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Research Report

ASEAN's expanding role as an FDI rule-maker

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by

Mark Feldman*

Since the [Bogor Declaration](#) in 1994, the Asia-Pacific Economic Cooperation (APEC) forum has focused on advancing economic integration in the Asia-Pacific region. Indeed, APEC leaders have characterized the region as an “[incubator](#)” of the Free Trade Area of the Asia-Pacific agreement.

But APEC's largest economy—the United States—is not seeking to join either of the two mega-regional “[pathways](#)” to Asia-Pacific economic integration: the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). The lack of US involvement in those two mega-regional agreements has weakened, to some extent, APEC's role in advancing Asia-Pacific economic integration, given the importance APEC has attached, for integration purposes, to building on “[ongoing regional undertakings](#)” generally and on the Asia-Pacific mega-regionals (CPTPP/TPP and RCEP) in particular.

As APEC's role in advancing regional economic integration has lost some momentum, another Asia-based institution has taken on a greater role in this area: the Association of Southeast Asian Nations (ASEAN). Most notably on this point, RCEP, the “[world's largest regional free trade agreement by several metrics](#),” (p. 1) was an ASEAN-led project.

The successful conclusion of ASEAN-led RCEP negotiations reinforced ASEAN's centrality principle, under which ASEAN, as expressed in its Charter (Art. 1(15)), is to be “[the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive](#)” (p. 5). The RCEP negotiating states (which originally had included India) themselves acknowledged the role of ASEAN centrality in the RCEP context specifically and, more generally, “[in the emerging regional economic architecture](#)” (p. 1). The ASEAN Outlook on the Indo-Pacific—an initiative that, as characterized by ASEAN leaders, seeks to reinforce “[the ASEAN-centered regional architecture](#)” (p. 2)—similarly views the “[Asia-Pacific and Indian Ocean regions](#)

[\[. . .\] as a closely integrated and interconnected region, with ASEAN playing a central and strategic role”](#) (p. 3).

The ASEAN Outlook on the Indo-Pacific itself has created additional momentum for ASEAN leadership in trade and investment law rulemaking by establishing four areas of cooperation, which include economic cooperation. In recent months, ASEAN has sought to advance its Outlook through a set of joint statements on cooperation with [New Zealand](#), [China](#), the Republic of [Korea](#), and the [United States](#). Each statement outlines specific areas of anticipated economic cooperation within the ASEAN Outlook on the Indo-Pacific framework.

There are many opportunities for ASEAN to further reinforce its central role in advancing economic integration in the Asia-Pacific (or, alternatively, Indo-Pacific) region, including rulemaking in the area of international investment law. Specifically, ASEAN should consider:

- Leading (and completing) negotiations of an investor-State dispute-settlement mechanism under the RCEP investment chapter (as contemplated by RCEP Article 10.18).
- Implementing and expanding existing investment facilitation frameworks established under RCEP (Article 10.17) and the ASEAN Investment Facilitation Framework.
- Developing ASEAN-based initiatives—alongside APEC’s existing work relating to a Free Trade Area of the Asia-Pacific agreement—aimed at supporting the development of a Free Trade Area of the Asia-Pacific agreement (including an investment chapter). APEC’s recent initiative (in the context of the envisaged Free Trade Area) of [organizing dialogues for sharing views on emerging trade and investment issues](#) could serve as one model for ASEAN to consider.
- Investing significantly in the RCEP Secretariat, which, under [RCEP Article 18.3](#), is to “provide secretariat and technical support to the RCEP Joint Committee [consisting of senior officials designated by the RCEP Parties] and its subsidiary bodies.” The Joint Committee oversees the implementation and operation of the RCEP agreement, including the RCEP investment chapter. The capacity and impact of the RCEP Secretariat, like the RCEP agreement itself, should be impressive in scale.
- Further advancing economic cooperation opportunities under the ASEAN Outlook on the Indo-Pacific framework. The ASEAN Outlook joint statements on cooperation include many references to investment facilitation, resilience and sustainability. Notably, such goals closely align with the recent, successful development of a [multilateral supply chain agreement](#) in the context of the US-led [Indo-Pacific Economic Framework for Prosperity](#), which currently includes seven of the ten ASEAN member states; the Indo-Pacific Economic Framework for Prosperity supply chain agreement aims to, among other goals, “explore new ways and enhance existing efforts to improve the attractiveness of investment opportunities in [the Framework’s] supply chains” ([Art. 2\(2\)](#)). ASEAN-led efforts in this area could further advance ASEAN’s centrality and the ASEAN Outlook on the Indo-Pacific framework.

As APEC's longstanding role as Asia-Pacific economic integration incubator has lost some momentum—given the lack of US participation in the two mega-regional pathways to such integration (CPTPP, RCEP)—ASEAN has emerged as a leading trade and investment law rule-maker in the region. RCEP and the ASEAN Outlook on the Indo-Pacific are particularly noteworthy ASEAN-led initiatives that have reinforced ASEAN centrality, both as a foundational principle and in the particular context of international investment law rulemaking. Although [internal political dynamics within individual ASEAN member states](#) can impede international rulemaking, ASEAN nevertheless remains well-positioned to continue expanding its role as an FDI rule-maker.

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