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Another brick in the wall: the EU-India investment-facilitation mechanism*

by

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Almost unnoticed in the discussions on investment facilitation, the EU-India investment-facilitation mechanism (IFM) was officially launched in July 2017. Moved by a reciprocal interest in re-launching negotiations for a mutually beneficial free trade agreement (the negotiation of which had stalled after 12 negotiating rounds and only recently resumed), India and the EU opted for a practical approach, implementing a non-WTO related mechanism. The IFM does not concern attracting potential investors that have not yet selected an investment destination (investment promotion), but starts at the pre-establishment phase, when an investor shows interest in a location, and touches upon the policy framework. The EU-India IFM is a platform to address issues faced by existing EU investors in India—and to some extent affects companies that consider investing in India, as some of the IFM’s policies may discourage new investments.

India is the fourth largest services exporter to the EU, and the sixth largest destination for EU services exports.¹ The IFM builds on the outcome of the [13th EU-India summit](#) held in Brussels in March 2016, and is expected to ensure a more predictable business environment for EU investors, seeking to identify and solve problems faced by investors regarding operations in the country. [Invest India](#) is the country’s official investment promotion and facilitation agency. It serves both as a contact point, to which EU investors can direct their queries, and as a single-window entry point for EU investors that need assistance with their operations at the central or state level.

The value-added of an instrument such as the EU-India investment-facilitation mechanism lies in its simplicity and practicability. Like the WTO structured discussions on investment facilitation, the EU-India mechanism focuses on transparency, streamlining procedures and eliminating bottlenecks for foreign investors, also echoing [India’s proposal for a trade-facilitation agreement for services](#), circulated among WTO members in July 2017. Although excluded from the discussions on investment facilitation, market access remains one of the

most sensitive issues for India, which strongly opposed a multilateral agreement that encompasses market access as it would amount to surrendering policy space.² India's position, however, appears more nuanced within the bilateral context. The EU mechanism addresses issues that implicate market access, for instance, repeated and sudden customs duties in the information and communications technology or automotive industries, which increase the costs of inputs of companies that have invested in India and thus make the business environment unpredictable.

Almost two years down the road, the IFM is working with mixed results. FDI from the EU decreased in 2017-2018, but over the same period services exports increased modestly for the EU (+0.1 million EUR) and more remarkably for India (+2.2 million EUR), in line with India's current policies to favor local production at the expense of imports. Most of the problems faced by EU investors so far have been policy and regulatory issues, not always straightforwardly manageable and/or solvable by the IFM. As a consequence, the more company-specific issues have been left to be dealt with at the bilateral level between India and the EU member state concerned. These complications notwithstanding, the EU expects that, by raising problematic issues continuously through the IFM, some improvements in the ease of doing business will come eventually.

What can be learned from this experiment? Bilateral initiatives, like the EU-India mechanism, should be seen as bricks for building and shaping the structure of a multilateral investment-facilitation framework. Bilateralism offers insights on how public policies could evolve, and it is instrumental for understanding countries' positions and strategies. The IFM revealed that India is more lenient about sensitive issues like market access bilaterally rather than multilaterally.

Bilateralism, however, enhances the fragmentation of international economic law, by proceeding in an uncoordinated and piecemeal manner.³ It exposes countries (especially least developed countries) to the risk of being left behind because of their inability to mobilize international support for technical assistance and capacity building, necessary to effectively attract and retain investment. Good practices such as transparency and fast-track procedures can improve domestic institutional frameworks and help attract FDI. However, it would be unrealistic to expect that such practices would be implemented unless substantial technical assistance were provided. Arguably, therefore, least developed countries should be more supportive of discussions on investment facilitation at the WTO than expect technical assistance on a bilateral basis.

In the absence of a multilateral investment-facilitation framework, bilateral initiatives are instrumental for understanding how far countries are willing to go. But what is achieved bilaterally cannot automatically be transplanted into a multilateral agreement, unless the level of ambition remains low. One first step for multilateralists could be to adopt a flexible approach that leaves states enough autonomy to define policies to implement commonly agreed

principles and that builds upon the sharing of knowledge and experience of other countries, thus imitating the BRICS' approach.⁴ As often is the case in the multilateral trading system, the higher the ambition, the harder the negotiations.

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¹ [Eurostat](#).

² [Subhayan Chakraborty, "Why India has opposed investment facilitation talks at WTO," *Business Standard*, May 15, 2017.](#)

³ [ICTSD, "Crafting a framework on investment facilitation," June 2018, p. 11.](#)

⁴ [Ninth Meeting of the BRICS Trade Ministers Brasília, 11 November 2019.](#)

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