Do We Need a Multilateral Instrument on Investment Facilitation?

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Introduction

Currently, there are no multilateral rules on international investment. But there is a concerted push by China, Brazil, Russia and Argentina to start formal discussions on a multilateral instrument on investment facilitation at the World Trade Organization (WTO).

In the past few weeks, five proposals have been submitted to the General Council – the highest decision-making body of the WTO – to initiate discussions on a multilateral instrument on investment facilitation with the intention of possible deliverables at the Ministerial Conference in Buenos Aires in December 2017. The five proposals have been submitted by Friends of Investment Facilitation for Development (consisting of Argentina, Brazil, Chile, China, Colombia, Hong Kong, China, Kazakhstan, Mexico, Nigeria and Pakistan); MIKTA (consisting of Mexico, Indonesia, Korea, Turkey and Australia); China; Russia; and Argentina and Brazil.

While India, South Africa, Uganda and Bolivia have voiced their opposition to discuss these proposals on the grounds that the investment facilitation rules go much beyond the WTO's current mandate. At the General Council meeting held on May 10, India insisted on the removal of five proposals on investment facilitation from the proposed agenda that led to the suspension of GC meeting.

The Hard Selling of Trade-Investment Nexus

The proponents of a multilateral instrument on investment facilitation tend to treat trade and investment issues on equal footing due to linkages of international trade with investment, particularly foreign direct investment (FDI). But their proposition that investment facilitation rules should be negotiated under the WTO because of these linkages lacks conviction.

Cross-border trade (in goods and services) and investment are certainly inter-related. Similarly, finance, labour, human rights, human development and environmental issues are interrelated with trade. However, this does not mean that all these policy matters should be handled in the same manner, and that too by a single organization (i.e., WTO).

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According to this logic, there is no relevance for specialized institutions such as the International Labour Organization (ILO) and the International Monetary Fund (IMF) because trade issues are also closely linked with labour and finance issues. Should these institutions then be closed and their mandate handed to the WTO?

The proponents of this approach also overlook a very important fact: foreign investment is a far more politically sensitive issue than trade since it essentially means exercising control over ownership of national assets and resources. That's why; past attempts to establish comprehensive multilateral rules on investment through various fora have failed miserably (see Box 1).

The Current Approaches

It is widely anticipated that supporting member-countries are unlikely to pursue an overly ambitious agenda and a fast-track approach to negotiate a multilateral instrument on investment facilitation at the WTO, after having learnt important lessons from the failure of the Multilateral Agreement on Investment (MAI) negotiations at the Organisation for Economic Cooperation and Development (OECD) in 1998 and the collapse of the Seattle Ministerial Meeting of the WTO in December 1999. Several other bilateral trade negotiations also suggest that a less ambitious and gradual approach will have a better chance of success in the present times.

Even though the current emphasis of the proposals is purportedly on investment facilitation measures, there is strong apprehension in academic and civil society circles that the other pillars of a multilateral instrument on investment, the most controversial provisions related to investment liberalization and investment protection, would be brought

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Box 1

The Long Search for a Multilateral Agreement on Investment

The first attempt to forge a multilateral agreement on foreign investment was made in the period immediately after World War II. In 1948, the draft Charter to establish an International Trade Organization (ITO) was presented at a meeting in Havana. Besides trade issues, the draft Havana Charter had provisions under Articles 11 and 12 to address foreign direct investment issues. Notwithstanding the fact that the US government was one of the driving forces behind the Havana Charter, the US Congress refused to ratify it. Had the Havana Charter been ratified, the ITO would have played a decisive role in shaping investment policies and treaties worldwide.

Consequently, the proposal for establishing ITO was given up and the General Agreement on Tariffs and Trade (GATT) was launched as a temporary measure. For nearly four decades since its inception, GATT never brought investment issues under its rubric and maintained the dividing line between trade and investment issues. It was only at the Uruguay Round of GATT negotiations from 1986 to 1994 that the issue of investment was brought within its framework.

The failure to establish ITO was one of the major reasons that facilitated a shift from multilateral to bilateral investment agreements. In the 1950s and 1960s, bilateral investment treaties became the dominant instruments of investment agreements.

In 1995, negotiations on a proposed Multilateral Agreement on Investment (MAI) were launched at OECD, with an aim to develop a universal framework with high standards for market access and investment protection. The negotiations on MAI were discontinued in 1998 after France refused to support the proposed agreement on the grounds that it could erode state sovereignty and that the OECD was not the right forum to negotiate a major investment agreement of the global scope. The failure to negotiate an MAI at the OECD in the late 1990s pushed the European Commission to initiate a process for multilateral negotiations on investment in the WTO.

in at the later stages once the negotiations have been initiated at the WTO. Civil society organizations are wary that such initiatives may yet rekindle attempts to launch negotiations on an MAI in the future. Such apprehensions cannot be brushed aside in entirety.

Some proponents of investment facilitation rules have called for a plurilateral approach of the kind that was used in negotiating sectoral agreements on telecommunications, financial services and information technology, following the implementation of WTO agreement in 1995.

Under a plurilateral approach, only those member-countries that are willing to negotiate an agreement on investment facilitation will move forward on a voluntary basis. Such an approach is often viewed as the best option to speed up negotiations on new issues at the WTO. However, there are good reasons to question plurilateral approaches as the agenda of negotiations is usually set by stronger member-countries, and non-participating members find themselves under competitive pressure to adhere to plurilateral outcomes at some future date. As we all know, plurilateral agreements on telecommunications and financial services were negotiated mostly by developed countries but the results were eventually multilateralized.

Investment Issues at the WTO

Although investment provisions are contained in two WTO agreements – GATS and TRIMS – but their coverage is very limited to cross-border trade in services and goods, thereby reinforcing the role of WTO primarily as a trade institution dealing with the rules of international trade.

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At the first WTO Ministerial Conference in Singapore (1996), a work programme on four new issues (investment, competition policy, transparency in government procurement and trade facilitation) – commonly referred to as the Singapore issues – was adopted.

These four issues were included in the Doha Development Agenda (2001) but the declaration stated that negotiations would take place after the fifth session of the Ministerial Conference "on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations". So the declaration made it very clear that a decision on modalities, by explicit consensus of all member-countries, would be needed before negotiations could commence on these four issues at the WTO.

However, at the fifth Ministerial Conference held at Cancún in 2003, a large number of member-countries, led by India, Malaysia and several African countries, voiced their objections to include the Singapore issues in the WTO on the grounds that these issues were not directly related to trade and could restrict domestic policy space. Ultimately, three issues (investment, competition policy and transparency in government procurement) were dropped from the Doha Agenda in July 2004 and the members agreed to initiate negotiations only on the issue of trade facilitation.

The text of the General Council's decision on the Doha Agenda work programme, which was released on 1 August 2004, clearly states that these three issues "will not form part of the work programme set out in that

Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round". Further, the Nairobi Ministerial Declaration, adopted on 19 December 2015, also states: "While we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members".

Hence, objections raised by India and others that no new issues should be added to the negotiating agenda until the Doha Development Agenda (DDA) has been completed, are based on valid grounds.

What is baffling is the urgency to negotiate a multilateral instrument on investment facilitation while ignoring the need to fast track negotiations on important pending issues which includes a permanent solution on subsidies on account of public stockholding for food security purposes which affect millions of food producers and consumers. The ongoing deadlock raises a fundamental question: Where is the balance between the interests of investors and interests of farmers and consumers?

The New Power Dynamics

Notably, instead of developed countries, this time, the demandeurs for a multilateral instrument on investment facilitation are developing countries like China, Russia, Brazil and Argentina while the developed countries have taken a back seat in the current discussions.

The new power dynamics is at play at the WTO on investment issues as some of the big developing countries have become capital-exporters themselves in recent years.

Nevertheless, with the sole exception of the US (under the Trump administration), developed economies such as the EU, Canada, Japan and South Korea remain deeply committed to a legally-binding multilateral instrument at the WTO that has high standards for market access and investment protection.

This illustrates the new power dynamics at play at the WTO on investment issues as some of the big developing countries have become capital-exporters themselves in recent years.

In the past, big developing economies have played an important role in providing leadership and building alliances among poor and developing countries on agriculture, investment and other issues. Such collective efforts by poor and developing countries helped in articulating interests and priorities that were different from those of the developed countries and played a key role in increase their bargaining power at the WTO.

As is evident from the current state of power play, the North-South divide, which had galvanized solidarity among poor and developing member-countries against investment rules at the WTO, will become less clear-cut than before.

From an Indian perspective, this changing power dynamics will not only have ramifications on developing a common policy stance on cross-border investment issues at BRICS (Brazil-Russia-India-China-South Africa grouping), G20 and other international policy fora, it may also have a major bearing on building new alliances and coalitions on issues of common interest at the WTO in the future.

China, G20 and International Investment Policymaking

During China's G20 presidency in 2016, three important developments took place on international trade and investment issues. First, a G20 Trade and Investment Working Group (TIWG) was established at China's initiative, to guide the future direction of trade and investment in the G20.

Second, based on discussions at TIWG, "Guiding Principles for Global Investment Policymaking" were endorsed by G20 trade ministers in Shanghai on 10 July 2016, and subsequently by G20 leaders at the Hangzhou Summit in September. Despite being non-binding in nature, the nine Guiding Principles will have far-reaching implications on investment policymaking and investment treaties across the world in the coming years (as discussed below).

Third, G20 leaders also adopted a "Strategy for Global Trade Growth" which focusses on lowering trade costs, harnessing trade and investment policy coherence, boosting trade in services and promoting e-commerce.

Not long ago, China refused to negotiate on the Singapore issues at the Cancun Ministerial Conference of the WTO. The negotiations at Cancun Conference collapsed without reaching any agreement because China, India, Brazil and other developing countries refused to support the move to begin talks on the four Singapore issues.

This raises an obvious question: Why has China shifted its policy stance on international investment issues? China taking a leadership role on investment policymaking and putting this matter at the centre of the G20 agenda should be viewed in the wider context of its transition from a net inward investor to a net outward investor. Currently, China's outward foreign direct investment (FDI) exceeds its inbound FDI, making the country one of the world's leading sources of FDI. China is now the world's second largest sources of FDI after the US.

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In the coming years, China's outward investment flows are expected to rise further with the rolling out of "One Belt, One Road" (OBOR) initiative which will funnel billions of dollars in infrastructure projects across Asia, Africa, and Europe. According to Ning Jizhe, China's vice-minister of the National Development and Reform Commission, "Chinese outbound investment is forecast to total $600 billion to $800 billion over the next five years and a fairly large proportion of which will go into markets related to the OBOR Initiative". China's other big initiative on outbound investment is "International Production Cooperation" under which Chinese firms undertake large construction and production projects overseas.

In 2016, the combined value of China's outbound mergers and acquisitions (M&As) reached $160 billion. However, some high-profile cross-border M&As deals by Chinese enterprises (both state and privately-owned) have come under increased scrutiny around the world. As Chinese enterprises may face tougher regulatory and political hurdles in pursuing M&As deals, particularly in high technology, infrastructure and strategic sectors, China is getting increasingly concerned with the potential roadblocks to its outward investments. Therefore, investment facilitation and investment protection measures have now become important components of

China's new "going out" strategy consisting of outward FDI, financing large-scale infrastructure investments through public and private investments, concessional loans, development aid, and insurance to investors.

At a time when the Western world is retreating on global economic governance, China is willing to fill the vacuum and expand its external economic engagements on trade, investment and finance issues with the rest of the world.

G20 Guiding Principles for Global Investment Policymaking

The Guiding Principles for Global Investment Policymaking emerged from negotiations at the G20 Trade and Investment Working Group, supported by the OECD, the World Bank, the UNCTAD and other international organizations. The Guiding Principles are meant to provide guidance for investment policymaking with an objective of:

- fostering an open, transparent and conducive global policy environment for investment;
- promoting coherence in national and international investment policymaking; and
- promoting inclusive economic growth and sustainable development.

The Guiding Principles are primarily focused on the obligations of the host country in its treatment of foreign investors. There are no obligations on the part of the home country.

Following are the nine Principles to guide international investment policymaking:

- Avoid protectionism in relation to cross-border investments.
- Establish open, non-discriminatory, transparent and predictable conditions for investment.
- Provide strong protection to investors and investments, tangible and intangible, including access to effective mechanisms for the prevention and settlement of disputes, as well as to enforcement procedures.
- Develop regulations in a transparent manner.
- Aim for policy coherence with the objectives of sustainable development and inclusive growth.
- Recognise the right to investment for legitimate public policy purposes.
- Pursue investment promotion and facilitation policies.
- Observe best practices for responsible business conduct and corporate governance.
- Continue dialogue on investment policies.

Except the Principle of reaffirming the right to regulate investment for legitimate public policy purposes, the other Principles are primarily focused on the obligations of the host country in its treatment of foreign investors. Surprisingly, there is no mention of obligations on the part of the home country.

The formulation regarding obligations of foreign investors towards responsible business conduct is vague. There are no direct demands from investors to integrate best environmental, social and governance practices into their operations in the host country. Rather the onus is on investment policies (of the host country) to "promote and facilitate the observance by investors of international best practices and applicable instruments of responsible business conduct and corporate governance".

Furthermore, the Guiding Principles make no reference to recent initiatives undertaken to advance the responsible business conduct on a global scale. In 2011, for instance, the OECD Guidelines for Multinational Enterprises were updated and the UN Guiding Principles on Business and Human Rights were endorsed. The UN Guiding Principles are a set of guidelines for both states and companies to prevent, address and remedy business-related human rights abuses.

One wonders why such a framework that overwhelmingly favors the interests of investors was endorsed by India which has recently overhauled its investment treaty regime in order to strike a balance between the interests of investors and those of host states. India's New Model BIT (2015) has an entire chapter devoted to investor obligations seeking compliance with laws and incorporation of internationally recognized standards of corporate social responsibility in business practices and policies.

The Guiding Principles: An Appetiser?

It is amply clear that the Guiding Principles, despite being non-binding in nature, have laid the ground work for future discussions on G20's investment policy framework. Investment facilitation has already been put on the agenda of Germany's G20 presidency in 2017. It is expected that Argentina, which will hold the presidency in 2018, would further carry forward the investment policy work based on the outcome of the Hamburg Summit.

Some key elements of the G20's Guiding Principles are currently being used as a springboard for initiating discussions on a multilateral instrument on investment facilitation at the WTO.

In the words of Ana Novik, head of the OECD Investment Division, "If policy makers can maintain this momentum at a global level and implement conforming investment policy reforms at domestic level, these Guiding Principles may yet come to be seen as the appetiser to a feast."

There are wider implications of the Principles that go beyond G20 member-countries. As we all know, a policy framework endorsed by G20 carries considerable international influence because of the strong economic clout of the grouping. The G20 collectively accounts for 85% of the world's GDP and represents the bulk of global FDI. In the coming years, these Principles and other policy frameworks endorsed by G20 would exert enormous influence on investment policies and treaties of many countries that are not G20 members. Some key elements of the G20's Guiding Principles are currently being used as a springboard for initiating discussions on investment facilitation disciplines at the WTO.

Put simply, the G20's TIWG has emerged as a high-level policy forum for trade and investment policymaking and governance of international investments is back on the global policy agenda.

The Bumpy Road to Hamburg

With a motto of "Shaping an interconnected world", Germany is keen to use its G20 presidency (from 1 December 2016 to 30 November 2017) to deepen international cooperation. For the G20 Leaders' Summit in Hamburg in July 2017, Germany has identified three priorities in the areas of trade and investment: supporting the rules-based multilateral trade system; investment facilitation; and digital trade.

Can Germany's G20 presidency deliver a positive outcome on investment facilitation?

The excellent reporting by D. Ravi Kanth reveals that India and South Africa have criticized the attempts by G20's TIWG to prepare non-binding principles on investment facilitation on the grounds that such principles may undermine policy space for developing countries to pursue their developmental policies. The US has opposed any discussion on investment facilitation at TIWG. In the run up to the Hamburg Summit, a major confrontation among G20 members on possible deliverables on investment facilitation is expected.

The Policy Menu for Investment Facilitation

The five proposals for initiating a discussion on a WTO instrument on investment facilitation are essentially aimed at improving ease of doing business in host countries.

What may be required is a 'bottom up' unilateral approach beginning with the local administrative practices, rather than a 'top down' multilateral approach on investment facilitation.

Many proposed policy tools are not new as governments across the world have already implemented a wide range of investment facilitation measures to make it easier for investors to start, operate and exit their businesses. For instance, Odisha – a state of India – established a single window clearance system through legislation in 2004 to accomplish one-stop facilitation process. This system enables the investor (both domestic and foreign) to approach a single designated agency and seek time-bound clearances and approvals. Besides, the investment facilitation cells have been constituted at the state and district levels to guide the investor and follow up for timely approvals of investment projects. The Orissa government has also developed an online portal (GOiPLUS) – a GIS based industrial land use information system which displays real time information on availability of industrial land in the state. Several other Indian states have also implemented similar investment facilitation measures in recent years.

Since most of the administrative impediments associated with investment projects are faced at the local and sub-national levels, the real challenge is to develop action plans to address them at those levels. What may be required is a 'bottom up' unilateral approach beginning with the local administrative practices, rather than a 'top down' multilateral approach on investment facilitation. Besides ensuring democratic accountability, a 'bottom up' approach can also provide the countries adequate freedom to choose policy instruments that conform to the institutional architecture of the country concerned.

Equally importantly, the incorporation of investment facilitation measures in the legally-binding bilateral investment treaties (with investor-state dispute settlement provisions) could be highly problematic and, therefore, should be avoided at all costs. Of late, Brazil has signed bilateral investment treaties (called Agreement for Cooperation and Investment Facilitation) with Mozambique, Angola, Malawi and Mexico primarily focused on cooperation and investment facilitation measures but it should be emphasized here that these agreements do not contain ISDS provisions that are found in most BITs.

Some of the common elements contained in five proposals include:

- Ensuring transparency, predictability and non-discrimination in investment policies.
- Improving the efficiency of administrative procedures to minimize investment barriers.
- Establishing a single window system for addressing all enquiries concerning investment policies and applications to invest.
- Establishing accountability of government officials and mitigating investment disputes through a National Focal Point or Ombudsperson.
- Building constructive stakeholder relationships at national and sub-national levels.
- Strengthening local capacities and technical cooperation.
- Promoting cross-border coordination and collaboration among investment promotion agencies.

An analysis of each element of the proposals is beyond the scope of this report, but some important elements are discussed below.

Transparency could be better promoted through much simpler mechanisms that are national in nature, and on a best endeavour basis, rather than through complex and binding multilateral disciplines.

Transparency

One of the key common elements in all five proposals for investment facilitation is transparency. It is not our contention that investment policies and rules should not be transparent. In fact, transparency and accountability in public administration is the sine qua non of participatory democracy. At the same time, it is worthwhile to note that transparency is not an end in itself, but could be a useful mechanism to usher accountability.

There are four key concerns regarding the implementation of transparency measures. Firstly, the strategies to bring greater transparency in design, implementation and review of investment policies may vary from country to country depending on the diversity of administrative arrangements, constitutional requirements and political contexts. The member-countries should retain the autonomy to decide on how to bring more transparency into their investment policies and rules.

Secondly, transparency could be better promoted through much simpler mechanisms that are national in nature, and on a best endeavour basis, rather than through complex and binding multilateral disciplines on transparency in investment policymaking and rules.

Thirdly, it is often argued that transparency is a crucial component in investment decisions; in many instances far more important than other determinants such as market size and infrastructure. But if lack of transparency is hindering investment, China's ability to attract billions of dollars in foreign investment since the 1990s needs to be explained. That China has been able to attract huge investments without the semblance of transparency seen in most democratically governed regimes points to the fact that there are no causal relationships between the extent of transparency and investment inflows.

The same is the case with Central and Eastern European countries, which witnessed a surfeit of foreign investment in their banking sector in the 1990s without adhering to any transparency and disclosure standards.

Lastly, should not the same principles of transparency and accountability be applicable to foreign investors as well? This issue acquires greater significance in the present times since transnational corporations (TNCs) have become the dominant players in the contemporary global economy.

With the adoption of the 2030 Agenda for Sustainable Development, the role of the private sector is seen as crucial in making a positive contribution to sustainable development and inclusive growth in the countries in which they operate. Therefore, major improvements need to be made in the area of corporate transparency.

The spate of recent corporate scandals (from Enron to Parmalat to WorldCom to LIBOR rigging) also reinforce the need for enhanced transparency by TNCs and other business enterprises, and such efforts should go hand in hand with increased transparency of public administration.

In practice, the single window system may not be very effective in countries where setting up a business requires approvals from different competent authorities (national and subnational) as per their institutional architecture.

The Single Window System

The one-stop single window system is often considered the best solution to reduce the time and effort required in obtaining regulatory clearances and licences from governmental agencies in a host country. The single window system enables foreign investors to seek information and submit all regulatory documents at a single office. This office acts as a dedicated investment agency dealing with approval of application and keeping the investor informed about the legal and regulatory matters.

In the case of cross-border trade, it has been found that the single window system helps in reducing costs thanks to increased efficiency and fewer delays since traders don't have to deal with multiple agencies to seek clearances for moving goods across borders.

Can a single window system deliver similar benefits in the area of international investment?

In practice, this mechanism may not be very effective in countries where setting up a business requires approvals from different competent authorities (national as well as subnational) as per their institutional architecture. In India, for instance, a foreign investor may have to approach different authorities – for land acquisition and building permit (local bodies but varies across states); compliance with environmental regulations (Ministry of Environment); licence from sectoral regulatory agencies (for example, the central bank) – depending on the nature of business. Since land is principally a state subject under Indian Constitution, a single window system throughout India is unlikely to work. In some other countries that may not be the case due to their different institutional set up.

In addition, there may be instances that involve specific agreements between foreign investors and host governments on the transfer of technology, divestment of equity in favour of local investors, hiring of local staff, skill development, local content requirements, and similar provisions aimed towards economic development of the host country.

Few can dispute that it is the quality of investment that determines growth and development in a host country. Therefore, a country keen to attract quality investment will have to adopt a balanced strategy towards elimination of administrative hurdles in order to maximize the benefits of investment and minimize risks.

Furthermore, it is important to note that there is no causal relationship between the establishment of single window system and increases in FDI inflows. There is no evidence to prove conclusively that the implementation of such investment facilitation tools leads to increased foreign investment in a host country.

There are numerous countries which have established single window system and streamlined other administrative procedures. Yet, these efforts have not always been accompanied by increased foreign investment, thereby questioning the efficacy of investment facilitation measures.

Even within India, one can observe that Punjab – the so-called 'model' state which has institutionalized a single window system with time-bound approvals of investment proposals – is lagging behind other Indian states in attractive investments from both domestic and foreign investors.

The Ombudsperson

Although the institution of Ombudsman was established in Sweden in 1809, it only became popular across the world in the 1980s and the 1990s, in tune with prevailing intellectual climate.

The joint proposal submitted by Argentina and Brazil for a WTO instrument on investment facilitation seeks the establishment of a National Focal Point or Ombudsperson which will improve investment-related institutional governance. As per the proposal, the Ombudsperson is expected to improve the communication between investors and governments; clarify doubts on investment policies and other regulatory issues; address complaints by investors; assist investors in resolving government-related difficulties; take timely action to prevent, manage and resolve disputes; and prevent disputes among member-countries. The proposal allows members to decide on the nomenclature of any new office or agency in their country.

However, it is beyond the formal powers of a National Focal Point or Ombudsperson to perform such wide-ranging functions at multiple levels, without encroaching upon the powers of legislative and executive branches of the government. Hence, a more cautious approach is required while outlining the potential functions of such office.

The joint proposal does not go so far in empowering the Ombudsperson or National Focal Point to receive complaints from host communities adversely affected by the operations of foreign companies. This is a major departure from the approach adopted in the OECD Guidelines for the Multinational Enterprises.

As discussed earlier, investors face most investment-related administrative obstacles at local levels but the competence of a National Focal Point or Ombudsperson is unlikely to extend to local authorities.

Furthermore, the joint proposal does not go so far in empowering the Ombudsperson or National Focal Point to receive complaints from host communities adversely affected by the operations of foreign companies. This is a major departure from the approach adopted in the OECD Guidelines for the Multinational Enterprises under which adhering governments are required to set up National Contact Points (NCPs) with a mandate to handle inquiries from diverse stakeholders and to resolve issues if the Guidelines are not implemented. The OECD Guidelines allow affected communities, NGOs, trade unions, consumer organizations and other stakeholders to file a complaint against an enterprise from signatory countries with the NCPs regarding breach of the Guidelines.

Not a Panacea

In sum, investment facilitation measures are not a panacea. The measures aimed at improving transparency of investment rules and streamlining administrative procedures alone are not a sufficient policy instrument to attract FDI inflows into a host country. Other determinants, particularly economic determinants, play a far greater role. Even if one assumes that all member-countries sincerely implement the proposed investment facilitation measures, there is no assurance that these measures will alone enhance FDI inflows because the major factors determining FDI inflows are size of domestic markets, quality of infrastructure, labour costs and productivity, trade openness, taxation policy and political environment.

Investment facilitation measures should not be seen in isolation from the wider policy agenda of fostering corporate accountability, human rights and sustainable development.

Investment Facilitation, Corporate Accountability and Sustainable Development

The current proposals for a multilateral instrument on investment facilitation are overly-focused on providing a hassle-free business environment to foreign investors in the host country. But proponents of a multilateral instrument on investment facilitation need to be reminded that the WTO has a much wider mandate to promote sustainable development among member-countries. The Preamble to the Marrakesh Agreement establishing the World Trade Organization (the "WTO Agreement") makes direct references to the objective of promoting sustainable development. In the name of "ease of doing business" and simplifying rules, the regulatory framework designed to protect the natural environment should not be weakened.

Of late, multilateral efforts have been underway to develop a binding instrument on transnational corporations and other business enterprises through which businesses can be held accountable for their adverse impacts on human rights. Since 2014, discussions for an international legally-binding treaty to regulate business impact on human rights have been taking place at the Human Rights Council of the UN. Hence, investment facilitation measures should not be seen in isolation from the wider policy agenda of fostering corporate accountability, human rights and sustainable development. These should not be construed as mutually exclusive issues. ■

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