin. 2006. Multilateralising Regionalism: Spaghetti Bowls as Building Blocs on the Path to Global Free Trade. *The World Economy*. 29 (11). pp. 1451–1518.

J. Chaisse and C. Bellak. 2011. Do Bilateral Investment Treaties Promote Foreign Direct Investment? Preliminary Reflections on a New Methodology. *Transnational Corporations Review*. 3 (4). pp. 3–11.

J. Chaisse. 2012. Promises and Pitfalls of the European Union Policy on Foreign Investment—How Will the New EU Competence on FDI affect the Emerging Global Regime. Journal of International Economic Law. 15. pp. 5–84.

J. Chaisse and M. Matsushita. 2013. Maintaining the WTO's Supremacy in the International Trade Order: A Proposal to Refine and Revise the Role of the Trade Policy Review Mechanism. *American Journal of Law and Medicine*. 16. pp. 9–36.

J. Chaisse, D. Chakraborty, and J. Mukherjee. 2013. Deconstructing Service and Investment Negotiating Stance: A Case Study of India at WTO GATS and Investment Forum. *Journal of World Investment & Trade*. 14. pp. 44–78.

Clayton–Utz. 2011. *Guide to Protecting Foreign Investments*. p. 26. Available at http://www.claytonutz.com/docs/Guide_to_protecting_foreign_investments.pdf

D. Collins. 2009. A New Role for the WTO in International Investment Law: Public Interest in the Post-Neoliberal Period. *Connecticut Journal of International Law*. 25. pp. 1–35.

D.K. Elms and C.L. Lim. 2012. *An Overview and Snapshot of the TPP Negotiations in The Trans-Pacific Partnership (TPP)—A Quest for Twenty-First Century Trade Agreement* (eds. C.L. Lim, D. Elms, and P. Low). London: Cambridge University Press. pp. 21–44.

M. Hallward–Driemeier. 2003. Do Bilateral Investment Treaties Attract Foreign Direct Investment? Only a Bit... And They Could Bite. *World Bank Policy Research Working Paper*. No. 3121. pp. 1–37.

S. Hamanaka. 2012. Evolutionary Paths to a Region-Wide Economic Agreement in Asia. *Journal of Asian Economics.* 23 (4).

D. Lavranos. 2010. Bilateral Investment Treaties and EU Law. *European Society of International Law Conference*. Available at http://www.esilen.law.cam.ac.uk/Media/Draft_Papers/Agora/Lavranos.pdf

M.K. Lewis. 2011. The Trans-Pacific Partnership: New Paradigm Or Wolf In Sheep's Clothing? 34 B.C. Int'l & Comp. L. Rev. pp. 27–52.

C.L. Lim, D. K. Elms, and P. Low. 2012. What is "High-Quality, Twenty-First Century" Anyway? In The Trans-Pacific Partnership (TPP) in *A Quest for a Twenty-First Century Trade Agreement* (eds. C. L. Lim, D. Elms, and P. Low). London: Cambridge University Press. pp. 3–18.

K. Polanyi. 2001. *The Great Transformation*. Beacon Press.

J. W. Salacuse. 2010. The Emerging Global Regime for Investment. *Harvard International Law Journal*. 5. pp. 427–446.

J.W. Salacuse. 2007. The Treatification of International Investment Law. *Law and Business Review*. pp. 155.

P. Sauvé. 2006. On the Attempts at Crafting Multilateral Disciplines on Investment in Multilateral Rules on Investment: Is Forward Movement Possible? *Journal of International Economic Law*. 9 (2). pp. 325–55.

J. Schott and J. Muir. 2012. US PTAs: What's Been Done and What it Means for the TPP Negotiations in The Trans-Pacific Partnership (TPP) in *A Quest for a Twenty-First Century Trade Agreement* (eds. C.L. Lim, D. P. Elms. Low) London: Cambridge University Press. pp. 45-63.

S. Jandhyala, W. J. Henisz, and E. D. Mansfield. 2010. Pooling is a BIT Inappropriate: A Two Stage Model for Bilateral Investment Treaty Signing. 27 January. (mimeo).

T. Voon and A. Mitchell. 2011. Time to Quit? Assessing International Investment Claims against Plain Tobacco Packaging in Australia. *Journal of International Economic Law*. 14 (3). pp. 515–52.

J.Y. Willems. 2011. The Settlement of Investor State Disputes and the [People's Republic of] China New Developments on ICSID Jurisdiction. South Carolina Journal of International Law and Business. 8 (1-62).

J. Zhan et al. 2012. United Nations Conference on Trade and Development. *World Investment Report*. p. 199.

Annex 1: ADB Regional Members

Members	Year of Membership
Afghanistan	1966
Armenia	2005
Australia	1966
Azerbaijan	1999
Bangladesh	1973
Bhutan	1982
Brunei Darussalam	2006
Cambodia	1966
China, People's Republic of	1986
Cook Islands	1976
Fiji	1970
Georgia	2007
Hong Kong, China	1969
India	1966
Indonesia	1966
Japan	1966
Kazakhstan	1994
Kiribati	1974
Korea, Republic of	1966
Kyrgyz Republic	1994
Lao PDR	1966
Malaysia	1966
Maldives	1978
Marshall Islands	1990
Micronesia, Federated States of	1990
Mongolia	1991
Myanmar	1973
Nauru	1991
Nepal	1966
New Zealand	1966
Pakistan	1966
Palau	2003
Papua New Guinea	1971
Philippines	1966
Samoa	1966
Singapore	1966
Solomon Islands	1973
Sri Lanka	1966
Taipei,China	1966
Tajikistan	1998
Thailand	1966
Timor-Leste	2002
Tonga	1972
Turkmenistan	2000
Tuvalu	1993
Uzbekistan	1995
Vanuatu	1981
Viet Nam	1966

Annex 2: The Asian International Investment Agreement Noodle Bowl

	Armenia	Australia	Azerbaijan	Bangladesh	Brunei Darussalam
Armenia					
Australia					
Azerbaijan					
Bangladesh					
Brunei Darussalam					
Cambodia					ACIA 1 Mar 2012
China, People's Republic of	BIT 18 Mar 1995	BIT 11 July 1988	BIT 1 Apr 1995	BIT 25 Mar 1997	BIT not yet into force
Georgia	BIT 18 Feb 1997		BIT 10 July 1996		
Hong Kong, China		BIT 15 Oct 1993			
India	BIT 30 May 2006	BIT 4 May 2000		BIT 7 Jul 2011	BIT 18 Jan 2009
Indonesia		BIT 29 July 1993		BIT 22 Apr 1999	ACIA 1 Mar 2012
Japan				BIT 25 Aug 1999	FTA Brunei Darussalam - Japan 31 Jul 2008
Kazakhstan			BIT not yet into force		
Korea, Republic of			BIT 25 Jan 2008	BIT 6 Oct 1988	
Kyrgyz Republic	BIT 27 Oct 1995		BIT 28 Aug 1997		
Lao People's Democratic Republic		BIT 8 Apr 1995			ACIA Mar 2012
Malaysia				BIT 20 Aug 1996	
Mongolia					
Myanmar					
Nepal					
New Zealand		BIT not yet into force and Australia - New Zealand (ANZCERTA) Jan 1989			FTA Trans-Pacific Strategic Economic Partnership 28 May 2006

Annex 2: *Continued*

	Armenia	Australia	Azerbaijan	Bangladesh	Brunei Darussalam
Pakistan		BIT 14 Aug 1998		BIT not yet into force	
Papua New Guinea		BIT 20 Oct 1991			
Philippines		BIT 8 Dec 1995		BIT 1 Aug 1998	
Singapore		FTA Singapore - Australia 28 Jul 2003		BIT 19 Nov 2004	FTA Trans-Pacific Strategic Economic Partnership 28 May 2006
Sri Lanka		BIT not yet into force			
Taipei,China					
Tajikistan	BIT not yet into force		BIT 26 Feb 2008		
Thailand		FTA Thailand - Australia 1 Jan 2005		BIT 12 Jan 2003	
Turkmenistan	BIT not yet into force				
Uzbekistan			BIT 2 Nov 1996	BIT 24 Jan 2001	
Vanuatu					
Viet Nam	BIT 28 Apr 1993	BIT 11 Sep 1991		BIT not yet into force	

Annex 2: *Continued*

	Cambodia	China, People's Republic of	Georgia	Hong Kong, China	India
Armenia		BIT 18 Mar 1995	BIT 18 Feb 1997		BIT 30 May 2006
Australia		BIT 11 July 1988		BIT 15 Oct 1993	BIT 4 May 2000
Azerbaijan		BIT 1 Apr 1995	BIT 10 July 1996		
Bangladesh		BIT 25 Mar 1997			BIT 7 July 2011
Brunei Darussalam	ACIA 1 Mar 2012	BIT not yet into force			BIT 18 Jan 2009
Cambodia		BIT 1 Feb 2000			
China, People's Republic of	BIT 1 Feb 2000		BIT 1 Mar 1995	FTA PRC - Hong Kong, China 29 June 2003	BIT 1 Aug 2007
Georgia		BIT 1 Mar 1995			
Hong Kong, China		FTA PRC - Hong Kong, China 29 June 2003			
India		BIT 1 Aug 2007			
Indonesia	BIT not yet into force and ACIA 1 Mar 2012	BIT 1 Apr 1995			BIT 22 Jan 2004
Japan	BIT 31 Jul 2008	BIT 14 May 1989		BIT 18 June 1997	
Kazakhstan		BIT 13 Aug 1994	BIT 24 Aug 2008		BIT 26 Jul 2001
Korea, Republic of	BIT 12 Mar 1997	BIT 1 Dec 2007		BIT 30 July 1997	BIT 7 May 1996
Kyrgyz Republic		BIT 8 Sep 1995	BIT 28 Oct 1997		BIT 10 Apr 1998

Annex 2: *Continued*

	Cambodia	China, People's Republic of	Georgia	Hong Kong, China	India
Lao People's Democratic Republic	BIT not yet into force and ACIA 1 Mar 2012	BIT 1 June 1993			BIT 5 Jan 2003
Malaysia	BIT not yet into force	BIT 31 Mar 1990			BIT 12 Apr 1997
Mongolia		BIT 1 Nov 1993			BIT 29 Apr 2002
Myanmar		BIT 21 May 2002			BIT 8 Feb 2009
Nepal					BIT not yet into force
New Zealand		BIT 25 Mar 1989 and FTA PRC - New Zealand 1 Oct 2008		BIT 5 Aug 1995 and Hong Kong, China - New Zealand 1 Jan 2011	
Pakistan	BIT not yet into force	BIT 30 Sep 1990 and FTA Pakistan – PRC 1 Jul 2007			
Papua New Guinea		BIT 12 Feb 1993			
Philippines	BIT not yet into force	BIT 8 Sep. 1995			BIT 29 Jan 2001
Singapore	BIT 24 Feb 2000	BIT 7 Feb 1986			FTA India - Singapore 1 Aug 2005
Sri Lanka		BIT 25 Mar 1987			BIT 13 Feb 1998
Taipei,China					BIT 28 Nov 2002
Tajikistan		BIT 20 Jan 1994			BIT 14 Nov 2003
Thailand	BIT 16 Apr 1997	BIT 13 Dec 1985		BIT 18 Apr 2006	BIT 13 July 2001
Turkmenistan		BIT 4 June 1994	BIT 21 Nov 1996		BIT 27 Feb 2006

Annex 2: *Continued*

	Cambodia	China, People's Republic of	Georgia	Hong Kong, China	India
Uzbekistan		BIT 1 Sep 2011	BIT 24 May 1999		BIT 28 Jul 2000
Vanuatu		BIT not yet into force			
Viet Nam	BIT not yet into force	BIT 1 Sep 1993			BIT 1 Dec 1999

Annex 2: *Continued*

	Indonesia	Japan	Kazakhstan	Korea, Republic of	Kyrgyz Republic
Armenia					BIT 27 Oct 1995
Australia	BIT 29 July 1993				
Azerbaijan			BIT not yet into force	BIT 25 Jan 2008	BIT 28 Aug 1997
Bangladesh	BIT 22 Apr 1999	BIT 25 Aug 1999		BIT not yet into force	
Brunei Darussalam	ACIA 1 Mar 2012	FTA Brunei Darussalam – Japan 31 Jul 2008		BIT 30 Oct 2003	
Cambodia	BIT not yet into force and ACIA 1 Mar 2012	BIT 31 Jan 2008		BIT 12 Mar 1997	
China, People's Republic of	BIT 1 Apr 1995	BIT 14 May 1989	BIT 13 Aug 1994	BIT 1 Dec 2007	BIT 8 Sep 1995
Georgia			BIT 24 Aug 2008		BIT 28 Oct 1997
Hong Kong, China		BIT 18 June 1997		BIT 30 July 1997	
India	BIT 22 Jan 2004		BIT 26 Jul 2001	BIT 7 May 1996	BIT 10 Apr 1998
Indonesia		FTA Japan – Indonesia 1 Jul 2008		BIT 10 Mar 1994	BIT 23 Apr 1997
Japan	FTA Japan - Indonesia 1 Jul 2008			BIT 1 Jan 2003	
Kazakhstan				BIT 26 Dec 1996	BIT not yet into force
Korea, Republic of	BIT 10 Mar 1994	BIT 1 Jan 2003	BIT 26 Dec 1996		BIT 8 June 2008
Kyrgyz Republic	BIT 23 Apr 1997		BIT not yet into force	BIT 8 June 2008	
Lao PDR	BIT 14 Oct 1995 and ACIA 1 Mar 2012	BIT 3 Aug 2009		BIT 14 June 1996	
Malaysia	BIT 27 Oct 1999	FTA Japan – Malaysia 13 Jul 2006	BIT not yet into force	BIT 31 Mar 1989	BIT not yet into force

Annex 2: *Continued*

	Indonesia	Japan	Kazakhstan	Korea, Republic of	Kyrgyz Republic
Mongolia	BIT 13 Oct 1999	BIT 24 Mar 2002	BIT 3 Mar 1995	BIT 30 Apr 1991	BIT not yet into force
Myanmar					
Nepal					
New Zealand					
Pakistan	BIT 3 Dec 1996	BIT 29 May 2002	BIT not yet into force	BIT 15 Apr 1990	BIT not yet into force
Papua New Guinea		BIT not yet into force			
Philippines	BIT not yet into force	FTA Japan - Philippines 11 Dec 2008		BIT 25 Apr 1996	
Singapore	BIT 21 June 2006	FTA Japan - Singapore 30 Nov 2002		BIT 26 Mar 1998 and FTA Korea, Republic of - Singapore 2 Mar 2006	
Sri Lanka	BIT 21 Jul 1997	BIT 7 Aug 1982		BIT 15 Jul 1980	
Taipei,China					
Tajikistan	BIT not yet into force			BIT 13 Aug 1995	BIT not yet into force
Thailand	BIT 5 Nov 1998	FTA Japan – Thailand 1 Nov 2007		BIT 30 Sep 1989	
Turkmenistan	BIT not yet into force				
Uzbekistan	BIT 27 Apr 1997	BIT 29 Sep 2009	BIT 8 Sep 1997	BIT 20 Nov 1992	BIT 6 Feb 1997
Vanuatu					
Viet Nam	BIT 3 Apr 1994	BIT 19 Dec 2004	BIT not yet into force	BIT 5 Jun 2004	

Annex 2: *Continued*

	Lao People's Democratic Republic	Malaysia	Mongolia	Myanmar	Nepal
Armenia					
Australia	BIT 8 Apr 1995				
Azerbaijan					
Bangladesh		BIT 20 Aug 1996			
Brunei Darussalam	ACIA 1 Mar 2012	ACIA 1 Mar 2012		ACIA 1 Mar 2012	
Cambodia	BIT not yet into force and ACIA 1 Mar 2012	BIT not yet into force and ACIA 1 Mar 2012		ACIA 1 Mar 2012	
People's Republic of China	BIT 1 June 1993	BIT 31 Mar 1990	BIT 1 Nov 1993	BIT 21 May 2002	
Georgia					
Hong Kong, China					
India	BIT 5 Jan 2003	BIT 12 Apr 1997	BIT 29 Apr 2002	BIT 8 Feb 2009	BIT not yet into force
Indonesia	BIT 14 Oct 1995 and ACIA 1 Mar 2012	BIT 27 Oct 1999 and ACIA 1 Mar 2012	BIT 13 Oct 1999	ACIA 1 Mar 2012	
Japan	BIT 3 Aug 2009	FTA Japan – Malaysia 13 Jul 2006	BIT 24 Mar 2002		
Kazakhstan		BIT not yet into force	BIT 3 Mar 1995		
Korea, Republic of	BIT 14 June 1996	BIT 31 Mar 1989	BIT 30 Apr 1991		
Kyrgyz Republic		BIT not yet into force	BIT not yet into force		
Lao People's Democratic Republic		BIT not yet into force and ACIA 1 Mar 2012	BIT 29 Dec 1994	BIT not yet into force and ACIA 1 Mar 2012	
Malaysia	BIT not yet into force		BIT 14 Jan 1996		

Annex 2: *Continued*

	Lao People's Democratic Republic	Malaysia	Mongolia	Myanmar	Nepal
Mongolia	BIT 29 Dec 1994	BIT 14 Jan 1996			
Myanmar	BIT not yet into force				
Nepal					
New Zealand		New Zealand - Malaysia 1 Aug 2010			
Pakistan	BIT not yet into force	BIT 30 Nov 1995 and FTA Pakistan - Malaysia 1 Jan 2008			
Papua New Guinea		BIT not yet into force			
Philippines			BIT 1 Nov 2001	BIT 11 Sep 1998	
Singapore	BIT 26 Mar 1998		BIT 7 Jan 1996		
Sri Lanka		BIT 31 Oct 1995			
Taipei,China		BIT 18 Match 1993			
Tajikistan			BIT 16 Sep 1999		
Thailand	BIT 7 Dec 1990			BIT not yet into force	
Turkmenistan		BIT not yet into force			
Uzbekistan		BIT 20 Jan 2000			
Vanuatu					
Viet Nam	BIT 23 Jun 1996	BIT 9 Oct 1992	BIT 13 Dec 2001	BIT not yet into force	

Annex 2: *Continued*

	New Zealand	Pakistan	Papua New Guinea	Philippines
Armenia				
Australia	BIT not yet into force and Australia - New Zealand (ANZCERTA) 1 Jan 1989	BIT 14 Aug 1998	BIT 20 Oct 1991	BIT 8 Dec 1995
Azerbaijan				
Bangladesh		BIT not yet into force		BIT 1 Aug 1998
Brunei Darussalam	FTA Trans-Pacific Strategic Economic Partnership 28 May 2006			ACIA 1 Mar 2012
Cambodia		BIT not yet into force		BIT not yet into force and ACIA 1 Mar 2012
China, People's Republic of	BIT 25 Mar 1989 and PRC - New Zealand 1 Oct 2008	BIT 30 Sep 1990 and FTA Pakistan – PRC 1 Jul 2007	BIT 12 Feb 1993	BIT 8 Sep 1995
Georgia				
Hong Kong, China	BIT 5 Aug 1995 and FTA Hong Kong, China - New Zealand 1 Jan 2011			
India				BIT 29 Jan 2001
Indonesia		BIT 3 Dec 1996		BIT not yet into force and ACIA 1 Mar 2012
Japan		BIT 29 May 2002	BIT not yet into force	FTA Japan - Philippines 11 Dec 2008
Kazakhstan		BIT not yet into force		
Korea, Republic of		BIT 15 Apr 1990		BIT 25 Apr 1996
Kyrgyz Republic		BIT not yet into force		
Lao People's Democratic Republic		BIT not yet into force		ACIA 1 Mar 2012

Annex 2: *Continued*

	New Zealand	Pakistan	Papua New Guinea	Philippines
Malaysia	New Zealand – Malaysia 1 Aug 2010	BIT 30 Nov 1995 and FTA Pakistan - Malaysia 1 Jan 2008	BIT not yet into force	
Mongolia				BIT 1 Nov 2001
Myanmar				BIT 11 Sep 1998
Nepal				
New Zealand				
Pakistan				BIT not yet into force
Papua New Guinea				
Philippines		BIT not yet into force		
Singapore	FTA New Zealand - Singapore 1 Jan 2001 and Trans-Pacific Strategic Economic Partnership 28 May 2006	BIT 4 May 1995		
Sri Lanka		BIT 5 Jan 2000		
Taipei,China				BIT 28 Apr 1992
Tajikistan		BIT not yet into force		
Thailand				BIT 6 Sep 1996
Turkmenistan		BIT not yet into force		
Uzbekistan		BIT 15 Feb 2006		
Vanuatu				
Viet Nam				BIT 29 Jan 1993

Annex 2: *Continued*

	Singapore	Sri Lanka	Taipei,China	Tajikistan
Armenia				BIT not yet into force
Australia	FTA Singapore - Australia 28 Jul 2003	BIT not yet into force		
Azerbaijan				BIT 26 Feb 2008
Bangladesh	BIT 19 Nov 1994			
Brunei Darussalam	FTA Trans-Pacific Strategic Economic Partnership 28 May 2006			
Cambodia	BIT 26 Feb 2000 and ACIA 1 Mar 2012			
China, People's Republic of	BIT 7 Feb 1986	BIT 25 Mar 1987		BIT 20 Jan 1994
Georgia				
Hong Kong, China				
India	FTA India - Singapore 1 Aug 2005	BIT 13 Feb 1998	BIT 28 Nov 2002	BIT 14 Nov 2003
Indonesia	BIT 21 June 2006	BIT 21 Jul 1997		BIT not yet into force
Japan	FTA Japan - Singapore 30 Nov 2002	BIT 7 Aug 1982		
Kazakhstan				
Korea, Republic of	BIT 26 Mar 1998 and FTA Korea, Republic of - Singapore 2 Mar 2006	BIT 15 Jul 1980		BIT 13 Aug 1995
Kyrgyz Republic				BIT not yet into force

Annex 2: *Continued*

	Singapore	Sri Lanka	Taipei,China	Tajikistan
Lao People's Democratic Republic	BIT 26 Mar 1998 and ACIA 1 Mar 2012			
Malaysia		BIT 31 Oct 1995	BIT 18 Match 1993	
Mongolia	BIT 7 Jan 1996			BIT 16 Sep 1999
Myanmar				
Nepal				
New Zealand	FTA New Zealand - Singapore 1 Jan 2001 and Trans-Pacific Strategic Economic Partnership 28 May 2006			
Pakistan	BIT 4 May 1995	BIT 5 Jan 2000		BIT not yet into force
Papua New Guinea				
Philippines			BIT 28 Apr 1992	
Singapore		BIT 30 Sep 1980	BIT 9 Apr 1990	
Sri Lanka	BIT 30 Sep 1980			
Taipei,China	BIT 9 Apr 1990			
Tajikistan				
Thailand		BIT 14 May 1996	BIT 30 Apr 1996	BIT not yet into force
Turkmenistan				
Uzbekistan	BIT 23 Nov 2003			
Vanuatu				
Viet Nam	BIT 25 Dec 1992	BIT not yet into force	BIT 23 Apr 1993	BIT not yet into force

Annex 2: *Continued*

	Thailand	Turkmenistan	Uzbekistan	Vanuatu	Viet Nam
Armenia		BIT not yet into force			BIT 28 Apr 1993
Australia	FTA Thailand – Australia 1 Jan 2005				BIT 11 Sep 1991
Azerbaijan			BIT 2 Nov 1996		
Bangladesh	BIT 12 Jan 2003		BIT 24 Jan 2001		BIT not yet into force
Brunei Darussalam	ACIA 1 Mar 2012				ACIA 1 Mar 2012
Cambodia	BIT 16 Apr 1997				BIT not yet into force and ACIA 1 Mar 2012
China, People's Republic of	BIT 13 Dec 1985	BIT 4 June 1994	BIT 1 Sep 2011	BIT not yet into force	BIT 1 Sep 1993
Georgia		BIT 21 Nov 1996	BIT 24 May 1999		
Hong Kong, China	BIT 18 Apr 2006				
India	BIT 13 July 2001	BIT 27 Feb 2006	BIT 28 Jul 2000		BIT 1 Dec 1999
Indonesia	BIT 5 Nov 1998	BIT not yet into force	BIT 27 Apr 1997		BIT 3 Apr 1994 and ACIA 1 Mar 2012
Japan	FTA Japan – Thailand 1 Nov 2007		BIT 29 Sep 2009		BIT 19 Dec 2004
Kazakhstan			BIT 8 Sep 1997		BIT not yet into force
Korea, Republic of	BIT 30 Sep 1989		BIT 20 Nov 1992		BIT 5 Jun 2004
Kyrgyz Republic			BIT 6 Feb 1997		
Lao People's Democratic Republic	BIT 7 Dec 1990 and ACIA 1 Mar 2012				BIT 23 Jun 1996 and ACIA 1 Mar 2012

Annex 2: *Continued*

	Thailand	Turkmenistan	Uzbekistan	Vanuatu	Viet Nam
Malaysia		BIT not yet into force	BIT 20 Jan 2000		BIT 9 Oct 1992 and ACIA 1 Mar 2012
Mongolia					BIT 13 Dec 2001
Myanmar	BIT not yet into force				BIT not yet into force ACIA 1 Mar 2012
Nepal					
New Zealand					
Pakistan		BIT not yet into force	BIT 15 Feb 2006		
Papua New Guinea					
Philippines	BIT 6 Sep 1996				BIT 29 Jan 1993 and ACIA 1 Mar 2012
Singapore			BIT 23 Nov 2003		BIT 25 Dec 1992 and ACIA 1 Mar 2012
Sri Lanka	BIT 14 May 1996				BIT not yet into force
Taipei,China	BIT 30 Apr 1996				BIT 23 Apr 1993
Tajikistan	BIT not yet into force				BIT not yet into force
Thailand					BIT 7 Feb 1992 and ACIA 1 Mar 2012
Turkmenistan			BIT 2 Aug 1996		

Annex 2: *Continued*

	Thailand	Turkmenistan	Uzbekistan	Vanuatu	Viet Nam
Uzbekistan		BIT 2 Aug 1996			BIT 6 Mar 1998
Vanuatu					
Viet Nam	BIT 7 Feb 1992		BIT 6 Mar 1998		

ACIA = ASEAN Comprehensive Investment Agreement , ANZCERTA= Australia–New Zealand, ANZTEC= The Agreement between New Zealand and the Separate Customs Territory of Taipei,China, Penghu, Kinmen, and Matsu on Economic Cooperation, BIT = bilateral investment treaty, IIA = international investment agreement.

Annex 3: Current European Union Negotiations with Asian Economies since 2009

Asian Economy	Negotiating Directives	Current Status	Next Steps
China, People's Republic of	Announcement made 23 May 2013	Preparations	Starting investment negotiations
India	Negotiating authorization and directives of April 2007	Negotiations were launched in June 2007. After 11 full rounds, negotiations are now in a phase where negotiators meet in smaller more targeted clusters rather (i.e. expert level inter-sessionals) rather than full rounds, chief negotiator meetings, and meetings at Director General level. Negotiations are ongoing, on market access for goods (improve coverage of both sides' offers), the overall ambition of the services package and achieving a meaningful chapter on government procurement	Both sides are aiming to find solutions which are mutually acceptable, so as to achieve an ambitious outcome which would give an important boost to trade between the European Union and India.
Singapore	Based on 2007 ASEAN negotiating directives (see below).	European Union Trade Commissioner de Gucht and Singapore's Minister of Trade and Industry, Lim, announced the completion of negotiations on 16 December 2012. The agreement reached is one of the most comprehensive the European Union has ever negotiated and will create new opportunities for companies from Europe and Singapore to do business together. The growing Singaporean market offers export potential for European Union, industrial, agricultural and services businesses. An EU–Singapore FTA will be the EU's second ambitious agreement with a key Asian trading partner, after the EU–Republic of Korea FTA, which is in operation since July 2011.	The draft agreement will now be reviewed by legal teams from both sides, which aim to initial the draft text in summer 2013. Negotiations on investment protection, which are based on a new European Union competence under the Lisbon Treaty and started later, will continue in 2013.
Malaysia	Based on 2007 ASEAN negotiating directives (see below).	On 10 September 2010, European Union Member States agreed that the commission could start FTA negotiations with Malaysia. The negotiations were officially launched in Brussels on 5 October 2010. A consultation of stakeholders is completed. The seventh round of FTA negotiations took place in Brussels in April 2012.	Technical Working Groups in a number of negotiating areas met in Kuala Lumpur September 2012.

Annex 3: *Continued*

Asian Economy	Negotiating Directives	Current Status	Next Steps
ASEAN	Negotiating authorization and directives of April 2007.	Negotiations with a regional grouping of 7 ASEAN member states launched in July 2007. The Joint Committee in March 2009 agreed to take a pause in the regional negotiations.	In December 2009, European Union Member States agreed that the Commission will pursue FTA negotiations in a bilateral format with countries of ASEAN. Negotiations with Singapore and Malaysia were launched in 2010, and with Viet Nam in June 2012. The Commission continues exploratory informal talks with other individual ASEAN member states with a view to assessing the level of ambition at bilateral level.
Viet Nam	Based on 2007 ASEAN negotiating directives (see above)	The Foreign Affairs Council (Trade format) on 31 May 2012 endorsed the launching of negotiations for a FTA with Viet Nam. Commissioner De Gucht and Minister Hoang officially launched the FTA negotiations at a ceremony in Brussels on 26 June 2012. Since then three rounds of negotiations have taken place. The first from 8–12 October in Ha Noi, Viet Nam, the second round in Brussels from 22–25 January 2013 and the third in Ho Chi Minh City on 23–26 April 2013.	Both sides seek for a comprehensive agreement covering tariffs, non-tariff barriers as well as commitments on other trade related aspects, notably procurement, regulatory issues, competition, services, and sustainable development. The fourth round of negotiations took place in Brussels on 2–5 July.
Japan	NA	At the EU-Japan Summit of May 2011, the EU and Japan decided to start preparations for both an FTA and a political framework agreement. The EU and Japan stated that on the basis of a successful scoping exercise, the European Commission would seek the necessary authorization from the Council for negotiations. After 1 year of intensive discussions, in May 2012, the Commission agreed with Japan on a very ambitious agenda for the future negotiations (covering all EU market access priorities).	The EU-Japan FTA negotiations have been launched on 25 March 2013. The first round of negotiations took take place on 15-19 April 2013 in Brussels. Parties exchanged views and a limited number of texts on all negotiating areas identified during the scoping exercise. The second round is scheduled for 24-28 June in Tokyo

Annex 3: *Continued*

Asian Economy	Negotiating Directives	Current Status	Next Steps
Japan	NA	In the context of the negotiations, the Commission also agreed with Japan on specific 'roadmaps' for the removal of non-tariff barriers as well as on the opening up of public procurement for Japan's railways and urban transport market. In July 2012 the European Commission decided to ask the Member States for their agreement on opening FTA negotiation with Japan. On the 29 November 2012 the Council decided to give the Commission 'the green light' to start trade negotiations with Japan. On 29 November 2012 the Council decided to give the Commission the green light to start trade negotiations with Japan. The negotiations with Japan will address a number of European Union concerns, including non-tariff barriers and the further opening of the public procurement market	
Thailand	Negotiating directives obtained in April 2009	Negotiations were launched in May 2009 and the content of the CETA (Comprehensive Economic and Trade Agreement) and its general modalities were agreed in June 2009. The first round took place in October 2009. The negotiations are now in their final phase. Commissioner de Gucht and his Canadian counterpart Trade Minister Fast met on 22 November 2012 and on 6–7 February in Ottawa to take stock of the remaining open points. The aim is to conclude the CETA negotiations in the third quarter of 2013.	Negotiation teams are currently meeting twice per month to work out the final deal.

ASEAN=Association of Southeast Asian Nation, PRC=People's Republic of China, EU=European Union, FTA=Free Trade Agreement, NA= not applicable.

Source: EU, Trade Directorate Overview of FTA and other Trade Negotiations (updated 5 July 2013).

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The Investment Version of the Asian Noodle Bowl
The Proliferation of International Investment Agreements

The main objective of this paper is to describe and provide an exhaustive mapping of the recent Asian experiences in international investment rule-making through regional and bilateral investment agreements or treaties. It considers the problems caused by the "noodle bowl" of international investment treaties and concludes that the proliferation of agreements could be harmful in the case of investment, unlike trade.

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