China moves the G20 toward an international investment framework and investment facilitation

by

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Abstract

China is increasingly concerned with protecting its outward foreign direct investment, facilitating the operations of its firms abroad and creating a strong international investment law and policy regime. After briefly reviewing the emergence of China as an outward investor and some policy issues associated with this rise, this chapter reviews a few issues central to the future of the international investment law and policy regime. It then comments on several outcomes that were achieved—or initiated under--China's G20 leadership: non-binding "Guiding Principles for Global Investment Policymaking" that could eventually form the basis of a universal framework on international investment; the Importance of investment facilitation, leading perhaps to an international support program for sustainable investment facilitation, beginning possibly with "Guiding Principles for Global Investment Facilitation"; and the creation of an additional intergovernmental platform that allows for a continued systematic intergovernmental process to discuss the range of issues related to the governance of international investment, preferably paralleled by an informal, inclusive and result-oriented consensus-building process that takes place outside intergovernmental settings.

Keywords: China, G20, foreign direct investment, international investment regime, multinational enterprises

I. Introduction

The world's investment needs are tremendous. Meeting the sustainable development goals alone will require trillions of additional dollars annually, not to speak about the implementation of the Paris climate change agreement and our desire to stimulate economic growth and sustainable development in general.[1] Domestic resource

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[1] See, most recently, the following pronouncement of the G20: "We are determined to foster an innovative, invigorated, interconnected and inclusive world economy to usher in a new era of

mobilization from the public and private sectors will have to finance a considerable share of these investment needs. However, foreign direct investment (FDI), too, can make an important contribution by bringing capital, skills, technology, access to markets and other tangible and intangible assets to host countries. In fact, FDI flows will have to grow substantially if future investment needs are to be met. It is for this reason that all countries seek to attract such investment and maximize its development impact, and that the issues surrounding these efforts have become key global concerns.

At the same time, a broad discussion is underway about how the international investment regime, within which investment flows take place, needs to be reformed to reflect adequately the requirements of our time. In particular, all governments have subscribed to the sustainable development goals and committed to fight climate change. Against this background, there is a need to broaden the regime's purpose to encourage explicitly the flow of substantially higher amounts of sustainable FDI in the framework of a widely-accepted enabling framework that regulates the relationships between governments and international investors in a balanced manner: sustainable FDI for sustainable development.

China, as the President of the G20 in 2016, has had an opportunity to advance the discussion of these issues. The country has taken a special interest in international investment, judging from the decision to create the G20's Trade and Investment Working Group. This reflects both the role of FDI in China's own development and especially its recent rise as an important outward investor.

This article discusses briefly, in Section II, the emergence of China as an outward investor, embedded in the rise of emerging markets as home countries of multinational enterprises (MNEs). Section III contains an analysis of some policy issues related to the rise of FDI from emerging markets. A brief discussion of issues central to the future of the international investment law and policy regime follows in Section IV, including the adoption of non-binding principles outlining the architecture of a comprehensive framework on international investment. Section V focuses on a concrete proposal for a sustainable investment facilitation program that could be launched as a follow-up of the discussions initiated under China's leadership. Section VI concludes.

II. China's Rise as an Outward FDI Country

In the past, FDI originated overwhelmingly in developed countries. However, during the past decade or so, the rise of emerging markets,[2] and in particular China, as major MNE home countries, has fundamentally changed the FDI landscape. More specifically, over 120 emerging markets reported FDI outflows during at least one of the five years

global growth and sustainable development, taking into account the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda and the Paris Agreement. See, the "G20 Leaders' Communique, Hangzhou Summit, 4-5 September 2016", para. 5, available at http://www.consilium.europa.eu/press-releases-pdf/2016/9/47244646950_en.pdf.

[2]The emerging markets are defined here as all non-OECD countries.

between 2009 and 2013, and there are now considerably more than 30 000 MNEs headquartered in these economies. FDI from emerging markets had reached 28 percent of US$1.5tn world FDI outflows in 2014, compared to an average of 2 percent of a rough annual average of US$50bn world FDI outflows during 1980–1985.[3] In absolute amounts, FDI outflows from emerging markets have risen from approximately US$1bn during 1980–1985, to US$409bn in 2015 (US$378bn from developing countries and US$31bn from transition economies);[4] the 2015 figure for emerging markets outflows was eight times higher than *world* outflows were three decades ago. Since 2004, outward FDI (OFDI) flows from emerging markets have been over US$100bn annually; in 2015, 6 of the top 20 home economies were emerging markets. MNEs from emerging markets have become important players in major global industries and in the word FDI market in general.

Among emerging markets, China is the star performer.[5] China's OFDI flows grew from US$7bn in 2001 to US$146bn in 2015, for an accumulated stock of US$1.1tr (MOFCOM, NBS and SAFE, 2016). This made China the single most important home country among all emerging markets, and the second largest among all home economies in 2015.[6] In fact, China's OFDI flows have caught up with China's inward FDI flows: in 2001, OFDI flows were equal to 15 percent of inward FDI flows; in 2015, the ratio had reached 107 percent (MOFCOM, NBS and SAFE, 2016).

By the end of 2015, China's 20 200 MNEs had established 30 800 foreign affiliates in 188 countries and territories (MOFCOM, NBS and SAFE, 2016). Chinese firms have invested substantially in both developed and developing countries, increasingly using mergers and acquisitions (M&As) as a mode of entry. Chinese's FDI distribution across sectors and geographic regions is difficult to ascertain, however, as more than two-thirds of China's non-financial sector outflows are channeled via financial centers, tax havens and countries of convenience; consequently, the precise amounts, economies and sectors in which funds are ultimately invested are unknown. It seems likely, however, that services and natural resources are the most important sectors.[7]

These figures should not disguise, however, that China's average shares in world FDI outflows and world FDI stock remain quite low: in terms of flows, China's share was 10 percent in 2015, while the country's share in the world's OFDI stock was 4 percent that year (MOFCOM, NBS and SAFE, 2016).

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[3] See UNCTAD (2016) and *UNCTAD Stat*, available from: http://unctadstat.unctad.org/ReportFolders/reportFolders.aspx. All data in this article are from these sources, unless otherwise indicated.

[4] As defined in annex Table 1 of UNCTAD's *World Investment Reports*, available from: http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/World_Investment_Report.aspx.

[5] In the following text, no adjustments are made for "round-tripping" that leads to an overestimation of China's international investment position.

[6] This is not counting outflows from Hong Kong.

[7] Judging from the data provided in MOFCOM, NBS and SAFE (2015).

A distinguishing characteristic of China's OFDI is the very important role played by state-owned enterprises (SOEs). By the end of 2015, these enterprises controlled over half of China's OFDI, a share that has been decreasing (MOFCOM, NBS and SAFE, 2016). The role of SOEs is expected to remain particularly significant in the "One Belt One Road Initiative" (where Chinese SOEs are operating in tandem with Chinese sovereign wealth funds and state-controlled banks, the first providing management skills and the second financing -- not only for M&As but increasingly also for greenfield investments.

III. Policy Issues

Outward FDI from emerging markets faces a number of constraints, and the changing climate for FDI may stymie the outward expansion of firms headquartered in emerging markets. In particular, China's OFDI is attracting considerable attention and rising skepticism (Sauvant and Nolan, 2015). This skepticism stems from the speed with which this investment has grown; the leading role of SOEs in China's OFDI; the potential negative effects associated with FDI;[8] the fear that host countries do not benefit fully from this investment; and the suspicion that Chinese outward investors, when investing abroad, receive various benefits from their governments, giving Chinese SOEs an advantage over private companies investing abroad, thus resulting in unfair competition.

Moreover, a number of (especially developed) host countries are particularly concerned that China's OFDI might compromise their national security, given the central role of SOEs and the question of whether China's OFDI serves purposes other than commercial ones. Not surprisingly, therefore, these concerns have led to the creation or strengthening of regulatory review processes of incoming M&As, especially in critical infrastructure industries.

Regulatory attention has focused primarily on M&As by SOEs. This is reflected in the strengthening or creation of review mechanisms for inbound M&As in a number of countries, led by the United States (Sauvant, 2009).[9] For example, the *Foreign Investment and National Security Act of the United States*[10] establishes the presumption that a national security investigation needs to be undertaken by the Committee on Foreign Investment in the United States (CFIUS) if a merger or acquisition in the United States is undertaken by a foreign state-controlled entity. Not surprisingly, deals involving firms

[8]Fears include that such investment can crowd out domestic firms; research-and-development capacities are being transferred out of the host country; transfer prices and taxes may be calculated to the disadvantage of the host country; local sourcing (and, hence, backward linkages) may be limited; and that restrictive business practices may be employed.

[9] For an analysis of the reforms of review mechanisms in the European Union, see, Chaisse (2015a).

[10]See the *Foreign Investment and National Security Act of 2007*, Public Law No. 110-49, 121 Stat. 246, available from: http://www.treasury.gov/resource-center/international/foreign-investment/Documents/FINSA.pdf.

based in China accounted for the largest number of CFIUS filings during the period 2012–2014, nearly 20 percent of all cases (Committee on Foreign Investment in the United States, 2016). Furthermore, 52 of the 147 notices received in 2014 by CFIUS proceeded to a second-stage investigation (following a 30-day review).[11] While CFIUS does not identify the percentage of investigations by home country, "it almost certainly is the case that a disproportionate percentage of those (second-stage) reviews have involved Chinese acquirers" (Covington & Burling LLP, 2016, p. 2). President Obama's September 2012 veto of a Chinese windmill project near a military base in Oregon, the first veto in 22 years, is emblematic of these concerns.[12] Such trends and occurrences underline the importance of the principle of non-discrimination for China.

With China having become a net outward investor, China's government is becoming more interested in protecting its outward investments than protecting its own firms from inward FDI in certain sectors. This is reflected in the changing orientation of China's 129 bilateral investment treaties (BITs) and 19 other international investment agreements (IIAs).[13] Although these treaties were originally concluded with FDI in China in mind, they increasingly provide protection to the assets of Chinese investors abroad and seek to facilitate their operations. In line with this development, China and the United States reached a watershed accord in July 2013 (in the context of the US–China Strategic and Economic Dialogue) to continue their negotiations of a BIT on the basis of pre-establishment national treatment and the negative list approach to exceptions from such treatment.[14] Both changes had long been resisted by China and, hence, pinpoint the shift in emphasis in the country's investment perspective from a host country to a home country. They also have implications for China's broader approach to the international investment regime. In fact, at their 2015 Strategic and Economic Dialogue, the two governments used the even more ambitious expression "high-standard bilateral investment treaty."[15]

Furthermore, China's evolving approach to IIAs needs be viewed in the broader context of the changing global FDI landscape. With the number and size of MNEs from emerging markets – as well as their volume of outward FDI -- growing rapidly, the constellation of national interests of important emerging markets is changing profoundly, in a manner that favors a multilateral approach toward investment. When earlier efforts at the international level were undertaken, most notably the 1995–1998 OECD negotiations of a Multilateral Agreement on Investment and the subsequent discussions in the WTO,

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[11]See Committee on Foreign Investment in the United States (2016), p. 2.

[12]See "In rare move, Obama unwinds Chinese acquisition of U.S. wind farms," *Inside U.S. Trade*, 2012, Vol. 12, No. 39, pp. 16–7.

[13]Data are as of November 2016, available from: http://investmentpolicyhub.unctad.org/IIA.

[14]See Li (2014). This is reflected in the (shorter) negative list for the China (Shanghai) Pilot Free Trade Zone; see https://www.omm.com/resources/alerts-and-publications/publications/shanghai-ftz-unveils-2014-version-of-negative-list/Agreement. Still, the China–US negotiations on the length and breadth of China's negative list are difficult: see "China misses deadline for 'negative list' investment offer to U.S.," *Reuters*, 1 April 2016, available from: http://uk.reuters.com/article/us-usa-china-trade-idUKKCN0WY5OU.

[15]See http://www.state.gov/r/pa/prs/ps/2015/06/244153.htm, 3 April 2016.

there was a clear distinction between home and host countries, typically along North–South lines.

Today, emerging markets (and particularly the biggest among them) define their policy interests no longer only defensively as host countries, but also offensively as home countries interested in protecting their investors abroad and facilitating their operations. This can be exemplified by China's change in approach to continue negotiating a BIT with the United States on the basis of pre-establishment national treatment and the negative list approach to exceptions from such treatment.

Similarly, traditional capital-exporting countries are recognizing their importance as host countries and their increasing role as respondents in international arbitrations. As a result, developed countries define their policy interest no longer only offensively as home countries, but also defensively as host countries interested in preserving adequate policy space and, therefore, the government's ability to regulate in the public interest. This is exemplified by the change of approach by the United States when, in its revised 2004 and 2012 model BITs, it narrowed protections afforded to foreign investors -- a significant change for a country that had long led efforts to provide full protection to investors and facilitate their operations.

The convergence of policy interests between home and host countries, as well as between developed countries and a growing number of emerging markets, should facilitate reaching a multilateral agreement, if there is the political will to pursue this objective.

It is also significant that governments (including China's) continue to show a great willingness to make rules on international investment, as reflected in the proliferation of bilateral, regional and mega-regional IIAs (Chaisse, 2015b, p. 567). In particular, a number of important on-going and concluded negotiations are likely significantly to advance a more harmonized approach to investment rule-making: "recent treaty practice by the states negotiating the TPP [Trans-Pacific Partnership], the RCEP [Regional Comprehensive Economic Partnership], and the U.S.–China BIT, as well as the recent Pacific Alliance Agreement, creates a significant opportunity for the harmonisation of the international investment law regime at a regional, Pacific Rim level" (Feldman *et al.*, 2016, p. 12).[16] The negotiations of a number of BITs between important countries (in addition to the United States–China BIT),[17] and the negotiations of the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States (should they continue), could lead to a more harmonized approach to investment rule-making and, de facto, to common rules on international investment.

[16] It is in both in the interest of China and the United States to size this opportunity. But the question is which ways and means can be used to achieve this goal, as both countries seek to complete and enact their own initiatives, namely, RCEP and TPP, respectively. However, in the current political climate, RCEP has attracted less criticism domestically and has built political momentum after the ASEAN Summit of 2016.

[17] These include the negotiations of BITs between China and the European Union, the European Union and India, the European Union and Japan, and India and the United States.

These negotiations represent significant opportunities to shape the investment regime by narrowing the substantive and procedural international investment law and policy differences between and among the principal FDI host and home economies. They could set standards that might considerably influence future investment rulemaking and that would be also in the interest of China's growing outward FDI. Should this occur, the result of these negotiations could form an important stepping-stone toward a subsequent universal investment instrument.

III. China and the Reform of the International Investment Regime

Given these developments, China's Presidency of the G20 provided that country an opportunity to lay the groundwork for a process that could eventually lead to a multilateral framework on investment, perhaps with an open plurilateral agreement as a first step.

In fact, broad discussions are underway, in academic circles, among governments and now increasingly also in the OECD, UNCTAD and since 2016 also in the G20, about how to improve the international investment regime. China has had an opportunity to advance this discussion through the G20's Trade and Investment Working Group, created in January 2016. The areas in which improvements can be made in the international investment regime are numerous, as outlined briefly in the following.[18]

Any discussion of the reform of the international investment regime needs to begin with the regime's very purpose. Given the origin of IIAs, it is not surprising that its principal purpose has been, and remains, to protect foreign investors and, more recently, to facilitate their operations, seeking to encourage in this manner additional FDI flows and the benefits associated with them, a concern China shares fully. But this purpose alone is no longer sufficient: it needs to be expanded. In particular, IIAs must recognize, in addition, the need to promote sustainable development and, in line with this objective, the encouragement of higher flows of *sustainable* FDI.[19] Broadening the purpose of the investment regime, moreover, has implications, among other things and most importantly, in terms of recognizing explicitly a carefully defined right to regulate, as well as a clearer definition of key concepts used in IIAs. It also raises the question of the responsibilities of investors and their recognition in IIAs.

Even if the investment regime's purpose is broadened and its key concepts are clarified more precisely, disputes between international investors and host countries can, and will, arise. Naturally, every effort needs to be made to prevent and manage such disputes at the national level. However, if they reach the international level, it is important that the investment regime's dispute-settlement mechanism is beyond reproach. A major reform would be the establishment of a world investment court as a standing tribunal with an appeals mechanism, as suggested by the European Commission (2015). While establishing such an investment court system faces many obstacles, it would

[18]For a detailed discussion, see Sauvant (2016).
[19]For a discussion of the concept of "sustainable FDI", see below.

institutionalize dispute settlement and represent a major step toward enhancing the legitimacy of the investment regime. It is, therefore, encouraging that this concept has already been incorporated in the Canada–European Comprehensive Economic and Trade Agreement and the European–Vietnam Free Trade Agreement. If broadly accepted, such a move would be comparable to the move from the ad hoc dispute-settlement process under the General Agreement on Tariffs and Trade to the much-strengthened dispute settlement understanding of the WTO.

Even if a widely-accepted investment court system were to be established, it would not alleviate another shortcoming of the present regime, namely, that poor countries, especially the least developed among them, typically do not have the human and financial resources to defend themselves adequately as respondents in international investment disputes. And any dispute-settlement process that does not provide a level playing field for the disputing parties is compromised, undermining its legitimacy and, with that, the legitimacy of the international investment regime.

The solution to this problem is obvious, and it has been pioneered by the WTO: there is a need for establishing an advisory center on international investment law. It could be patterned on the Advisory Center on WTO Law. Its main function should be to advise eligible countries as regards prospective disputes and, if need be, provide administrative and legal assistance to respondents facing investor claims that cannot defend themselves adequately. This is a straightforward proposal. The G20, any of its individual members or, for that matter, any other country could easily take the initiative to establish such an institution, in the interest of enhancing the legitimacy of the investment regime.

The discussion so far has dealt with individual aspects of the present investment regime. However, governments could also take a holistic approach to international investment governance, preferably by negotiating a multilateral framework on investment, perhaps beginning with an open plurilateral agreement. Obviously, this is not an easy road to take, given the experience of past efforts in this regard. However, as mentioned above, there are a few important developments since earlier efforts had taken place that augur well for a renewed initiative to take the multilateral path. Most importantly, as discussed earlier, the constellation of national interests of developed and developing countries has changed profoundly over the past decade, preparing, at least in principle, the way for a consensus approach. Moreover, governments have shown a great appetite to negotiate IIAs, not only bilaterally, but also regionally. In particular, the mega-regional agreements mentioned earlier could lead to a certain harmonization of the substantive and procedural aspects of international investment law. Finally, the investment court system could become the nucleus of a plurilateral/multilateral agreement.

China’s evolving approach to IIAs reflects this changing interest constellation. Its leadership of the G20 in 2016 provided that country with the opportunity to initiate an intergovernmental discussion and process about how the international investment law and policy regime can be improved, and it sized this opportunity.

Such a process cannot be concluded during the year of China's leadership, but rather has to be continued in the G20's Trade and Investment Working Group (whose mandate was extended by the G20 Ministerial in July 2016, as confirmed by the subsequent G20 summit), or an intergovernmental organization, such as UNCTAD or the WTO. UNCTAD continues to examine the whole range of matters related to IIAs and has an established competence in this area. As to the WTO, it created a Working Group on the Relationship between Trade and Investment during its Singapore Ministerial Meeting in 1996, but this Working Group was suspended during the WTO's Ministerial Meeting in Cancun in 2003. The WTO members are of course free to reactivate this working group if they choose to do so.[20] Alternatively, the WTO could establish a new working group (which would be free of the "baggage" of the suspended working group), focussing on the coherence of trade and investment policies in the age of global value chains. In fact, regardless of what happens elsewhere, the WTO needs to have a discussion on the interface and overlap between trade and investment policies and regimes, including the various types of treaty instruments involved in both areas, and without any prejudice to what further joint action WTO members might want to take. In any event, the G20 could invite governments to do more work to explore the nexus of investment and trade.

The G20 chose a different approach. It agreed on a non-binding declaration on shared principles that would provide overall political guidance by laying out the principal elements that should guide international investment policy in general.[21] More specifically, the G20 Trade Ministers agreed on nine non-binding "Guiding Principles for Global Investment Policymaking" (see annex) during their July 9-10, 2016 meeting in Shanghai, subsequently endorsed during the G20 Summit in Hangzhou, September 4-5, 2016.[22] They provide the following elements for investment policy-making: avoidance of FDI protectionism; openness, non-discrimination, transparency, and predictability; investment protection, including dispute settlement; transparency in investment rule-making, involving all stakeholders; coherence in investment rule-making, consistent with sustainable development; the right to regulate; investment promotion and facilitation; responsible business conduct; and international cooperation on investment

[20] See in this context the following statement by the G20 Trade Ministers: "We welcome further research and analytical work in UNCTAD, WTO, OECD and the World Bank, in consultation with the IMF, within their existing mandates and resources, to identify ways and means to enhance coherence and complementarity between trade and investment regimes. In this context, we take note of the B20's recommendation for the WTO Working Group on the Relationship between Trade and Investment to resume its work". "G20 Trade Ministers Meeting Statement", 9-10 July 2016, Shanghai, available at https://www.wto.org/english/news_e/news16_e/dgra_09jul16_e.pdf, para. 20.

[21] Something very similar was suggested, for the G20, in Sauvant and Ortino (2013); see also Shan (2015). Such a declaration could be patterned on the "Statement of the European Union and the United States on Shared Principles for International Investment," available from: http://trade.ec.europa.eu/doclib/docs/2012/april/tradoc_149331.pdf.

[22] See, the "G20 Leaders' Communiqué", op. cit., para. 29. For an analysis and discussion of the Principles, see Joubin-Bret and Rodriguez Chiffelle (2017) and Zhan (2016).

matters. (Given the attention and rising skepticism that China's outward FDI is experiencing, the principles of avoidance of FDI protectionism and non-discrimination are of particular importance to China.) The Guiding Principles are meant to "promote coherence in national and international policymaking and provide greater predictability and certainty for business to support their investment decisions".[23]

Reaching this agreement presented a challenge, as the G20 members needed to muster the willingness to compromise in a very short period of time to find common ground, in spite of their disparate views on key principles. For example, if the text would have been very general, it would not have added much value in terms of being of use to policy-makers and IIA negotiators. On the other hand, if a declaration would have laid out a number of relatively detailed principles, governments seeking strong and clear principles (e.g., in order to protect their position in on-going negotiations regarding the need for pre-establishment protection) would have clashed with governments that would have been less inclined to do that (e.g., regarding non-discrimination at the pre-establishment stage of an investment), or that would not have wanted to mention certain principles at all (e.g., investor-state dispute settlement). Finally, remaining silent on key (controversial) principles would have been a difficult option for some governments, as silence could be interpreted as meaning that these principles have lost importance for erstwhile proponents.

Obtaining compromise therefore required that the Guiding Principles needed to be formulated in general language, and certain issues could not be agreed, such as regarding specific protections. Other things could not be pushed further or clarified, for example, that investment promotion and facilitation should also include maximizing benefits for host countries; that investment, to contribute most to sustainable development, should have certain sustainability characteristics; and that responsible business conduct should include obligations, in such areas as contained, for instance, in the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights. More generally, the G20 Guiding Principles remain primarily focussed—as is typical for the great majority of IIAs—on the obligations of host countries. They make only a modest reference to investor obligations. And they do not mention at all obligations of home countries.

Given China's interest in the subject matter and, also, in having a concrete deliverable in the investment area, it employed its diplomatic skills to bring about a compromise, aided by Canada as co-Chair of the Trade and Investment Working Group, helped by its links to the other members of the BRICS group and supported especially by the Secretariats of UNCTAD and the OECD.[24] Agreement was possible because the Guiding Principles are of a fairly general nature, are non-binding, retain the traditional focus on obligations of host countries, and perhaps allowed trade-offs in other subjects on

[23] "G20 Trade Ministers Meeting Statement", op. cit., para. 19.

[24] Apart from these two international organizations, the Working Group was also supported by the Secretariats of the WTO and the World Bank.

the G20 agenda.[25] Overall, they are a desirable step toward outlining the architecture of a comprehensive framework on international investment and, in this manner, preparing the ground for a plurilateral/multilateral investment regime.

Finally, regardless of whether or not systematic intergovernmental efforts aimed at improving the international investment regime take place, it would be very desirable to initiate an informal, inclusive and result-oriented consensus-building process that takes place *outside* intergovernmental settings and, preferably, is led by a respected non-governmental organization. It would have to be informal and off-the-record, to make sure that all governmental and non-governmental participants feel free to speak up, and that they have the opportunity not only to make statements, but can actually discuss the issues. It would have to be inclusive to make sure that all stakeholders are being heard. In addition, it would have to be result-oriented to make sure not only that problems are identified, but also that solutions (or alternative solutions) are proposed. Such a process would also help to build bridges between various groups of stakeholders. There may be members of the G20 (or other countries) that might be interested in promoting such a process. After all, improving the international investment law and policy regime is a long-term process, and all stakeholders need to be on board to move this process forward.

Despite the attractiveness of beginning a process of discussing, in an intergovernmental body, the desirability and feasibility of a plurialteral/multilateral investment framework and the systemic issues associated with such an endeavor, it is quite clear that key governments may not be interested in doing so at this point in time. This may be because key players involved in the negotiation of important bilateral and/or regional agreements with investment chapters may wish to wait until these negotiations are concluded before considering a plurialteral/multilateral approach. Therefore, dealing with this issue is a long-term challenge. It is also in China's interest to face the challenge of improving the international investment regime, given the rise of its own OFDI and the reception it receives in a number of host countries, and to meet this challenge in both intergovernmental and non-governmental settings.

IV. A Concrete Proposal and Opportunity: An International Support Program for Sustainable Investment Facilitation[26]

[25] Agreement was perhaps also facilitated by the fact that the International Chamber of Commerce (ICC) had adopted, in 2012, "Guidelines for International Investment) (available at http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2012/2012-ICC-Guidelines-for-International-Investment/), suggesting that the climate for a plurilateral/multilateral approach is improving.

[26] For the original proposal and a discussion of the rationale for such a program, see Sauvant and Hamdani (2015); for a further elaboration, see Sauvant (2016). UNCTAD has since then proposed a "Global Action Menu for Investment Facilitation", available at http://investmentpolicyhub.unctad.org/Upload/Documents/GlobalActionMenuForInvestmentFacilitation.v4.16.09.2016.pdf.

Beyond the adoption of the Guiding Principles for Global Investment Policymaking and building on them toward a plurilateral/multilateral investment regime, there is one practical area in which it may be possible to make concrete progress in the near- or medium-term future, with a view toward eventually having an important deliverable initiated during China's G20 Presidency. It involves the development of a systematic international investment facilitation[27] program to encourage higher flows of sustainable FDI to developing countries, and especially the least developed among them, in light of the need to mobilize substantially more resources to meet the investment needs of the future.

There is, of course, the issue of defining "sustainable FDI," that is, to identify the sustainability characteristics of FDI, a task that could perhaps be undertaken by a multi-stakeholder working group established for this purpose. It is a task not without challenges. While few (if any) governments are likely to object to an investment support program as such, the proposal made in this chapter to focus on sustainable FDI may create the impression (especially in the private sector) that there is "desirable" FDI and "non-desirable" FDI. This is not the intention. Rather, the idea is that, when seeking to attract FDI and benefit from it as much as possible, investment that has certain sustainability attributes might benefit, for example, from various incentives. In this sense, the approach is not different from the approach taken toward, for example, encouraging renewable energies.

Discussions on investment facilitation (without, however, focusing on the "sustainability" aspects of FDI) were initiated during China's Presidency, but no concrete action program was adopted, perhaps because of a lack of time. However, the Trade Ministers "welcome[d] efforts to promote and facilitate international investment to boost economic growth and sustainable development, and agree[d] to take actions in this regard, including promoting investment in Low Income Countries (LICs)".[28] Moreover, "they encourage[d] UNCTAD, the World Bank, the OECD and the WTO to advance this work within their respective mandates and work programmes, which could be useful for future consideration by the G20".[29] The G20 Summit in Hangzhou subsequently endorsed this approach.[30] This puts at least part of the responsibility of developing a coherent international effort for the promotion of higher FDI flows to developing countries, and especially the least developed among them, in the hands of the international organizations mentioned.

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[27] "Investment facilitation", as used here, includes both investment promotion (i.e., attracting FDI) and benefitting from FDI as much as possible. This is, admittedly, a broad definition, as it includes "benefitting from FDI". The reason for such a broad definition is that one needs to keep in mind that, for countries, FDI is just another tool to advance their growth and development; in other words, countries attract FDI not for its own sake, but with a particular purpose in mind, namely to advance their growth and sustainable development.

[28] "G20 Trade Ministers Meeting Statement", op. cit., para. 17.

[29] Ibid., para. 18.

[30] See, the "G20 Leaders' Communiqué", op. cit..

More specifically, these organizations could develop -- preferably jointly -- an international support program for sustainable investment facilitation. Such an investment support program is in the interest of host countries (i.e., all countries) seeking investment for growth and development, as well as of all home countries seeking to strengthen the international competitiveness of their firms by helping them to establish a portfolio of locational assets as an important source of such competitiveness.[31]

1. Aligning Investment and Trade Support Policies

As mentioned earlier, all governments seek to attract FDI and benefit from it as much as possible. IIAs are meant to help these efforts in an indirect manner by protecting the investments made. However, evidence about the extent to which IIAs *per se* induce greater FDI flows in this manner is mixed.[32] This is not surprising given the importance of the economic FDI determinants, the role of the national FDI regulatory framework and the importance of investment facilitation and promotion to attract such investment. In any event, IIAs themselves typically do not require active and direct efforts to encourage FDI flows and to help host countries benefit from them as much as possible. This is crucial in particular for developing countries, and especially the least developed economies, since most of them simply do not have the capacity to compete successfully in the highly competitive world market for FDI (World Bank, 2012). They need assistance, not only to obtain more FDI, but *sustainable* FDI.[33]

Therefore, what is required is an international support program for sustainable investment facilitation, focused on improving *national* FDI regulatory frameworks and strengthening investment promotion capabilities. Such a program would concentrate on practical ways and means, the "nuts and bolts," of encouraging the flow of sustainable FDI to developing countries, and, in particular, the least developed among them.[34] It would be situated in a context in which all countries seek to attract FDI in general, typically through national investment promotion agencies (but increasingly also through a growing number of sub-national agencies), but it would focus specifically on sustainable FDI.

Such a program would complement the WTO-led Aid for Trade Initiative and the WTO Trade Facilitation Agreement (TFA, which focuses on practical issues related to

[31]China has a "going out" strategy reflecting precisely these objectives; see Sauvant and Chen (2014). Accordingly, an international support program as suggested here, if adopted, would also embed China's own approach to outward FDI (and, for that matter, that of a number of other (especially developed) countries) in an international consensus.
[32]See Sauvant and Sachs (2009); for more recent studies, see, Min *et al.* (2011), Lejour and Salfi (2015) and Gómez-Mera *et al.* (2015). The empirical evidence is particularly mixed in the case of BITs, but (logically) different in the case of investment chapters in preferential trade and investment agreements, as the latter enhance both protection and liberalization and link trade to investment.
[33]See footnote 20.
[34]See UN (2015) sustainable development goal 17: "Strengthen the means of implementation and revitalize the global partnership for sustainable development" with target 17.5: "Adopt and Implement investment promotion regimes for least developed countries."

trade and does not deal with such contentious issues as WTO-committed access conditions for agricultural and other products). In a world of global value chains, these two instruments address one side of the equation, namely, the trade dimension. An international support program for sustainable investment facilitation would address the other side of the equation, namely, the international investment dimension.[35] In today's world economy, characterized by global value chains, trade facilitation alone cannot achieve the benefits that are being sought without investment facilitation. The interface of trade and investment requires close alignment of investment and trade policies.

Analogously to the WTO efforts and in support of them, an investment support program would be entirely technical in nature, focusing on practical actions to encourage the flow of sustainable investment to developing countries and, in particular, the least developed among them.

1. Coverage of an Investment Support Program

An investment support program could address a range of subjects:

- Host countries could commit to making comprehensive information promptly and easily available (online) to foreign investors on their laws, regulations and administrative practices directly bearing on inward FDI, beginning with issues relating to the establishment of businesses and including any limitations and incentives that might exist. Information about investment opportunities and help in project development would also be desirable. Host country governments, be they of OECD or non-OECD economies, could also provide an opportunity for comments to interested stakeholders when changing the policy and regulatory framework directly bearing on FDI, or when introducing new laws and regulations in this area; at the same time, they would of course retain ultimate decision-making power.
- Home countries, too, can increase transparency. From the perspective of investors, transparency is not only important as far as host countries are concerned, but also as regards support offered to outward investors by their home countries. Thus, home countries could commit to making comprehensive information available to their outward investors on the various measures they have in place, both to support and restrict OFDI. Supportive home country measures include information services, financial and fiscal incentives and political risk insurance.[36] Some of these measures are particularly important for small- and medium-sized enterprises.
- Multinational enterprises could make comprehensive information available on their corporate social responsibility programs and any instruments they observe in the area of international investment, such as the Human Rights Council's Guiding Principles on Business and Human Rights, the ILO's Tripartite Declaration, the

[35]However, it should be noted that an investment support program as advocated here places special emphasis on the promotion of sustainable FDI and maximizing its benefits.

[36]For a detailed discussion of home country measures, see Sauvant *et al.* (2014).

OECD's MNE Guidelines, the OECD's due diligence guidance in different sectors, and the United Nations Global Compact.

- Both host countries and MNEs could commit to making investor-state contracts publicly available.

Investment promotion agencies (IPAs), as one-stop shops, could be an investment support program's focal points, possibly coordinating with the national committees on trade facilitation to be established under the WTO's Trade Facilitation Agreement. Within a country's long-term development strategy, IPAs could undertake various activities to attract sustainable FDI and benefit from it as much as possible (OECD, 2015).[37] They could improve the regulatory framework for investment; establish time-limited and simplified procedures for obtaining permits, licenses etc., when feasible and when these do not limit the ability of governments to ensure that the regulatory procedures can be fully complied with by investors and government officials; identify and eliminate unintended barriers to sustainable FDI flows; engage in policy advocacy (part of which could relate to promoting the coherence of the investment and trade regulatory frameworks); render after-investment services; facilitate private–public partnerships; identify opportunities for inserting a country in global value chains; promote backward and forward linkages between foreign investors and domestic firms; and, very importantly, find ways and means to increase the sustainable development impact of FDI in host countries.

Investment promotion agencies could also play a role in the development of investment risk-minimizing mechanisms badly needed to attract long-term investment in general and in various types of infrastructure in particular. They could, moreover, have a role in preventing and managing conflicts between investors and host countries, including by providing information and advice regarding the implementation of applicable IIAs and the preparation of impact assessments to avoid liability arising under these agreements. If conflicts occur, they could seek to resolve them before they reach the international arbitral level. Institutionalized regular interactions between host country authorities and foreign (as well as domestic) investors would be of particular help in this respect (e.g., through investor advisory councils in individual countries).

Finally, as in the WTO's trade instruments mentioned above, donor countries could provide assistance and support for capacity building to developing countries (especially the least developed economies) in the implementation of the various elements of an investment support program. This could begin with a holistic assessment of the various elements of the investment policy framework (economic determinants, the FDI policy framework, investment promotion and related policies) and how it is anchored within the broader context of countries' overall development strategies. The investment policy reviews undertaken by UNCTAD (or the WTO's trade reviews and the OECD's investment reviews) could provide a useful tool for more economies. Support could focus on strengthening the capacity of national IPAs as the country focal points for the implementation of an investment support program.

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[37]See in this context also "Investment promotion and facilitation," in OECD (2015).

3. Avenues that could be Pursued

An investment support program could be advanced through:

- Extending the Aid-for-Trade Initiative to cover investment, and fully so, [38] creating in this manner an integrated platform for promoting sustainable FDI. This would be a logical and practical approach that recognizes the close interrelationship between investment and trade. Its initial emphasis could be on investment in services, given the WTO's General Agreement on Trade in Services: transactions falling under its Mode 3 ("commercial presence") account for nearly two-thirds of the world's FDI stock. The matter could be taken up at the next Global Review on Aid for Trade, as a first step in an exploratory examination of the desirability and feasibility of this approach: an Aid for Investment and Trade Initiative. Alternatively, the current Aid-for-Trade Initiative could be complemented with a separate Aid-for-Investment Initiative.
- Expanding the TFA to cover sustainable investment, to become an Investment and Trade Facilitation Agreement, either through an interpretation of the TFA or through amendment; in either case, member states would have to agree. A subsidiary body of the Committee on Trade Facilitation (to be established in the WTO when the TFA enters into force) could provide the platform to consult on any matters related to the operation of what would effectively be a sustainable investment module within the TFA.
- Launching – by all countries (or a group of interested) governments -- a Sustainable Investment Facilitation Understanding that focuses entirely on practical ways to encourage the flow of sustainable FDI to developing countries. The WTO could work on such an understanding, as part of a post-Doha agenda. Work could also begin within another international organization with experience in international investment matters, especially UNCTAD, the World Bank, or the OECD. Or leading OFDI countries could launch such an initiative, with the G20 (or a number of its members) at its core.[39]
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Every one of these options requires careful study, discussions and consultations, organized by any of the abovementioned international organizations, or by a credible non-governmental organization or by a group of experts and practitioners. IPAs and representatives of the business community should play a central role in this process, as they know best what would be needed to create an effective investment support program.

There are, of course, challenges to be addressed. In particular, there are financial implications of an investment support program. At the present time, a number of bilateral, regional and multilateral organizations undertake, on their own, various types of technical assistance meant to help countries attract FDI, and governments dedicate a substantial

[38]It has already been expanded to cover infrastructure and some elements of investment.
[39]The top ten outward FDI economies, which include four emerging markets, accounted for approximately four-fifths of world FDI outflows in 2014.

amount of financial resources to this objective. A basic characteristic of an investment support program is that it goes beyond what individual countries or organizations are doing, by putting in place a systematic, well-organized international program that is based on a comprehensive blueprint. Such a program, internationally agreed upon, would still be financed by individual governments, as well as regional and multilateral organizations. This could be done if the Aid-for-Trade Initiative (which is already funded) were broadened to cover investment, or by following the TFA model: if a country fails to attract funding from other sources, it may approach the Trade Facilitation Agreement Facility (launched in July 2014)[40] as a last-resort source of finance, More generally, in the same manner as it is recognized that reaching the sustainable development goals will require additional finance, promoting higher flows of sustainable FDI would deserve support, as it directly strengthens the productive capacity of host countries.

The proposal's key premise is the importance and urgency of creating more favorable national conditions in host and home countries to encourage substantially higher sustainable FDI flows to meet the investment needs of the future. All countries should have an interest in this objective, as all countries seek to attract such investment, and many countries support their firms investing abroad. It is encouraging that the members of the G20, in their July 2016 Trade Ministers Meeting Statement and in their September 2016 Summit Communiqué, picked up the idea of investment facilitation, committing themselves to working toward this objective and encouraged international organizations to advance this subject within their respective mandates and work programs. The G20 has given the impetus for initiating work to facilitate the flow of investment. It needs to keep this idea on its agenda, focussing especially on sustainable FDI, with a view toward launching an international support program for sustainable investment facilitation.

V. Conclusions

It is important that China has put the issue of the governance of international investment on the agenda of the G20, since it requires global attention. As intergovernmental discussions and negotiations, as well as the reaction of civil society, have shown, it is a very difficult subject. Hence, there was only so much that the G20 could have achieved during China's one-year Presidency in 2016. As discussed earlier, a number of bilateral and regional negotiations are underway between and among important countries, and it must be expected that these countries would first want to resolve key issues among themselves before addressing the same issues in a more concrete and much wider context.

Considering the difficulty of the subject matter and the shortness of time, the agreement reached by the G20 Trade Ministers (subsequently endorsed by the G20 Heads of State and Government at their summit in Hangzhou in September 2016) on "Guiding

[40] However, it is uncertain how the Trade Facilitation Agreement Facility (which is linked to the TFA) will function in its quest to act as a financing facility to support those developing countries that are unable to access funds from other funding agencies.

Principles for Global Investment Policymaking" is an important accomplishment. Even though the Guiding Principles are fairly general, their adoption by such a diverse group of countries (accounting, as they do, for the lion's share of the world's FDI) is a desirable step toward outlining the architecture and key elements of a comprehensive framework on international investment.

Going forward, three things are particularly important:

The first is that governments need to build on the Guiding Principles. For example – and this would be the least that could be done -- a review could be undertaken (in a mapping/gap analysis) of the extent to which existing international investment agreements reflect already the Guiding Principles and how new agreements take them into account; in the process, the various ways in which this was done could be identified. Another possibility would be for international organizations to monitor future treaty practice in this respect and regularly report on the results of such monitoring, or to invite countries to report about how they reflect the Guiding Principles in their investment policy making. Finally, the Guiding Principles could be elaborated through the addition of annotations; in doing so, a number of the issues that were outlined earlier in this chapter relating to the reform of the international investment law and policy regime could be taken into account. The key is that governments work with the Guiding Principles. For that purpose, these need to be widely disseminated to anyone involved in the negotiation of international investment agreements.

Second, China's Presidency has laid the groundwork for something concrete, relatively non-controversial and in the interest of everyone (including countries that are skeptical about IIAs), namely the facilitation of higher sustainable FDI flows to developing countries, and especially the least developed among them. The G20 explicitly encouraged work in this idea, and various international organizations have initiated such work. It is also encouraging that India has introduced the idea of an "Agreement on Trade Facilitation in Services" in the WTO,[41] a proposal that explicitly covers Mode 3 (i.e., commercial presence) of the General Agreement on Trade in Services; FDI (akin to "commercial presence") in services accounts for roughly two-thirds of total FDI. While there are several options to arrive at an international approach to the facilitation of higher amounts of sustainable FDI, an Agreement on Trade Facilitation in Services could become, in the longer run, a stepping-stone for a broader International Support Program for Sustainable Investment Facilitation. In the near future, however, one way to make progress in this area would be the preparation of G20 "Guiding Principles for Global Investment Facilitation", to draw on the precedence of the G20 "Guiding Principles for Global Investment Policymaking", adopted in Hangzhou, as a basis and stimulant for more concrete work.

[41] See, "Communication from India: Concept Note for an Initiative on Trade Facilitation in Services", document S/WPDR/W/55 of September 27, 2016, and "Communication from India: Possible Elements of a Trade Facilitation in Services Agreement", document S/WPDR/W57 of November 14, 2016.

Finally, the G20 decided to maintain its Trade and Investment Working Group, even if it may not meet at the ministerial level.[42] It could continue to be a valuable additional intergovernmental platform for the continued systematic intergovernmental discussion of the range of issues related to the governance of international investment and serve as an incubator for ideas in this respect. Preferably, its work would be paralleled by an informal, inclusive and result-oriented consensus-building process that takes place outside intergovernmental settings, allowing in this manner for a free exchange of ideas. Germany, which holds the Presidency of the G20 during 2017 and, in that capacity, will co-chair the Working Group, has an opportunity to move the G20's investment policy work forward. However, given the controversies surrounding some investment issues (especially investor-state dispute settlement) and the fact that federal elections will take place in Germany during the Fall of 2017, this might well mean that Germany will take a low profile on investment, focusing on more technical aspects such as investment facilitation. Argentina, which will hold the G20 Presidency after Germany and which has a particular interest in facilitating FDI, could then build on this work with a view toward additional concrete outcomes.

China's influence was limited when the international trade and financial regimes were created. The country, moreover, was not party to the Uruguay Round, as it joined the WTO only in December 2001. As the 2016 leader of the G20, China had the opportunity to initiate and help shape a process that could eventually lead to a plurilateral/multilateral investment agreement that encourages explicitly the flow of substantially higher amounts of sustainable FDI in the framework of a widely accepted enabling investment framework that regulates the relationships between governments and international investors in a balanced manner. The process will take time, patience and the involvement of a wide range of stakeholders and, therefore, has to continue far beyond China's Presidency of the G20. China will need to play an active role in moving this process forward—in its own interest and in the interest of improving the international investment law and policy regime.

References

Chaisse, Julien, *Demystifying Public Security Exception and Limitations on Capital Movement: Hard Law, Soft Law and Sovereign Investments in the EU Internal Market*, 37 U. PA. J. INT'L L.583 (2015a), Available from: http://scholarship.law.upenn.edu/jil/vol37/iss2/3.

Chaisse, Julien, *The Shifting Tectonics of International Investment Law-- Structure and Dynamics of Rules and Arbitration on Foreign Investment in the Asia-Pacific Region*, (2015b) 47(3) George Washington International Law Review 563-638.

Committee on Foreign Investment in the United States, 2016, *Annual Report to Congress, Report Period: CY 2014*, Government Printing Office, Washington, DC.

[42] For the terms of reference of the Working Group, see: https://www.wto.org/english/news_e/news16_e/dgra_09jul16_e.pdf.

Covington & Burling LLP, 2016, “Reflections on the CFIUS process: New CFIUS report underscores growth of Chinese investment in the United States,” Washington, DC: Covington & Burling, 22 February, p. 4.

European Commission, 2015, “Investment in TTIP and beyond: The path for reform,” *Concept Paper*, European Commission, 12 May.

Feldman, M., R. M. Vignolo and C. R. Chiffelle, 2016, *The Role of Pacific Rim FTAs in the Harmonsiation of International Investment Law: Towards a Free Trade Area of the Asia-Pacific*, International Centre for Trade and Sustainable Development and World Economic Forum, E15Initiative, Geneva.

Gómez-Mera, L.,T. Kenyon, Y. Margalit, J. G. Reis and G. J. Varela, 2015, *New Voices in Investment: A Survey of Investors From Emerging Countries*, World Bank, Washington, DC.

Joubin-Bret, A. and C.R. Chiffelle, 2017, *G20 Guiding Principles for Global Investment Policy-Making: A Stepping Stone for Multilateral Rules on Investment*, International Centre for Trade and Sustainable Development and World Economic Forum, E15Initiative, Geneva.

Lejour, A and M. Salfi, 2015, “The regional impact of bilateral investment treaties on foreign direct investment,” Netherlands Bureau for Economic Policy Analysis, *Discussion Paper* 298 [online; cited 21 May 2016]. Available from: http://www.cpb.nl/en/publication/the-regional-impact-of-bilateral-investment-treaties-on-foreign-direct-investment.

Li, J., 2014, “China, US ‘pragmatic about pact,’” *China Daily* [online; cited 16 January 2014]. Available from: http://www.chinadailyasia.com/business/2014-01/16/content_15112679.html.

Min, B., S. Mujumdar and J. Rhim, 2011, “Bilateral investment treaties and foreign direct investment,” *Global Business and Finance Review*, Spring, pp. 75–87.

MOFCOM (Ministry of Commerce of China), NBS (National Bureau of Statistics of China) and SAFE (State Administration of Foreign Exchange), 2016, *2015 Statistical Bulletin of China’s Outward Foreign Direct Investment*, Beijing: China Statistics Press.

OECD (Organisation for Economic Co-operation and Development), 2015, “Investment promotion and facilitation,” in *Policy Framework for Investment*, OECD, Paris, pp. 45–54.

Sauvant, K. P., 2009, “Driving and countervailing forces: A rebalancing of national FDI policies,” in K. P. Sauvant, ed., *Yearbook on International Investment Law and Policy 2008–2009*, New York: Oxford University Press, pp. 215–72.

Sauvant, K. P., 2017, “China moves the G20 on international investment,” *Columbia FDI Perspectives*, no. 190 (2017).

Sauvant, K. P. and L. Sachs, eds, 2009, *The Effect of Treaties on Foreign Direct Investment: Bilateral Investment Treaties, Double Taxation Treaties and Investment Flows*, New York: Oxford University Press.

Sauvant, K. P. and F. Ortino, 2013, *Improving the International Investment Law and Policy Regime: Options for the Future*, Helsinki: Ministry for Foreign Affairs of Finland.

Sauvant, K. P. and V. Z. Chen, 2014, “China’s regulatory framework for outward foreign direct investment,” *China Economic Journal*, Vol. 7, No. 1, pp. 141–63.

Sauvant, K. P., P. Economou, K. Gal, S. Lim and W. P. Wilinski, 2014, "Trends in FDI, home country measures and competitive neutrality," in A. K. Bjorklund, ed., *Yearbook on International Investment Law & Policy 2012–2013*, New York: Oxford University Press, pp. 3–107.
Sauvant, K. P. and K. Hamdani, 2015, An International Support Programme for Sustainable Investment Facilitation [online; 21 May 2016]. Available from: https://works.bepress.com/karl_sauvant/397/.
Shan, W. H., 2015, "The case for a multilateral or plurilateral framework on investment," *Columbia FDI Perspective* No. 161, Columbia Center on Sustainable Investment, a joint center of Columbia Law School and the Earth Institute, Columbia University, USA.
UN (United Nations), 2015, *Transforming Our World: The 2030 Agenda for Sustainable Development* [online; cited 21 May 2016]. Available from: https://sustainabledevelopment.un.org/post2015.
UNCTAD (United Nations Conference on Trade and Development), 2015, *World Investment Report 2015. Investor Nationality: Policy Challenges*, Geneva: UNCTAD.
World Bank, 2012, *Global Investment Promotion Best Practices 2012* [online; cited 21 May 2016]. Available from: https://www.wbginvestmentclimate.org/uploads/Global percent20Investment percent20Promotion percent20Best percent20Practices_web.pdf.
Zhan, J., 2016, "G20 Guiding Principles for Global Investment Policymaking: A Facilitator's Perspective," Geneva: UNCTAD, mimeo.

Annex

G20 Guiding Principles for Global Investment Policymaking[43]

With the objective of (i) fostering an open, transparent and conducive global policy environment for investment, (ii) promoting coherence in national and international investment policymaking, and (iii) promoting inclusive economic growth and sustainable development, G20 members hereby propose the following non-binding principles to provide general guidance for investment policymaking.

I. Recognizing the critical role of investment as an engine of economic growth in the global economy, Governments should avoid protectionism in relation to cross-border investment.
II. Investment policies should establish open, non-discriminatory, transparent and predictable conditions for investment.
III. Investment policies should provide legal certainty and strong protection

[43] "G20 Trade Ministers Meeting Statement: Annex III", 9-10 July 2016, Shanghai, available at https://www.wto.org/english/news_e/news16_e/dgra_09jul16_e.pdf.

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. Dispute settlement procedures should be fair, open and transparent, with appropriate safeguards to prevent abuse.

IV. Regulation relating to investment should be developed in a transparent manner with the opportunity for all stakeholders to participate, and embedded in an institutional framework based on the rule of law.

V. Investment policies and other policies that impact on investment should be coherent at both the national and international levels and aimed at fostering investment, consistent with the objectives of sustainable development and inclusive growth.

VI. Governments reaffirm the right to regulate investment for legitimate public policy purposes.

VII. Policies for investment promotion should，to maximize economic benefit, be effective and efficient, aimed at attracting and retaining investment, and matched by facilitation efforts that promote transparency and are conducive for investors to establish, conduct and expand their businesses.

VIII. Investment policies should promote and facilitate the observance by investors of international best practices and applicable instruments of responsible business conduct and corporate governance.

IX. The international community should continue to cooperate and engage in dialogue with a view to maintaining an open and conducive policy environment for investment, and to address shared investment policy challenges.

These principles interact with each other and should be considered together. They can serve as a reference for national and international investment policymaking, in accordance with respective international commitments, and taking into account national, and broader, sustainable development objectives and priorities.