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Research Report

Strengthening regional investment facilitation rulemaking in Asia: The why and the how

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Strengthening regional investment facilitation rulemaking in Asia: the why and the how

by

Manjiao Chi*

Recent years have witnessed a growing interest in investment facilitation (IF) rulemaking. In addition to the negotiation of a historic agreement on IF for development in the WTO, many countries have also initiated or strengthened IF rule-making efforts at the regional level, mainly by concluding IF-oriented international investment agreements (IIAs). Examples include Brazil, the EU and the African continent.

Notwithstanding the IF rulemaking progress, Asian countries need to further strengthen IF rulemaking at the regional level, for a number of reasons. Asian countries are, for the most part, developing and least developed countries in need of FDI, which IF rules could help attract and retain. And Asian countries are no strangers to IF rulemaking, as they have signed IIAs with IF provisions. Besides, as other regions have intensified IF rulemaking, Asia faces growing pressure to sharpen its competitiveness in the global FDI market. To strengthen regional IF rulemaking, Asian countries have several options that can be pursued individually or collectively.

First, Asian countries could rely on some existing IIAs. IF rules are incorporated in many bilateral agreements, and some also in major regional agreements. For instance, the Regional Cooperation and Economic Partnership Agreement (RCEP) contains a clause entitled “facilitation of investment” that covers several major types of IF rules that are frequently and widely adopted. Since this Article has been [criticized](#) for lacking adequate enforceability and helpfulness for establishing a coherent regional IF standard, it could be improved, given that the RCEP has “[a build-in work program](#)” that allows future changes.

More recently, in September 2021, ASEAN has concluded a specialized regional IF instrument in form of the [ASEAN Comprehensive Recovery Framework](#) in response to the aftermath of the COVID-19 pandemic, namely the [ASEAN Investment Facilitation Framework](#) (AIFF). Though the AIFF is not legally binding, it incorporates various types of IF measures that could help facilitate regional FDI flow.

As many Asian countries are contracting parties to these IIAs, their IF rules could lay down a foundation for Asian countries to strengthen and harmonize regional IF rulemaking in the future. In this regard, a major challenge is how these regional IF rules could be uniformly implemented to cater to the different developmental needs of Asian countries, given that Asian countries have diverse economic, social and political situations. Capacity building and regional cooperation should be enhanced.

Second, Asian countries could also reference multilateral IF rules. Notably, many Asian countries have participated in the negotiations of an agreement of IF for development in the WTO, the apex of multilateral IF rulemaking. The [latest](#) negotiating text was circulated in December 2022 and covers a comprehensive set of IF rules, ranging from streamlining government measures to enhancing investor obligations. Its status in the WTO rulebook is yet to be decided. Compared with the AIFF or the RCEP Article, the WTO IF agreement seems to be more comprehensive and could be more enforceable, supported by technical assistance and capacity building. Given its potential of becoming a multilateral agreement, it could be a new benchmark and a helpful reference for Asian and other countries. In this regard, an outstanding challenge is whether Asian countries have a real need for regional IF rules, as many of them are committed to the WTO IF Agreement; and if there is such a need, how to make best use of the WTO IF rules in promoting regional IF rulemaking.

Third, Asian countries could consider using special economic zones (SEZs) as an experimental approach to IF rulemaking. Compared to other regions, Asia hosts a large number of SEZs of various types, and many SEZs aim at improving trade and investment facilitation. Some SEZs could allow the experimental implementation of IF measures, especially innovative ones. For instance, some recently established SEZs in China have adopted a broad range of IF measures aimed at optimizing the business environment. Some of these measures are innovative, have not been widely adopted at the national level and rarely appear in IIAs. Examples of such IF measures include [improving transparency and fairness in government procurement](#) and establishing a “[digital one-stop window](#)” for foreign investors. If proven effective, these measures could be implemented well beyond SEZs.

That SEZs normally enjoy a high level of policy flexibility could be an advantage for Asian countries in regional IF rulemaking, as they can try innovative IF measures in their SEZs and assess their effectiveness before implementing them at national and regional levels. In this regard,

a major challenge is how to transplant SEZ-based IF measures to the regional level. For instance, it is unclear if a FDI “digital one-stop window” operating in a Chinese SEZ could achieve a similar level of investment facilitating effect in a SEZ in another Asian country. Hence, it is advisable to establish joint or transnational SEZs for investment and trade facilitation among Asian countries.

To sum up, it seems both necessary and possible for Asian countries to strengthen regional IF rulemaking, though challenges remain. Asian countries, especially leading Asian economies, should consider deepening regional cooperation and making smart use of the various options in future regional IF rulemaking.

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