Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)

Managing Editor: Riccardo Loschi (Riccardo.Loschi@columbia.edu)

The Columbia FDI Perspectives are a forum for public debate. The views expressed by the authors do not reflect the opinions of CCSI or our partners and supporters.

No. 316 October 18, 2021

Green FDI: Encouraging carbon-neutral investment

by

Karl P. Sauvant, Matthew Stephenson and Yardenne Kagan*

The world needs more "Green FDI"—FDI that contributes to environmental objectives and, especially, the reduction of greenhouse gas emissions. Governments and MNEs need to work together to achieve this objective.

Aggressive goals and target dates have been set by countries and MNEs to reduce emissions. Nationally determined contributions under the Paris Agreement contain commitments to do so.

To support meeting these commitments—and to encourage additional MNEs to reduce emissions throughout their supply chains—proactive policies and measures are needed. Host countries should take the following priority actions:

- Incentivize—if need be, require—foreign affiliates to be/become carbon neutral for MNEs of a certain size. Reporting and publishing information for these firms' affiliates' carbon footprints should be mandated.
- Incentivize carbon-neutral FDI through financial and non-financial measures (preferably linked to countries' nationally determined contributions), including through creating a category of "Recognized Sustainable Investor" (RSI).[1] Criteria designating an RSI could include becoming carbon neutral or even climate positive. Once designated as an RSI, investors would receive preferential treatment, such as shorter timeframes for approvals, a "green channel" for imports and exports, or "red carpet" treatment for aftercare.
- Link taxes to the level of carbon emissions in investment projects: the lower the carbon footprint, the lower taxes. Governments can also facilitate tapping green finance (now in the trillions of dollars) as a source of capital for carbon-neutral FDI projects, supported by development finance institutions and international support mechanisms (e.g., a new Clean Development Mechanism).

- Host countries should create a pipeline of such projects, promoted through a (preferably multilateral) platform that helps connect capital to investment opportunities, and investment authorities to cooperate on two-way FDI flows.

Home countries also have a responsibility to promote Green FDI, including by linking outward FDI support to the observance of home-country climate standards, combined with requiring their outward investors to publish the carbon content of large-scale FDI projects.[2] Home-country measures—for instance, political risk insurance or guarantees—can be linked to carbon content: lower-carbon investments should receive more favorable insurance and guarantee terms. Home countries should not allow the relocation of high carbon-emitting industries to elsewhere. Home and host countries should link financing to the level of carbon emissions in investment projects: the lower the carbon footprint, the more preferential the financing.

Such carbon-emission reduction efforts should be supported—in the context of encouraging Green FDI in general—by international investment agreements (IIAs) that include provisions facilitating Green FDI, focusing on large MNEs.[3] For example:

> *"Each Party shall encourage the facilitation of green foreign direct investment that assists the Parties to become carbon neutral, including by promoting renewable energy, energy efficient investments and appropriate technologies, and taking other measures that help the transition to a carbon-neutral, sustainable and climate-resilient economy".*[4]

In the context of a WTO Investment Facilitation for Development agreement, such a provision would create the basis for technical assistance and capacity building to facilitate carbon-neutral FDI.

A more ambitious approach would be to include carbon-neutral FDI as one of the components of the contribution-to-development criterion of the Salini criteria (used to define "investment"); to make it (given its significance) an autonomous criterion additional to the Salini criteria; or to allow governments to deny protection to investments that fall short of carbon neutrality, through a denial-of-benefits clause. Joint committees increasingly foreseen in IIAs could set mutually applicable Green FDI standards (covering also carbon-neutral FDI) for investors and investments from each country in the territory of the other.

The private sector has begun to undertake carbon-neutral FDI. For example, Robert Bosch Inc. has declared that it is carbon neutral with respect to direct emissions from owned or controlled sources, and the firm has committed to reducing upstream and downstream emissions by 15% by 2030. Apple has committed to be 100% carbon neutral throughout its supply chain and products by 2030, and Toyota is working with dealers and suppliers to eliminate emissions by 2050. In fact, over 100 companies have committed to net-zero carbon emissions by 2040.[5]

MNEs will be further encouraged to move to carbon neutrality through court decisions, as highlighted by a 2021 Dutch court ruling. The court decided that Royal Dutch Shell's emission-reduction targets of 20% by 2030, 45% by 2035, and net zero emissions by 2050 were not sufficient; it ruled that Shell must reduce its carbon emissions by at least net 45% by the end of 2030, from 2019 levels.

This decision shows that the time is ripe for governments and firms to work together to ensure that FDI flows become increasingly green. Determined national and international efforts, as well as pioneering company actions and public-private cooperation, are needed.

---

* Karl P. Sauvant (karlsauvant@gmail.com) is Resident Senior Fellow, Columbia Center on Sustainable Investment, a joint center of Columbia Law School and the Earth Institute, Columbia University; Matthew Stephenson (Matthew.Stephenson@weforum.org) is Policy and Community Lead for International Trade and Investment at the World Economic Forum; Yardenne Kagan (ykagan@intracen.org) is Project Officer for the ITC/DIE Project on Investment Facilitation for Development, International Trade Centre. The views in this *Perspective* do not necessarily reflect those of the institutions with which the authors are affiliated. The authors are grateful to Khalil Hamdani, Peter Muchlinski and Markus Thill for their helpful peer reviews.

[1] Karl P. Sauvant and Evan Gabor, "Facilitating sustainable FDI for sustainable development in a WTO Investment Facilitation Framework: four concrete proposals", *Journal of World Trade*, vol. 55 (2021), pp. 261-286.

[2] Some countries already require companies to report on their annual carbon dioxide emissions, e.g., the UK, under Art. 15 of the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 No. 1970.

[3] Following the BEPS approach.

[4] Building on, e.g., Art. 8.11.2.c of the EFTA-Ecuador CEPA.

[5] "Net zero carbon by 2040".

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: "Karl P. Sauvant, Matthew Stephenson and Yardenne Kagan, 'Green FDI: Encouraging carbon-neutral investment,' Columbia FDI Perspectives No. 316, October 18, 2021. Reprinted with permission from the Columbia Center on Sustainable Investment (http://ccsi.columbia.edu)." A copy should kindly be sent to the Columbia Center on Sustainable Investment at ccsi@law.columbia.edu.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Riccardo Loschi, riccardo.loschi@columbia.edu.

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at *http://ccsi.columbia.edu*.

Most recent *Columbia FDI Perspectives*

- No. 315, Craig S. Miles, 'In defense of quantum,' Columbia FDI Perspectives, October 4, 2021
- No. 314, George Kahale, III, 'It's quantum!,' Columbia FDI Perspectives, September 20, 2021
- No. 313, Shradha Mani, "FDI and CSR to promote social entrepreneurship and sustainable FDI: Lessons from India," Columbia FDI Perspectives, September 6, 2021
- No. 312, Tomoko Ishikawa, "Materializing corporate social responsibility in investor-state dispute settlement," Columbia FDI Perspectives, August 23, 2021
- No. 311, Matthew Stephenson, "The OFDI policy path and the product space," Columbia FDI Perspectives, August 9, 2021

All previous *FDI Perspectives* are available at https://ccsi.columbia.edu/content/columbia-fdi-perspectives.