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Investment Facilitation

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Discussions on investment facilitation are likely to be raised at the Buenos Aires Ministerial Conference of the World Trade Organisation (WTO). Some countries having (and expected to have) significant investment interests across the world are supporting such a move, which is being opposed by many other countries. Such countries will need to be prepared with a back-up plan. This would entail providing informal support for preparation and dissemination of detailed counters to specific provisions of investment-related proposals being tabled at the WTO. A document endorsed by 'investment recipient countries' on principles of investment facilitation may also be prepared. At MC11 in Buenos Aires, developing countries may agree for the setting up of a Working Group on Investment Facilitation, if there is concrete (not just substantial) progress in different areas of agriculture, where many of them are demandeur.

Introduction

In mid-2017, five 'proposals' on investment facilitation were submitted to the WTO General Council. The objective was to initiate discussions on multilateral instruments for investment facilitation with the intention of possible deliverables at the Ministerial Conference (MC) in Buenos Aires in December 2017.

The submissions faced stiff resistance from many developing countries who have other priorities. These have subsequently been modified to 'communications' without calling for any WTO General Council decisions.

The action at the WTO is closely linked with developments at G20 during the last one year. In 2016, a Trade and Investment Working Group was established at G20 under the Chinese Presidency. The G20 trade ministers agreed on nine non-binding Guiding Principles for Global Investment Policy Making. In 2017, draft deliverables on investment facilitation were proposed by the German Presidency. These included a draft package on investment facilitation, which was met with significant opposition.

Nevertheless, given that G20 collectively accounts for 85 per cent of the world's gross domestic product (GDP) and represents more than two-thirds of global foreign direct investment, any policy framework endorsed by G20 carries considerable international influence.

A Quick Recap

For nearly first four decades of the General Agreement on Tariffs and Trade (GATT), investment issues were not brought under its rubric, until the Uruguay Round of negotiations, which was held in mid-1980s. At the first WTO MC in

Singapore (1996), a work programme on four new issues (Singapore Issues), including investment, was adopted. These issues were included in the Doha Development Agenda (2001) but the Doha Declaration stated that negotiations would take place after the fifth MC.

However, at the fifth MC held in Cancún in 2003, a large number of the WTO members voiced their objections to include the Singapore issues in the Doha Round of negotiations. Ultimately, three of the four issues, including investment, were dropped from the Doha Development Agenda in 2004.

Also, relevant WTO instruments make specific references to trade-related investment. For instance, Trade Related Investment Measures (TRIMs) that are inconsistent with basic provisions of the GATT Agreement are prohibited under the TRIMs Agreement and the General Agreement on Trade in Services (GATS) includes foreign direct investment in services.

Interests Involved

At the WTO, five proposals were submitted by the 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. At the G20, the initiative is being led by China and Germany.

Countries supporting multilateral discussions on investment are not limited to usual suspects, that is, advanced economies like Germany, Japan and South Korea, having significant global investment interests. Emerging economies such as China, Brazil, Russia and Argentina are also keen.

Interestingly, China opposed any discussion on Singapore Issues in Cancún MC (2003). This change of its position is unsurprising in the light of China's Belt and Road Initiative, which is expected to result in significant outward investment on its part. The recently released Global Investment Competitiveness Report 2017-18 also recognises the outward investment potential of emerging economies.

Conspicuous by absence in the list of supporters are the US and India, despite the former being world's largest investor and the latter is expected to have substantial outward investment interests in future. Countries such as India, South Africa, Uganda are opposing discussions on multilateral instruments on investment for reasons mentioned below.

Interestingly, India has not left itself completely out of the discussions on investment facilitation. It has voluntarily participated in discussions regarding guidelines on transparency with Brazil, Russia, India, China, South Africa (BRICS) nations, with a caveat that negotiations cannot be used to push a similar agreement at the WTO, and that the arrangement at BRICS cannot be replicated at any multilateral forum.

Some of the key arguments against initiating multilateral discussions on investment are as follows:

- investment issues do not lie within the scope of the WTO
- need to fast track negotiations on important pending issues, such as a permanent solution on public stockholding for food security purposes before discussing new issues
- foreign investment is a politically sensitive issue as it essentially means foreign control over ownership of assets and resources
- any outcome on investment facilitation would undermine 'policy space' and 'right to regulate investment' in strategic sectors for host countries and their right to pursue developmental policies
- a one-size-fits all approach is not conducive to facilitate and attract investment

Scope of Investment Facilitation

Almost pre-empting the criticisms on multilateral discussions on investment, the proposals at the WTO are intentionally titled 'investment facilitation' and take the lead from recently enforced Agreement on Trade Facilitation. Under these proposals, investment facilitation is essentially aimed at improving the ease of doing business for investors in host countries.

The provisions aim at:

- ensuring transparency, predictability and non-discrimination
- improving the efficiency of administrative procedures to minimise barriers
- establishing a single window system for addressing all enquiries
- facilitating accountability and mitigating investment disputes through a National Focal Point or Ombudsperson
- strengthening local capacities through technical cooperation
- promoting cross-border coordination and collaboration among investment promotion agencies

These proposals have met with following criticisms:

- lack of correlation of investment facilitation measures with enhanced investment
- absence of obligations on home countries and investors on sustainable development
- a top down model of investment facilitation removed from reality wherein different aspects of investment facilitation are under jurisdiction of different authorities at national and sub-national levels, and informed by local conditions

It is here that the G20 Principles can provide some guidance. They are as follows:

- have a statement on sustainable development in the preamble and conclusion
- emphasise on the consistency of investment policies with sustainable development and inclusive growth
- recognise the right to regulation by host countries for legitimate public policy purposes
- promote responsible business conduct and corporate governance

Way Forward

India and other developing countries have strategically demanded prioritising critical issues, such as agriculture over investment. They have also denounced the role of the WTO as a platform to discuss investment issues.

While such strong opposition is a necessary upfront strategy, these countries will need to be prepared with a back-up plan when they may not have much of an option but to discuss investment issues within the multilateral trading system.

This would entail providing informal support for preparation and dissemination of detailed counters to specific provisions of investment related proposals being tabled at different fora. As indicated earlier, G20 principles carry significant economic weight and some of them can be astutely used to deflect the significance being accorded to proposals at the WTO.

The strategy to informally support research could help put such detractors at a drivers' seat if and when investment issues are taken up for discussion at the WTO.

The research should aim to:

- highlight limitations of other proposals at their inception stage thus pointing towards limited utility to initiate discussions without consensus on importance and scope of investment facilitation
- prepare a document endorsed by investment recipient countries on 'principles' on investment facilitation

Most countries are already making substantial efforts to attract foreign investment, with varying degrees of success. While such efforts are customised to suit specific requirements and capabilities, the merit of strengthening capacities of investment promotion agencies, and promoting technical cooperation between them, need not be lost sight of.

Consequently, developing countries may agree for the setting up of a Working Group on Investment Facilitation for Development, with the following scope in mind:

- review divergent approaches to investment facilitation
- identify technical assistance and capacity building requirements
- examine areas that lie within and outside the scope of trade-related investment facilitation

However, such a Working Group should only be set up if there is concrete (not just substantial) progress in different areas of agriculture, where many developing countries are demandeur.

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