


BOOK REVIEWS

Incomplete International Investment Agreements: Problem, Causes, and Solutions

by Tae Jung PARK. Cheltenham, UK/Northampton, MA: Edward Elgar Publishing, 2022. ix + 168 pp. Hardcover: £75.00. doi: 10.4337/9781802202434

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It may or may not be surprising to many that the provisions stated in the International Investment Agreements (IIAs) are often incomplete. Instead of a fully termed IIA, nations often insert a renegotiation clause with the intention to complete these provisions later (p. 39). In this book, Park analyses the problems, causes, and solutions for this phenomenon through an interdisciplinary approach in economics and international law.

Chapter 1 provides an overview and summary of each chapter. Chapter 2 examines the main provisions and reservation lists in IIAs, setting the scene for readers to appreciate what is contained in a completed IIA. Chapter 3 examines the positive correlation between IIAs, Foreign Direct Investment (FDI), and Trade Liberalization due to the technology spillover effect (pp. 36–8), which puts forward Park's positive appreciation of completed IIAs. Chapter 4 describes the four types of unnecessarily incomplete IIAs, namely missing texts, missing articles, missing reservation lists, and missing or unspecified measures. Chapter 5 discusses, through theoretical economic analysis of the marginal costs and marginal benefits, the optimal degree of incompleteness of IIAs (pp. 69–70). Chapter 6 explains the cost of incomplete IIAs with three negative consequences related to missed opportunities in attracting FDI, establishing “appropriate economic and legal policies”, and inducing opportunistic behaviours (p. 73). Chapter 7 details how strong protectionism and a lack of institutional capacity are causes of incomplete IIAs. Chapter 8 proposes legal and institutional remedies. Chapter 9 advocates for the urgent need to resolve these issues to facilitate transparency and predictability of domestic law and to improve the credibility of IIAs.

This book is a practical guide for a wide range of readers to learn about the function of IIAs. It is a bold attempt to inspire readers to appreciate this phenomenon through the lens of economic contract theory. Yet, as the theoretical deliberation and breakdown of the components of costs, benefits, and level of incompleteness are not further developed, it hinders the visualization of how different factors move together and how a certain level of incompleteness can be warranted (p. 71). The overarching question is that if parties negotiate the IIA with a presumption that they would end up facing each other at court, what should be put in the IIAs? What provisions are absolutely essential to facilitate trade, and what provisions are essential to gain advantage in a litigation. Hence, such appropriate deliberation during the negotiation process of IIAs would enable parties to realize that the cost of a fully-termed IIA could mount up (p. 12). One advantage of an incomplete IIAs might offer much-needed flexibility for their execution despite the asymmetrical bargaining power between nations.

The book helpfully offers numerous global examples to illustrate incomplete IIAs, and it is also worth exploring how the phenomenon impacts individual and corporate behaviour to justify the apprehension stated in this book and to motivate reform as advocated.

Competing interest. The author declares none.

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Principles of International Trade and Investment Law

by Andrew D. MITCHELL and Elizabeth SHEARGOLD.
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The philosophical foundations of International Trade and Investment Law lie in creating primary obligations to ensure equality, non-discrimination, and maintaining minimum standards conducive to trade. Having these foundational principles at its core, this book introduces the angle of due process in the form of procedural fairness, equitability, reasonableness, non-discrimination, and necessity. The authors use due process here as a moral compass for navigating the volatile yet ever-emerging space of international trade.

The book under review is an indigenous anthology of eight chapters adroitly divided into two parts. The first part focuses on introducing the principles of procedural fairness, non-discrimination, reasonableness, and necessity to establish a theoretical framework for comparatively analyzing international trade and investment laws. The second part focuses on applying the principles from the first part to specific activities like cross-border trade, financial laws and regulations which promote, regulate, and mitigate risks in international trade.

Chapter 1 introduces the core principles, while Chapters 2, 3, 4, and 5 analyze the principles of procedural fairness, reasonableness, necessity, and non-discrimination, providing an in-depth analysis of the core principles which govern international trade and investments. Chapter 6 highlights how these core principles apply to cross-border transactions. Chapter 7 appreciates the integral role these principles play in establishing prudential lawmaking. Chapter 8 concludes the book by advocating a more flexible, cohesive, and inclusive approach while dealing with international trade and investment issues.

The authors, Andrew D. Mitchell and Elizabeth Sheargold, from Monash University and the University of Wollongong, Australia, respectively, use their incomparable academic and research pedigree to compile a well-researched, topical, and globally relevant book putting the spotlight on the role of selected core principles and their application thereof in establishing an international trade order. The book articulates the need to perceive international trade vis-à-vis the principles of procedural fairness, non-discrimination, reasonableness, and necessity to provide a fertile ground for state regulation and protection of financial systems. While the endeavour for a universal understanding and application of the selected core principles in international trade is an admirable one, issues of