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Investment facilitation and India: A closer look*

by

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Prior to the ongoing pandemic, and despite India's economic slowdown, FDI inflows had been officially recorded at a historical high.¹ Concurrently, India's "[ease of doing business](#)" ranking rose significantly. Investment-facilitation measures have potentially been a significant yet underrecognized force bringing about this result. At the federal level, leading such measures is [Invest India](#), the country's core institution for investment promotion and facilitation. Invest India is a government-funded, not-for-profit private-public partnership wherein domestic private industry chambers hold the majority of shares. This allows it to provide all facilitation services free-of-charge, while maintaining strong connections with industry networks and credibility within the state.

For a large and politically diverse state such as India, the potential incompatibility of investment-facilitation measures (such as national focal points and single-window clearance mechanisms) with its federal state structure has been a legitimate concern, particularly given how FDI projects inevitably require clearances from multiple levels of subnational political entities. Yet, Invest India virtually coordinates between federal and provincial state agencies, both horizontally and vertically. It therefore helps to diminish procedural inefficiencies caused by the "center vs. state" demarcation, using a managerial approach whereby a single "relationship manager" collaborates with both federal and state governments and supports an investor during the entire investment lifecycle. By doing so, it attempts to fast-track all types of licenses, approvals and clearances for investors, without encroaching upon the constitutionally guaranteed functional autonomy of regional and local authorities.

Despite the domestic adoption of investment-facilitation measures, India has consistently opposed discussions on investment facilitation at the WTO and declined attending any related meetings or workshops. While the Indian government has provided official reasons, including the WTO's lack of mandate and greater priority of such other issues such as food security, critics have also addressed the risks of policy-space curtailment and market-access obligations, despite their explicit exclusion in the various proposals.²

The institutional structure and division of responsibilities within India's administrative services may shed additional light on the country's stance. Reflecting the subject matter overlap of FDI-related measures being negotiated at an international trade body, multiple independent departments of the central

government are involved in internal deliberations. First, the Department of Commerce of the Ministry of Commerce and Industry (“DOC”), whose mandate covers international trade policy and related institutions such as the WTO. Second, the Department for Promotion of Industry and Internal Trade (“DPIIT”) of the same ministry, which formulates and governs FDI policy in India. Third, the Department of Economic Affairs of the Ministry of Finance (“DEA”), which oversees India’s negotiations of investment treaties and investment chapters within FTAs.³

While the DOC and the DPIIT have been proponents of India’s participation in the WTO’s investment-facilitation negotiations,⁴ the DEA, which *inter alia* has been defending against India’s hefty load of investment arbitration claims⁵ and is understandably cautious, has persistently opposed the idea. This underlying complexity beneath an official government position—where various departments “share the turf”—gives the upper hand (by means of possessing the heavier clout and the stronger mandate) to the department that also holds unfavorable views of FDI rules that are binding and enforceable.

Whether India’s decision to entirely shun investment facilitation discussions at the WTO will detrimentally affect incoming FDI is unclear, especially since the principal FDI determinants are typically economic factors.⁶ Greater empirical work is needed on the issue and, more generally, on the impact of investment-facilitation measures on qualitative factors as welfare impact, sustainable development, administrative accountability, and dispute prevention. Such research would help to understand key policy issues for India, namely: what is the added gain of joining a multilateral agreement with binding obligations and an uncertain scope for security exceptions when related measures are already domestically available; and if and how the benefits outweigh the additional administrative costs.

That said, total non-participation from the outset is arguably overkill and an unnecessarily strict position for an agenda that is relatively technical, uncontroversial and might well yield an actual agreement by the 12th WTO Ministerial Conference scheduled for 2021. As it stands, more than 100 WTO members are now participating in the negotiations. Due to this heightened traction, it is potentially worth re-evaluating whether the Indian position is not excessively cautious and overuses the “BIT lens” to view investment facilitation. Instead, the question should be asked: should India be contributing toward shaping the rules on investment facilitation now, rather than risk being a rule-taker later?

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¹ Over US\$50 billion from April-2019 to March 2020. [Fact Sheet on FDI April 2000 – March 2020](#).

² [Reji K. Joseph, “Investment facilitation agreement in WTO: What it contains and why India should be cautious?,” *Institute for Studies in Industrial Development* \(Dec. 7, 2017\).](#)

³ See the 1961 Government of India (Allocation of Business) Rules. The DEA’s role is also recognized by the [Brazil - India Investment Cooperation and Facilitation Treaty \(2020\)](#).

⁴ See, e.g., [Asit Ranjan Mishra, “WTO: India may drop opposition to investment facilitation treaty,” *LiveMint India* \(Feb. 21, 2018\).](#)

⁵ To date, at least [25 ISDS claims](#) have been brought against India.

⁶ For instance, much needed reforms in land ownership, tax and labor law would have greater and more immediate impacts on India’s attractiveness for inward FDI.

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