



Analysis of Regional Investment Frameworks Worldwide

Sophie WERNERT
Policy analyst

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Overview

- Objectives and methodology of analysing other regional investment frameworks in the world
- Typology of regional investment frameworks worldwide
 - By region
 - By instrument
 - By content
- Example: the ASEAN Process

Objectives and Methodology

- Identify best practices and approaches to regional investment framework options in other regions;
 - Draw on experiences at the regional and sub-regional level in order to set up frameworks and agreements on promoting, protecting and liberalizing international investments;
 - Analyse the approaches towards convergence chosen to reach a regional consensus on common norms and principles;
 - Rationalize the existing treaty network by identifying the characteristics, steps and the variety of options offered by practices.
- The practice in other regions shows a variety of options and instruments, whether binding or non-binding.

Overview of Regional Investment Agreements Worldwide

- **Asia & Pacific**

- Association of Southeast Asian Nations (ASEAN): Investment Area
- Asia-Pacific Economic Cooperation (APEC): Non-Binding Investment Principles

- **Americas**

- North American Free Trade Agreement (NAFTA)
- MERCOSUR
- ANDEAN
- Caribbean Community and Common Market (CARICOM)

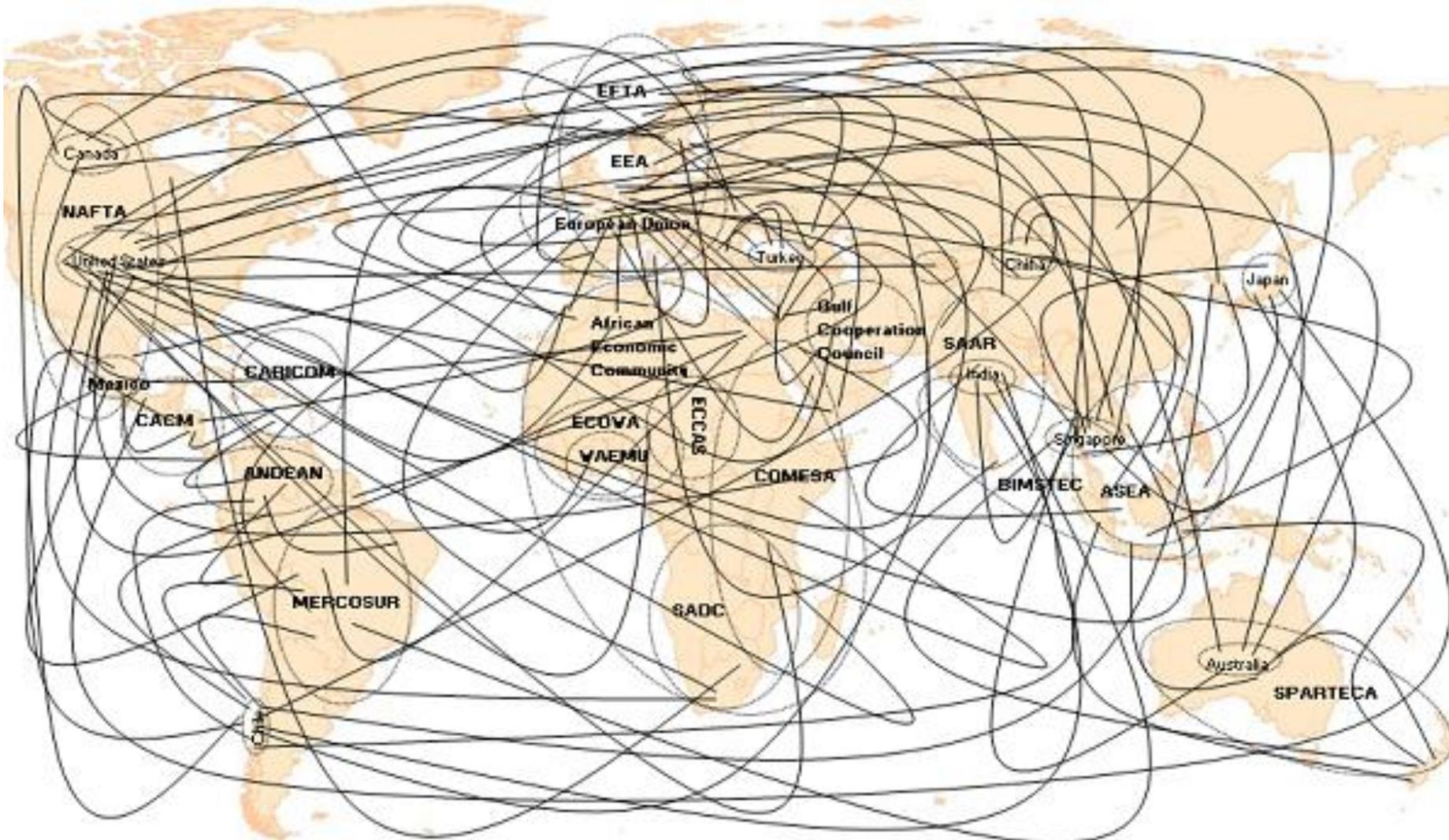
- **Africa**

- Common Market for Eastern and Southern Africa (COMESA): Common Investment Area (2007)
- Southern African Development Community (SADC)

- **Europe**

- European Union
- European Free Trade Association
- Energy Charter Treaty (initially towards former Soviet Union and Eastern Europe)

The « Spaghetti Bowl » of IIAs



Source: UNCTAD, 2006

Instruments with investment-related components

- Soft-law approach
 - APEC Principles
 - OECD Declaration on International Investment
 - Investment Chapter / Protocol
 - NAFTA Chapter Eleven
 - MERCOSUR, Colonia Protocol
 - Sector-specific agreement
 - Energy Charter Treaty
 - GATS, TRIPS
 - Comprehensive agreement
 - ASEAN Investment agreement
- Common denominator: create favorable conditions for investments of investors from Member States into the territory of other Member States.

1. Politically-binding Declaration

- **OECD Declaration on International Investment and Multinational Enterprises**
(1976, updated 2000)

Members: all 30 OECD Member countries and 12 non-members, including Egypt and Morocco.

The language of the Declaration and ensuing Decisions makes it non-binding, but rather general principles and objectives.

However, the Declaration sets up a series of obligations, politically enforceable through peer pressure, such as:

1. regular reviews of investment policy by the OECD Investment Committee;
2. transparency and notification requirements;
3. consultation mechanisms; and
4. the obligation to set up a national contact point.



2. Non-Binding Declaration of Principles

- Asia-Pacific Economic Cooperation (APEC, 21 members).
- **APEC Non-Binding Investment Principles** (1994) contains investment-related principles which are not legally enforceable.
- APEC Investment Transparency Standards (2002)
- In 2007, a report was produced on *Identifying Core Elements in Investment Agreements in the APEC region*, based on 28 bilateral and plurilateral investment agreements, at the request of the APEC Investment Experts Group. The inventory of agreements was conducted per country. Provisions were analyzed, and elements of convergence identified.

3. Investment Chapter in Free Trade Agreement

- **NAFTA** (1994): Chapter Eleven on Investment [Canada, USA, Mexico]
- **MERCOSUR**, Southern Common Market (created in 1991): Colonia Protocol for the Reciprocal Promotion and Protection of Mercosur Investments (1994) [Argentina, Brazil, Paraguay, Uruguay]
- Both instruments contain legally enforceable rules on:
 - the definitions of investment and investors,
 - binding obligations in terms of standard of treatment, MFN, transfer of funds, expropriation and compensation, etc.,
 - a mechanism of settlement of disputes between investors from a Party and a host State from another Party under ICSID or UNCITRAL Rules.

4. Sector-Specific Investment Agreements

- **Energy Charter Treaty (1994)**, « a legal framework for international energy cooperation » [EU, Central and Eastern Europe, Eurasia, Japan...]
 - Historically, the 1991 Energy Charter sets out objectives of international energy cooperation, including the promotion and protection of investments
 - contains provisions on trade, energy-sector investment, energy efficiency and environmental considerations
 - articulates sovereignty over natural resources and the openness to foreign investment
 - grants a series of protective rights for investors, including a dispute settlement mechanism
- WTO: **GATS** (General Agreement on Trade in Services) and **TRIMS** (Trade-related Investment measures)
 - Investment provisions on selected areas and measures relating to trade

5. Comprehensive Agreement: the ASEAN example

- The **ASEAN Comprehensive Investment Agreement (ACIA)** (2009) is one of the most advanced and ambitious regional investment tools to date.
- It has not yet entered into force.
- It was implemented incrementally:
 - 1987 ASEAN Agreement for the Promotion and Protection of Investments between certain members of ASEAN (Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand);
 - 1998 Framework Agreement on the ASEAN Investment Area (which inspired the COMESA Common Investment Area).
- ACIA replaces both agreements.
- It applies to ASEAN investors and ASEAN-based foreign investors.

5. The ASEAN example: ACIA (cont'd)

- The **ASEAN Comprehensive Investment Agreement** has four pillars:
 - Liberalisation
 - Protection
 - Facilitation
 - Promotion of investments.
- ACIA is more comprehensive than its two predecessors, with updates from best international practices.
- It includes substantive protection provisions as well as pre-establishment national treatment and MFN provisions with a positive list approach, as well as a timeline for investment liberalisation.
- It also has a more advanced dispute settlement mechanism.
- In parallel, ASEAN also concluded several free trade agreements which include an investment chapter with a pre-establishment national treatment provision (with Australia and New Zealand, China, India, Japan, South Korea).

Conclusion

- Various instruments with differing degrees of obligation, binding character and enforcement.
- Various instruments varying in scope, but, generally converging towards similar principles.
- Options presented are not exclusive of each other, and may be chosen successively and gradually on a step-by-step basis.
- Those examples also have the advantage of flexibility.