13

China's Approach to Investment Facilitation

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13.1 Introduction

Investment facilitation is an important means to attract foreign investment and promote outward investment. The importance of investment facilitation measures have been recognized at national and international lawmaking and policymaking. China is a major economy in the world, and it is of interest to explore how China deals with the issue of investment facilitation, as China's approach could be critical to the creation of the rule of law in international investment facilitation.

13.2 China's Investment Facilitation Practices in National Investment Laws

China has adopted a variety of measures that can facilitate both inbound foreign investment and outward Chinese investment. The Department of Foreign Investment Administration of the Ministry of Commerce of the People's Republic of China (MOFCOM) is responsible for the management of foreign investment, informing about new policies, investment opportunities, investment services, and enterprise inquiries and other services. Investment promotion agencies exist not only at the national level but also at the local level. The Department of Foreign Investment and Economic Cooperation of MOFCOM provides services such as informing about new policies, country (region) guidelines, foreign investment development reports, online services, and online inquiry mechanisms. At the same time, MOFCOM is also responsible for the management of Overseas Economic and Trade Cooperation Zones in other countries. The Investment Promotion Bureau of MOFCOM is responsible for the specific implementation of these measures.

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13.2.1 Historical Review of China's Investment Facilitation Measures

13.2.1.1 Investment Facilitation before the Adoption of the FIL

Before the Foreign Investment Law (FIL) was enacted in 2019, there were three Chinese laws to regulate foreign investment, namely, the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures,[1] the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures,[2] and the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises.[3] However, these laws focus on the operation and organization of the three types of foreign-funded enterprises, as well as the supervision and protection of foreign investment. They also provide foreign-funded enterprises preferential tax treatment. In general, there are few investment facilitation provisions in these investment laws, with provisions on visa facilitation as a probable exception.

China's opening up is accompanied by efforts of streamlining administrative procedures and delegation and decentralization of power to create a favorable business environment based on the rule of law. The practice of China's free trade zones (FTZs) is a reflection of this policy. In September 2013, the Shanghai FTZ was set up; in April 2015, FTZs were set up in Guangdong Tianjin and Fujian; and in March 2017, more FTZs were set up in Liaoning, Zhejiang, Henan, Hubei, Chongqing, Sichuan, and Shanxi. Many measures adopted in these FTZs aim at promoting and facilitating foreign investment.

Notably, to simplify the administrative procedure, three key measures have been adopted. First, the streamlining and speeding up administrative procedure related to the admission and establishment of foreign investment. In FTZs, most foreign investment enterprises are set up

[1] Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, adopted at the Second Session of the Fifth National People's Congress on 1 July 1979, after 3-times amendments, replaced by Foreign Investment Law of the People's Republic of China (Issued on 15 March 2019, effective on 1 January 2020).

[2] Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures, adopted at the First Session of the Seventh National People's Congress on 13 April 1988, after 4-times amendments, replaced by Foreign Investment Law of the People's Republic of China (Issued on 15 March 2019, effective on 1 January 2020).

[3] Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, adopted at the Fourth Meeting of the Standing Committee of the Sixth National People's Congress on 12 April 1986, after 2-times amendments, replaced by the Foreign Investment Law of the People's Republic of China (Issued on 15 March 2019, effective on 1 January 2020).

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through a simple record-filing procedure instead of a burdensome approval procedure. Furthermore, a large part of the approval authority is delegated from the central government to the local government, and the approval procedure is also shortened. Second, for the establishment of foreign investment enterprises in the FTZs, the requirement of registered capital is reduced. Third, reform measures are adopted through easing the burdens of taxes and fees on foreign investment enterprises. The experiences and best practices gained in FTZs are supposed to be adopted nationwide. Precisely for this reason, the term FTZ is prefixed with the word "pilot".

In September 2016, aiming at reforming the relevant administrative review and approval requirements stipulated in the three foreign investment laws, the Standing Committee of the National People's Congress (NPC) decided to amend these laws. These amendments put an end to the foreign investment approval mechanism, and the level of investment facilitation has been greatly improved.

In 2017, the Central Committee of the Communist Party of China put forward a policy to implement "high standard liberalization and facilitation on trade and investment" and claimed that "all businesses registered in China will be treated equally".[4]

As can be seen, investment liberalization and facilitation measures are actually an important policy tool for implementing China's opening up and reform policy. While this policy had heavily relied on granting foreign investment preferential treatment, it has shifted its focus to creating a favorable business environment for all market players.

13.2.1.2 Investment Facilitation after the Enactment of the FIL

The FIL replaced the three foreign investment laws and became China's unified legislation on foreign investment regulation. On January 1, 2020, the Regulation for implementing the FIL ("Regulation") came into effect.[5] Upholding investment liberalization and facilitation, the FIL not only introduces national treatment subject to a negative list approach for

[4] Central Committee of the Communist Party of China, 'Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era-Delivered at the 19th National Congress of the Communist Party of China' (Issued on 18 October 2017, effective on 18 October 2017).

[5] The Regulations for the Implementation of the Foreign Investment Law, issued by the State Council on 26 December 2019.

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market access of foreign investment but also stresses investment facilitation.

The general provisions of the FIL states that China "implements high-level investment liberalization and facilitation policies, establishes and improves the foreign investment promotion mechanisms, and builds a stable, transparent, and foreseeable investment environment with a level playing field". The FIL and the Regulation do not draw a clear distinction between investment promotion and facilitation and treated them combined. The investment promotion clauses also reflect the various elements of investment facilitation.

First, transparency of policy and law. Various articles of the FIL and the Regulations provide that transparency is needed in the making of relevant policies and laws. Article 14 of the Regulation emphasizes the transparency of the work of the standardization administration. Article 10.1 of the FIL ensures the right of foreign-funded enterprises to comment and make suggestions in appropriate manners on relevant laws, regulations, and rules related to foreign investment and to participate in the formulation and amendment of laws, regulations, and rules. Article 10.2 provides that regulatory documents and adjudicative instruments, among others, relating to foreign investment, shall be published in a timely manner.

Second, simplification of administrative procedures and improvement of investment services. Article 11 of FIL provides that China should establish and improve its foreign investment service system. Article 8 of the Regulation further proposes methods of providing services through government websites and integrated online platforms. Article 18 of the FIL and Article 19 of the Regulations provide local governments should improve investment promotion and facilitation policies and measures. Article 19 of the FIL and Article 20 of the Regulations provide that the government shall optimize services for foreign investment of various aspects. Article 35 of the Regulations also requires the government to improve foreign investment licensing and approval efficiency.

Third, enhancing international cooperation. Under Article 12 of the FIL, the state establishes multilateral and bilateral mechanisms for investment promotion with other countries, regions, and international organizations to enhance international exchange and cooperation in the field of investment. The Investment Promotion Bureau is actively exploring investment promotion cooperation and exchanges with many foreign bilateral agencies, for example, by signing Memorandums of Understanding (MOUs), aiming at strengthening investment

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information exchanges, co-organizing investment activities and other ways to provide services and support for companies and institutions.[6]

Fourth, facilitating investment flow through FTZs. Under Article 13 of the FIL and Article 12 of the Regulation, FTZs can be established to promote foreign investments. China has set up a number of FTZs in the recent decade, primarily aiming at facilitating trade and investment. Preferential policies are adopted to attract foreign investment in the FTZs. Prominent facilitation mechanisms adopted include the "single window system" and simplified and rapid registration procedures.

Fifth, establish and improve investment complaint mechanisms. Under Article 26 of the FIL, China shall establish a working mechanism for dealing with complaints of foreign-funded enterprises to address their concerns in a timely manner and coordinate and improve the relevant policies and measures all with the aim of avoiding the initiation of legal dispute settlement proceedings. Article 29 of the Regulation further provides that the governments at or above the county level shall establish and improve a complaint mechanism for foreign-funded enterprises. MOFCOM's Measures on Complaints for Foreign-invested Enterprises have further refined the substantive and procedural requirements of the complaint mechanism.[7] A "National Foreign Investment Complaint Center" will be established, and relevant local agencies will also be designated to handle complaints from foreign enterprises. MOFCOM, in conjunction with relevant ministries and committees of the State Council, shall also establish an interministerial joint conference system for foreign-invested enterprise complaints at the central level as well as complaints of local foreign-funded enterprises.

13.2.2 Home State Investment Facilitation Measures in China

Since the incorporation of the "Going Abroad" strategy in the Outline of the 10th Five-Year Plan for National Economy and Social Development in 2001 and the adoption of the "Belt and Road" initiative in 2013, China has issued a series of regulations and rules for regulating outbound

[6] See Invest in China, online at: www.fdi.gov.cn/1800000121_10000041_8.html (last accessed 13 June 2023).

[7] Measures for Complaints by Foreign-invested Enterprises, Order 2020 No. 3 (2020) of the Ministry of Commerce of the People's Republic of China, came into force on 1 October 2020.

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investment.[8] Most of them focus on regulating the conduct of Chinese investors. In order to contribute to the sustainable development of the host states, Chinese enterprises are required to comply with local laws and ensure their corporate social responsibility. Since 2006, China began publishing the Catalogue of Countries and Industries for Guiding Overseas Investment and published Guiding Policies for Overseas Investment Industries. Many of these regulations and rules contain investment facilitation measures, such as improving taxation, foreign exchange, insurance, customs, and information services and establishing information service systems.

Setting up overseas economic and trade cooperation zones are an important foreign investment promotion and facilitation measure adopted by China. Since 2014, under the initiative of MOFCOM, some Chinese enterprises established such zones abroad in accordance with local laws.[9] In these zones, infrastructures and other public service are provided for investment enterprises. Chinese enterprises established in these zones were able to enjoy various benefits through investment facilitation provided by the host country. The Department of Outward Investment and Economic Cooperation of MOFCOM is responsible for supervising these zones. This department, through China Investment Promotion Agency (CIPA) and in cooperation with other investment promotion agencies, also carries out various investment promotion and facilitation services, such as providing information about relevant overseas investment policies and specific country (region) guidelines.[10]

[8] The major legal documents on overseas investment are listed below: The Guidelines for Social Responsibility in Foreign Project Contracting (2012), Guidelines for Environmental Protection in Foreign Investment and Cooperation (2013), Provisions on Regulating Competitive Behaviors in the Fields of Foreign Investment Cooperation (2013), Measures for the Administration of Overseas Investment (2014), Measures for the Administration of Overseas Investment of Enterprises (2017), Guidelines on Social Responsibility of Chinese Overseas Mining Industry (2017), List of Sensitive Sectors for Outbound Investment (2018). For these relevant legal instruments, please see Ministry of Commerce of the People's Republic of China Department of Outward Investment and Economic Cooperation, online at: http://hzs.mofcom.gov.cn/article/zcfb/b/ (last accessed 13 June 2023).

[9] See List of Overseas Economic and Trade Cooperation Zones that have passed the confirmation and assessment, online at: http://fec.mofcom.gov.cn/article/jwjmhzq/article01.shtml (last accessed 13 June 2023).

[10] Since 2009, Chinese Academy of International Trade and Economic Cooperation of the Ministry of Commerce, the Economic and Commercial Counsellor's Office of Chinese Embassies in various countries, and the Department of Outward Investment and Economic Cooperation of the Ministry of Commerce have jointly issued the Guidelines

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13.3 China and International Investment Facilitation Rulemaking

China's involvement in international investment facilitation rulemaking can be seen from its active participation in the discussions in G20, World Trade Organization (WTO), and negotiations of free trade agreements (FTAs).

13.3.1 China's Participation in the Making of an IFD Framework in the WTO

Regarding the elements that should be included in a WTO IFD Agreement, China has put forward its suggestions in the document entitled "Possible Elements of Investment Facilitation", relating to transparency, efficiency, and special opinions "responding to developing and least-developed members' needs".

Transparency aims to increase the certainty and predictability of rules, which is an important aspect of the formal rule of law in both national and international laws.[11] It has a broad coverage, ranging from publication of laws and regulations, setting up enquiry points, and engaging stakeholders in the rulemaking process. The efficiency of administrative procedures includes streamlining of licensing and qualifications procedures, specifying reasonable time frames, providing timely notice of decisions, and fostering "institutional cooperation and coordination" of regulatory authorities, especially "one-stop" services. China advocates for the "special and differential treatment" principle, which includes technical assistance and capacity building with priority consideration given to the "special economic situation and development needs of least-developed members".[12] China also stresses improving the "efficiency of outward investment screening and approval process" and providing "appropriate policy support for outward investment", such as insurance and promotion services.

on Overseas Investment Cooperation Countries (Regions) to help Chinese overseas investors understand the investment climate of the host country.

[11] B. Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), p. 91; W. W. Bishop, 'The International Rule of Law' (1961) 594 *Michigan Law Review* 553–574.

[12] As a developing state, China put forward several relevant submissions on the issue of special and differential treatment. See, e.g., 'Improving the Special and Differential Provisions in the Dispute Settlement Understanding, Communication from China', TN/DS/W/29, 22 January 2003.

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China actively participated in the preparation and making of an agreement of investment facilitation for development in the WTO. In April 2017, China and some developing country members formed the "Friends of Investment Facilitation for Development" (FIFD), an informal group open to all WTO members. The FIFD held informal dialogues hoping to use the WTO as a forum to discuss the issue of investment facilitation for development.[13] In December 2017, structured discussions for a multilateral framework on investment facilitation had been initiated, upon the proposals of China and other developing countries.[14] In the 11th WTO Ministerial Conference, the Joint Ministerial Statement on Investment Facilitation was adopted.[15] In 2019, China signed a joint ministerial statement with many WTO members, emphasizing that the core objective of the framework is "facilitating greater developing and least-developed Members' participation in global investment flows".[16]

13.3.2 China's Role in the G20 Global Investment Guiding Principles

China was the chair of the G20 Meetings in 2016. The G20 Summit approved the G20 Guiding Principles for Global Investment Policymaking ("Guiding Principles"),[17] which caters for the needs of China and other developing countries. The Guiding Principles may be regarded as the first comprehensive multilateral framework on investment policymaking in the sense that the ICSID Convention deals only with investor–state investment disputes (ISDS), while the GATS and the WTO Agreement on Trade-Related Investment Measures (TRIMs) only touches upon a limited range of investment measures mainly relating to commercial presence and performance requirements. Notably, the Guiding Principles embody the intention of China and world leading

[13] WTO, 'Joint Ministerial Statement on Investment Facilitation for Development', Ministerial Conference Eleventh Session, Buenos Aires, 10–13 December 2017, WT/MIN(17)/59, 13 December 2017; 'Joint Statement on Investment Facilitation for Development', WT/L/1130, 10 December 2021.

[14] 'Draft Ministerial Decision on Investment Facilitation for Development', Ministerial Conference Eleventh Session, Buenos Aires, 10–13 December 2017.

[15] WTO, 'Joint Ministerial Statement on Investment Facilitation for Development', WT/MIN(17)/59.

[16] WTO, 'Joint Ministerial Statement on Investment Facilitation for Development', WT/L/1072, 5 November 2019.

[17] G20 Trade Ministers Meeting Statement (9–10 July 2016, Shanghai), Annex III: G20 Guiding Principles for Global Investment Policymaking, online at: http://www.g20.org/English/Documents/Current/201607/t20160715_3057.html (last accessed 13 June 2023).

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economies of advancing investment promotion and facilitation at the multilateral level.[18] Furthermore, the anti-corruption principles and action plans issued at the Hangzhou G20 Summit also reflect the aim of advancing sustainable investment. Though the Guiding Principles are not legally binding, they are of great significance for unifying the investment policies.

13.2.3 Typical Investment Facilitation Provisions in China's FTAs

Both the China–Korea FTA and China–Australia FTA include investment facilitation provisions that go beyond China's existing investment facilitation commitments in other investment agreements. Besides, the China–Mauritius FTA as the first FTA between China and an African country also contains some investment facilitation provisions. The provisions in these FTAs will be analyzed in the following.

First, provisions of establishing contact points. According to Article 12.19 of the China–Korea FTA, both countries shall designate "contact points", which encompass both the central government and local government levels, for improving the contracting parties' investment environment through promptly responding to the complaints and difficulties of investors. The contact points from the two countries will also endeavor to provide advisory services available with regard to establishment, liquidation, and investment promotion activities as much as possible. The contact points can be understood as a kind of mechanism of facilitating communication between host state actors and foreign investors.

Second, provision of transparency. Under Article 12.8 of the China–Korea FTA, except for special circumstances, each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures, and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party and which pertain to or affect investment activities. Transparency is essential to ensure the predictability of laws and regulations by giving the public the opportunity to comment on new laws and by introducing time intervals before they take effect. The

[18] G20 Trade Ministers Meeting Statement (9–10 July 2016, Shanghai), Annex III: G20 Guiding Principles for Global Investment Policymaking, VII, online at: http://www.g20.org/English/Documents/Current/201607/t20160715_3057.html (last accessed 13 June 2023).

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China–Australia FTA contains similar transparency provisions in Articles 2, 3, 4, and 5.

Third, provisions of improving efficiency and effectiveness of investment-related visa approval procedures. Both the China–Korea FTA and Australia–China FTA highlight the facilitation of visa and residence-related procedures. These elements are shown in Articles 11.2 and 11.3 and Annexes 11-B and 11-C of the China–Korea FTA. Besides, the Australian government also agreed to provide certain visa facilitation arrangements to relevant personnel of Chinese enterprises who enter Australia for investment-related purposes.[19]

Fourth, provision of cooperation for investment facilitation. Under the three FTAs, an "Investment Committee" is established to address matters related to investment facilitation. This requirement is embodied in Article 12.17 of China–Korea FTA, Article 7 of the China–Australia FTA, and Article 12.1.3 of the China–Mauritius FTA.

13.4 Features and Prospects of China's Investment Facilitation Approach

13.4.1 Implementing Two-way Investment Facilitation

Outbound investment can bring benefits to the home state, such as increasing trade, obtaining necessary resources, and strengthening political and economic relationship. It may also give rise to some concerns over industrial relocation, domestic employment, technology transfer, and national security. Thus, it is not surprising that many countries have enhanced investment review of outbound investment. Given that some countries, especially LDCs, may lack sufficient capability for investment review, it is hoped that the home state of the investor will take investment promotion and facilitation measures and help LDCs to take relevant measures promoting sustainable development.[20] It has been argued that China's outbound investment regulatory framework is relatively

[19] ChAFTA MOU on an Investment Facilitation Arrangement 2015, Canberra, 17 June 2015, paras. 8–11.

[20] See R. Polanco Lazo and A. Bazrafkan, 'Investment Promotion and Facilitation for LDCs', in M. Elsig, M. Hahn, and G. Spilker (eds.), *The Shifting Landscape of Global Trade Governance: World Trade Forum* (Cambridge: Cambridge University Press, 2019), pp. 295–322.

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sophisticated and is shifting "from restricting to encouraging" to "facilitate and support outward FDI to create globally competitive Chinese firms".[21]

13.4.1.1 Stressing Sustainable Development in National Regulations and IIAs

It is often mistakenly believed that China allows its state-owned enterprises (SOEs) to do whatever they want overseas, thereby reducing the cost of Chinese overseas investment and gaining competitive advantages over their competitors.[22] This is not the case, and China's various regulations and IIAs stress home country regulation of overseas investment for sustainable development considerations.

The Administrative Measures on Overseas Investments and the Administrative Measures for Outbound Investment of Enterprises include provisions on environmental protection, labor protection, and corporate social responsibility (CSR). The Guidelines for Environmental Protection in Overseas Investment and Cooperation emphasize environmental protection policy and specific implementation methods. Several Opinions on the Construction of Chinese Overseas Corporate Culture stresses anti-corruption. The Guiding Opinions on Further Guiding and Regulating the Sectors of Overseas Investment also restrict overseas investment that does not meet the laws and regulations on environmental protection, energy consumption, and safety standards of the investment destination.

Stress on sustainable development is also clear in China's IIAs. For instance, the 2010 Chinese draft model BIT states that contracting parties are "... willing to strengthen cooperation between the two countries, promote healthy, stable and sustainable economic development, and improve people's living standards". The China–Canada BIT stresses that it is important to recognize "the needs to promote investment based on the principles of sustainable development" and, in Article 18.3, provides that "it is inappropriate to encourage investment by waiving, relaxing, or

[21] K. P. Sauvant and M. D., Nolan, 'China's Outward Foreign Direct Investment and International Investment Law' (2015) 18 *Journal of International Economic Law* 1–42.

[22] D. C. K. Chow, 'Rising Nationalism: China's Regulation of Investment Trade', in J. deLisle and A. Goldstein (eds.), *China's Global Engagement: Cooperation, Competition, and Influence in the 21st Century* (Washington, DC: Brookings Institution Press, 2017), pp. 67–87.

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otherwise derogating from domestic health, safety or environmental measures".

A reference to CSR is contained in the preamble of the China–Tanzania BIT. It states that the contracting parties are "encouraging investors to respect corporate social responsibilities; and desiring to intensify the cooperation between both States, to promote healthy, stable and sustainable economic development, and to improve the standard of living of nationals".[23] And according to Article 16.2 of the BIT, a state party may request consultations with the other party if it considers that the other Contracting Party has offered an encouragement that may derogate the protection of environmental and public health.

In light of this, one may see Chinese overseas investments are guided by the principles of sustainable investment and win–win outcomes. Chinese enterprises shall consider the national conditions of the host country and promote mutual benefit and win–win cooperation.

13.4.2 Prospects of China's Investment Facilitation

13.4.2.1 Deepening International and National Investment Facilitation Measures

Despite all the efforts and achievements, China still has room for further efforts in investment facilitation. For instance, according to Global Enterprise Registration, there is no online single window for registering enterprises in China, and the rate of obtaining English information through the information portal of the Chinese government website is relatively low.[24]

Problems may exist in domestic investment facilitation measures. For instance, according to the aforementioned regulations, China has gradually loosened restrictions on outbound investment, but it still needs to considerably simplify the approval process and provide more efficient one-stop service for outbound investment.[25] China also needs to further strengthen its relationship with other countries through closer

[23] Agreement between the Government of the People's Republic of China and the Government of the United Republic of Tanzania Concerning the Promotion and Reciprocal Protection of Investments, signed on 24 March 2013, came into force on 17 April 2014.

[24] See Global Enterprise Registration, 'Make Business Registration Easy, Everywhere', online at: https://ger.co/ (last accessed 13 June 2023).

[25] Sauvant and Nolan, above note 21.

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international cooperation at the multilateral, regional, and bilateral levels on investment facilitation. China also needs to align its investment facilitation measures with international standards, such as those in the UNCTAD's Global Action Menu for Investment Facilitation and the IFD Agreement in the WTO.

13.4.2.2 Enhancing Competitive Neutrality of Investment Facilitation

Regarding China's outbound investment regulation measures, concerns mainly focus on their competitive neutrality.[26] It has been argued that China's measures are "undesirable" by a number of developed countries as they distort competition and "may in the future be evaluated in terms of their impact on competitive neutrality".[27]

Investment facilitation measures are not as controversial as investment promotion measures, which often target specific countries and specific subject areas. However, investment facilitation and the issue of competitive neutrality are closely linked.[28] It is believed that Chinese investment facilitation measures are unequal and discriminate foreign investors. For instance, Chinese SOEs may benefit more from China's measures, such as faster approval procedures.[29] It is necessary that investors should be given the same level of investment facilitation. Actually, since the 1990s, China has begun reforming its SOEs, trying to achieve fair competition among SOEs, small and medium-sized private enterprises, and foreign-funded enterprises. The value orientation of fair competition can be found in the FIL.

The issue of unfair or distorted competition that may be caused by outbound investment promotion measures has attracted attention from OECD member states. As early as in 1976, OECD member states signed the OECD Declaration on International Investment and Multinational

[26] K. P. Sauvant, 'Trends in FDI, Home Country Measures and Competitive Neutrality' (2014) *Yearbook on International Investment Law and Policy 2012–2013*; K. P., Sauvant, V. Z. Chen, 'China's Regulatory Framework for Outward Foreign Direct Investment' (2014) 7 *China Economy Journal* 141–163.

[27] Sauvant and Nolan, above note 21.

[28] Polanco Lazo and Bazrafkan, 'Investment Promotion and Facilitation for LDCs', p. 297.

[29] See K. P. Sauvant and M. D. Nolan, 'China's Rising Outward FDI, Its Reception in Host Countries and Implications for International Investment Law and Policy', in B. Liebman and C. J. Milhaupt (eds.), *Regulating the Visible Hand? The Institutional Implications of Chinese State Capitalism* (Oxford: Oxford University Press, 2015), p. 288.

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Enterprises and recognized that due consideration should be given to the interests of other countries affected by the official promotion measures for outbound investment. If the adversely affected country proposes a consultation request to reduce the adverse impact, it should be considered by the home country. During the negotiations of the China–United States BIT, it has been discussed that it is important to ensure the competitive neutrality of SOEs, whereby SOEs should not have additional competitive advantage due to their special linkages with the government, and the United States put forward this issue in 2016 in the context of the TPP.[30] Similarly, the EU–China Comprehensive Investment Agreement also deals with the issue of competition neutrality.[31]

Competitive neutrality should not be an abstract concept. In the absence of specific legally binding principles and rules of international law, competitive neutrality can only be a guiding principle. Specifically, competitive neutrality should mean that companies from different countries can compete with the same status and follow the same rules in a host country's market. This kind of competition should be maintained by the host country in accordance with the laws of the host country.

13.4.2.3 Promoting Shared Sustainable Development

Many existing investment facilitation instruments do not mention development. The Outlines for BRICS Investment Facilitation (2017) and Guiding Principles are two examples.[32] Traditionally, development is mainly used in the context of promoting economic development of DCs and LDCs. After the 1970s, DCs put forward the concept of the "right to development" during their struggle to establish a new international economic order.[33] The development advocacy of developing countries was affirmed by a series of UN General Assembly Resolutions in the 1970s and 1980s.[34] However, since the 1990s, the traditional

[30] J. Chaisse, *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy* (Oxford: Oxford University Press, 2019), p. 203.

[31] UNCTAD, Global Investment Trends Monitor No. 23: Countries Launch Investment Policies to Counter Covid-19, April 2020, p. 12.

[32] Outlines for BRICS Investment Facilitation, Annex II to the 7th Meeting of the BRICS Trade Ministers Statement, 31 August 2017. Enhance transparency, improve efficiency, and promote cooperation are stressed in this instrument, A. Berger et al., Towards G20 Guiding Principles on Investment Facilitation for Sustainable Development, T20, Japan 2019.

[33] See, e.g., Chapter 7 in this book.

[34] For example, Declaration on the Establishment of a New International Economic Order, Programme of Action on the Establishment of a New International Economic Order,

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concept of development has largely been replaced by concept "sustainable development", and over time, the new paradigm has entered in various international legal instruments, ranging from international environmental law to other branches of international law. Sustainable development emphasizes the development in all dimensions of economy, society, and the environment.

China should play a role in clarifying the theoretical basis and policy orientation of sustainable development when negotiating international instruments, such as the WTO IFD Agreement. On the one hand, the right to development cannot be put in a position completely opposite to sustainable development, and shared sustainable development of DCs and developed countries will certainly promote the common prosperity, peace, and stability of all countries.[35]

In fact, in the WTO, there are views of both opposing and safeguarding the right to development. Some developed countries have complained about the special and differential treatment enjoyed by DCs, and especially China's status as a developing country.[36] In order to mobilize the enthusiasm of those developed countries, it is suggested that the WTO IFD Agreement and other investment facilitation instruments should avoid to only emphasize the development of DCs. China should uphold and advocate the concept of shared sustainable development and emphasize the sustainable development of all members.

Investment facilitation is a tool for advancing shared sustainable development. The goal of investment facilitation is to align investment with the shared sustainable development of the host country, the home country, the investors, and other stakeholders. Not only should Chinese outbound investment comply with sustainability requirements, but foreign investment in China should also be required to play a helpful role in promoting China's sustainable development. The FIL does not clearly

Charter of Economic Rights and Duties of States that was adopted by the United Nations General Assembly in 1974, and Declaration on the Right to Development adopted by the United Nations General Assembly in 1986.

[35] Cf. H. Q. Zeng, 'Common Development: The Initiative on the Bilateral Investment Treaty Practice between China and "One Belt One Road" States' (2019) 1 *Journal of International Economic Law* 1–33 at 1. In this article, it is submitted that the "common development" shall be the purpose of BIT practice between China and "One Belt One Road" states. Although the concept of "common development" is different from the concept of "shared sustainable development" proposed in this article, the concept of "common development" is instructive.

[36] See WT/GC/W/757/Rev.1, WT/GC/W/764, Concept Paper—WTO Modernisation.

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reflect the investment policy objectives of sustainable development. However, the Regulation reflects the dimension of sustainable development.[37] Future investment promotion and facilitation should integrate principles and standards of sustainable development. China should consider the needs of DC and LDCs, share best practices and relevant information on investment facilitation with them, and grant them special and differential treatment, including technical assistance and capacity building.

13.5 Conclusion

In the era of anti-globalization and investment protectionism, strengthening investment facilitation and international cooperation is more important than ever. This concerns DCs and LDCs, as well as developed countries. All these countries need to facilitate investment for sustainable development.

China has adopted investment facilitation measures with Chinese characteristics. China's pilot free trade zones greatly advance investment facilitation. Of course, as investment facilitation measures are growingly diversified and improved, China's investment facilitation measures in both international treaties and domestic laws should also be expanded, with due consideration given to sustainable development and fair competition. China's investment facilitation measures may promote shared sustainable development, such as promoting the environment and labor and human rights, while promoting economic development. Domestic and foreign investments in the Chinese market should compete with each other on an equal basis.

China should advocate the shared sustainable development in the making of the WTO IFD Agreement to achieve higher engagement from developed countries. China may also promote investment facilitation through other fora, such as the China–Africa Cooperation Forum and the Belt and Road Initiative. China's domestic and international practices related to investment facilitation may play a major role in enhancing the rule of law related to investment facilitation in the future.

[37] Regulation for Implementing the Foreign Investment Law of the People's Republic of China, Paragraph 2 of Article 19: "The development of foreign investment promotion and facilitation policies and measures by the local people's governments at and above the county level shall be oriented to driving high quality development, be conducive to enhancing economic benefits, social benefits, and ecological benefits, and be conducive to continuously optimizing the foreign investment environment."

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