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The Political Economy of an Investment Facilitation for Development Agreement in Brazil, India, and China

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6.1 Introduction

Negotiations toward an Investment Facilitation for Development (IFD) Agreement have been concluded in July 2023 at the World Trade Organization (WTO). Eight more member countries joined the negotiations in November 2021, bringing the total number of participating countries to 112. A leaked draft of the agreement, called the 'Easter Text',[1] suggests that parties have made significant progress toward an agreement. The conclusion of the IFD Agreement marks an important juncture in the global politics of foreign investment. Earlier attempts at negotiating multilateral investment rules – including the 1995 Multilateral Agreement on Investment (MAI) under the Organisation for Economic Co-operation and Development (OECD) and the Free Trade Area of the Americas (FTAA) – were thwarted in part by opposition from developing countries.[2] Investment was also one of three 'Singapore Issues' dropped from the Doha Agenda in 2003 after strong objections from China, India, and Brazil over expanding the WTO's remit over non-trade-related investment matters. Momentum toward the IFD Agreement therefore raises

[1] An unofficial version can be accessed here: World Trade Organization, 'WTO Structured Discussions on Investment Facilitation for Development', INF/IFD/RD/74/Rev.6, 9 February 2022, online at: https://web.wtocenter.org.tw/DownFile.aspx?pid=367074&fileNo=0 (last accessed 13 June 2023).

[2] According to J. Kurtz, 'A General Investment Agreement in the WTO – Lessons from Chapter 11 of NAFTA and the OECD Multilateral Agreement on Investment,' (2002) 23 *University of Pennsylvania Journal of International Law* 713–747, negotiations towards the MAI reached an impasse when the United States refused European and Canadian requests to exempt cultural and linguistic industries from full coverage and the 1997 Asian financial crisis diluted support for investment liberalization. Negotiations towards the FTAA fell apart due to strong opposition from Brazil and concerns in that country over policy space.

important questions: What changes in the global politics of investment have made this initiative possible? And, what political challenges remain?

This chapter is dedicated to the political economy of multilateral investment rules. It examines the domestic and international pressures that inform the positions of three emerging powers – China, India, and Brazil – toward the IFD initiative. It focuses on these three countries not strictly for comparative purposes but to illustrate the domestic and international factors that have made progress on the IFD Agreement possible and those that may stand in the way of a successful implementation of the agreement. As three influential WTO members, India, China, and Brazil are key to the future direction of the WTO, yet they have taken different positions on the IFD Agreement. While China and Brazil champion the agreement, India is a vocal opponent. What is striking about these different positions is that all three countries claim to represent the interests of the developing world.

The chapter highlights three factors that have provided conducive grounds for the agreement, namely, the dissolution of capital-importing versus capital-exporting dichotomies in country identities; a corresponding convergence in interests among select WTO members; the questioned legitimacy in investment treaty law, which has created an opportunity for new thinking around investment rules; and expanded political space for new voices inside the WTO. At the same time, proponents will continue to struggle with lingering concerns from other WTO members about the policy space and asymmetries in existing trade rules. The chapter proceeds as follows: The next section provides necessary historical context to understanding contemporary debates on multilateral investment rules. It focuses primarily on the global politics of investment and the historic failures of countries to arrive at a multilateral investment agreement. The third section deals with the domestic and international factors driving country positions on the IFD Agreement in China, India, and Brazil. The last section offers some observations about what concessions may be needed to successfully multilateralize the agreement.

6.2 The Global Politics of Multilateral Investment Rules

The first step toward the IFD Agreement was taken during the 11th Ministerial Conference in December 2017 when WTO members adopted a Joint Ministerial Statement on Investment Facilitation for Development, calling for structured discussions on the development of a multilateral framework on investment facilitation.[3] The joint statement initiative was endorsed by seventy country members at varying levels of development from almost all continents. Notable abstentions include the United States and India. South Africa also objected, as discussed in this book (see Chapter 14). A set of informal discussions was then led by the Friends for Investment Facilitation for Development (FIFD), a coalition of seventeen developing country members with formal negotiations beginning in September 2020. Negotiations have focused on the following key areas: improving the transparency and predictability of investment measures; simplifying and speeding up investment-related administrative procedures; strengthening dialogue between governments and investors; promoting the uptake by companies of responsible business practices; and ensuring special and differential treatment (SDT), technical assistance, and capacity building for developing and least-developed countries.[4] Proponents hoped to conclude a draft agreement by November 2021 in time for the 12th Ministerial Conference in Geneva; however, that conference was ultimately placed on hold by the COVID-19 pandemic. When the Ministerial Conference resumed in June 2022, IFD was left off the agenda as WTO members prioritized negotiations on food security and intellectual property rights. Nevertheless, text-based negotiations were concluded by July 2023.

That over 110 member countries are participating in this plurilateral initiative is a remarkable success, given the politicized nature of the WTO at present and previous failures at negotiating multi- and plurilateral investment rules. To some scholars, the failure of past initiatives is hardly surprising, given that multilateral arrangements dispel the competitive dynamics between countries that are key to commitment making. Commenting on the success of bilateral investment treaties (BITs), Andrew Guzman[5] argues that multilateral initiatives fail precisely because they apply to each participant equally as a group. That no country derives an advantage in the global competition to attract foreign

[3] World Trade Organization (WTO), 'Joint Ministerial Statement on Investment Facilitation for Development', WT/MIN(17)/59, 13 December 2017, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=240870 (last accessed 13 June 2023).

[4] WTO, 'MC 12 Briefing Note: Investment Facilitation for Development', 2022, online at: www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfinvfac_e.htm (last accessed 13 June 2023).

[5] A. Guzman, 'Why LDCs Sign Treaties that Hurt Them: Explaining the Popularity of Bilateral Investment Treaties' (1998) 38 *Virginia Journal of International Law* 639–688.

direct investment (FDI) means that governments face few incentives to sign onto multilateral arrangements. Instead, governments are more likely to work together to resist since they recognize that they are better off preserving their freedom of movement.

One factor that helps to explain recent momentum behind the IFD Agreement is that it departs significantly from past multilateral initiatives in the depth of integration demanded of participants. During the MAI and FTAA negotiations, influential capital-exporting countries pushed for high standards of investment liberalization and protection as well as provisions on investor–state dispute settlement (ISDS) to reinforce them.[6] These provisions evoked strong opposition from developing countries over fears that they would unduly constrain their policy space. Civil society groups also contested the regulatory amendments that would have been required to bring the agreements into force.[7] In the last two decades, investment protection standards and ISDS have faced controversy due to a growing number of arbitral claims brought against governments under BITs and investment chapters in free trade agreements. Invoking these standards, foreign investors have won multi-million-dollar awards against governments that instituted public policies that negatively impacted their economic interests, policies related to basic service provision, public health, and natural resource governance. These awards have generated fears of regulatory chill in countries that belong to BITs and growing calls for the reform of countries' BIT commitments.

The IFD Agreement excludes issues of investment protection and liberalization. Proponents claim that it is more of a technical agreement about the 'nuts and bolts' of encouraging – not regulating – sustainable FDI flows.[8] While definitions vary, investment facilitation is generally understood as 'a set of practical measures concerned with improving the transparency and predictability of investment frameworks, streamlining procedures related to foreign investors, and enhancing coordination and cooperation between stakeholders, such as host and home-country

[6] ISDS is a system in which states consent to arbitrate disputes through a third-party institution should investors perceive their rights to investment protection to have been violated.

[7] Cf. A. Walter, 'NGOs, Business and International Investment: The Multilateral Agreement on Investment, Seattle, and Beyond' (2001) 7 *Global Governance* 51–73.

[8] K. Sauvant, 'China Moves the G20 toward an International Investment Facilitation Framework and Investment Facilitation', in J. Chaisse (ed.), *China's International Investment Strategy: Bilateral, Regional and Global Law and Policy* (Oxford: Oxford University Press, 2019), at 322.

government, foreign investors and domestic corporations, as well as societal actors'.[9] By excluding investment protections, advocates claim that the IFD Agreement will avoid impinging on a domestic policy space. As Gabor[10] argues, investment facilitation is not about 'whether investment related policies, laws and regulations should be changed but rather how those policies, laws and regulations currently in place are implemented, and what could be done to make their implementation more transparent and predictable'. A common example of an investment facilitation measure is the single electronic window (SEW), a national electronic platform that would provide investors ready access to information and enable them to fulfill administrative requirements and pay relevant fees. SEWs are meant to enhance the transparency and efficiency of administrative procedures while reducing the bureaucratic burden placed on investors. Framing the IFD Agreement as a 'technical agreement' that complements – not impinges on – governments' regulatory capacity seems to have eased concerns among some countries that once staunchly opposed the WTO's oversight in matters of investment. This includes Brazil, which along with other developing countries, opposed United States' efforts to place investment on the WTO's negotiating agenda during the Uruguay Round.[11]

Progress toward the IFD Agreement may also represent a new (and increasingly rare) instance of interstate cooperation on an economic matter vital to the interests of developing countries. According to the United Nations Conference on Trade and Development,[12] governments of developing countries face an annual investment gap of US$2.5 trillion in meeting their sustainable development goals, and foreign investment will ultimately play a vital role in addressing this gap. There appears to be

[9] A. Berger, S. Gsell and Z. Olekseyuk, 'Investment Facilitation for Development: A New Route to Global Investment Governance', Briefing Paper 5/2019 (The German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE), at 1, online at: https://doi.org/10.23661/bp5.2019 (last accessed 13 June 2023).

[10] E. Gabor, 'Keeping 'Development' in a Multilateral Framework on Investment Facilitation for Development' (2021) 22 *Journal of World Investment and Trade* 41–91.

[11] Developing country opposition led to the more circumscribed Trade-Related Investment Measures (TRIMs) agreement, which prohibits the use of trade-restricting performance requirements, and the General Agreement on Trade in Services (GATS), which addresses the commercial presence of foreign investors.

[12] UNCTAD, 'Global Action Plan for Investment Facilitation', September 2016, online at: https://investmentpolicy.unctad.org/uploaded-files/document/Actionpercent20Menupercent2001–12-2016percent20ENpercent20lightpercent20version.pdf (last accessed 13 June 2023).

a growing consensus on the need for investment facilitation in national, regional, and plurilateral circles to help countries achieve these goals. The IFD Agreement builds on preexisting initiatives. The Asia-Pacific Economic Cooperation endorsed an investment facilitation action plan as early as 2008.[13] Brazil, China, India, Russia, and South Africa agreed upon a Trade and Investment Facilitation Action Plan in 2014. The OECD and UNCTAD released policy documents that called on member countries to encourage investment facilitation measures with the 2015 Policy Framework for Investment and the updated 2016 Global Action Menu for Investment Facilitation, respectively. These various initiatives suggest that investment facilitation is a promising area of agreement in an otherwise contested policy area.

The IFD Agreement builds on another important precedence: the WTO's Trade Facilitation Agreement (TFA). WTO members accepted the notion of needing to 'facilitate' processes of economic integration with the conclusion of the TFA in 2013. The IFD Agreement has been framed as a natural corollary of the TFA by experts and some member states.[14] Country proposals for the IFD Agreement carry forward some of the TFA's main elements, including its emphasis on maximizing transparency and efficiency in administrative procedures, the potential for electronic governance, and the need for capacity building. Progress toward the IFD Agreement may therefore represent an emerging norm, not about investment liberalization but about the importance of transparency and efficiency in the execution of laws and regulation that concern trade and investment (as well as their interlinkages). Underlying this emerging consensus on facilitation is a more established norm about the role foreign investors can and should play in promoting sustainable development.

Another conducive change in the global politics of investment surrounds the shifting identities of WTO members. Country positions on multilateral investment rules no longer correspond strongly to a capital-importing versus -exporting country dichotomy as they did during the

[13] The Investment Facilitation Action Plan contains a number of investment facilitation disciplines (e.g., transparency, efficiency and the promotion of corporate responsibility) but goes beyond it as well, including into investment protections, issues of market access and ISDS.

[14] See K. P. Sauvant and K. Hamdani, 'An International Support Programme for Sustainable Investment Facilitation', International Centre for Trade and Sustainable Development (ICTSD) (2015), online at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3143372 (last accessed 13 June 2023).

MAI, FTAA, and TRIMs negotiations. Changing patterns of investment, rapid economic growth in countries like China and India, and controversies surrounding investment treaty law have complicated traditional understandings of where country interests lie. As Sauvant[15] argues, emerging powers no longer consider their defensive policy interests as host-states but also their offensive interests as home-states to powerful multinational enterprises (MNEs). At the same time, advanced economies like Canada and Australia have been forced to consider their defensive interests more strongly due to rising investment from emerging markets in security-related sectors and high-profile legal claims by foreign investors.

In a stark departure from the past, developing countries are the main forces behind the reintroduction of investment-related matters in the WTO. The Joint Statement Initiative originated from the efforts of two country coalitions – FIFD and MIKTA, an alliance of Mexico, Indonesia, Korea, Turkey, and Australia – that brought forward proposals for structured discussions on investment facilitation during the 2017 Ministerial meeting. Russia, China, and Argentina and Brazil (jointly) also submitted proposals.[16] This is while traditional advocates of investment rules – namely, the United States and EU member countries – have taken a back seat.

Still, the IFD Agreement negotiations have not been without controversy. Some of the most vocal opposition has come from other emerging powers, including India and South Africa. India and South Africa objected to the negotiations on the basis that joint statement initiatives were resulting in 'the marginalization of existing multilateral mandates arrived at through consensus in favor of matters without multilateral mandates'.[17] The Indian government also expressed concerns about the constraining effects of an IFD Agreement on government policy space. Academics and civil society groups caution that the investment facilitation agenda may focus disproportionately on making it easier for foreign

[15] Sauvant, 'China Moves the G20 toward an International Investment Facilitation Framework and Investment Facilitation'.

[16] All five proposals agreed on the core areas of fostering transparency, predictability and non-discrimination in investment policies and regulation efficiency and streamlining of administrative procedures to minimize investment barriers and international cooperation, capacity-building and technical assistance.

[17] WTO, 'Strengthening the WTO to Promote Development and Inclusivity, Communication from the African Group, Cuba and India, WT/GC/W/778', 4 December 2020.

investors to operate in host-countries, while more urgent concerns related to the promotion of sustainable development are neglected. For instance, Coleman et al.[18] point out that proposals to include commitments on regulatory streamlining might create incentives to ease environmental assessment regulations. Others argue that an IFD Agreement may impose steep adjustment costs on countries that are already struggling to meet their WTO commitments.

The IFD Agreement has also been bound up with political debates surrounding the WTO's future in global economic governance. WTO members are currently grappling with foundational debates about the future of the trade organization that will inevitably affect the success of the IFD Agreement. Most notable perhaps are highly contentious debates on the dispute settlement mechanism and the SDT principle, the latter of which have been driven by United States' demands for the 'graduation' from the SDT status of emerging powers like India and China.

Emergent norms and shifting identities may help explain recent momentum toward the IFD Agreement, but they do not explain why some countries continue to hold out. Explaining individual country preferences requires examining the domestic and international pressures that shape countries' foreign policy agendas. As Robert Putnam[19] famously observed, governments are often forced to balance competing demands not just from the international arena but also from domestic actors and conditions. It is the confluence of international and domestic conditions, which will ultimately shape the success of the IFD Agreement initiative. The next section discusses how domestic and international factors have interacted to shape the preferences of three influential WTO members.

6.3 The Politics of an IFD Agreement

6.3.1 China

As coordinator of FIFD, China was a major force behind the 2017 joint statement in support of the IFD Agreement. Even before informal discussions on the IFD Agreement were launched, China encouraged consensus building on investment facilitation measures during its tenure as

[18] J. Coleman, B. Güven, L. Johnson, and L Sachs, 'What Do We Mean by Investment Facilitation?', February 2018, online at: http://wordpress.ei.columbia.edu/vcc/2018/02/22/what-do-we-mean-by-investment-facilitation/ (last accessed 13 June 2023).

[19] R. D. Putnam, 'Diplomacy and Domestic Politics: The Logics of Two-Level Games' (1988) 42 *International Organization* 427–460.

president of the G20.[20] China has since become one of the most vocal proponents of the agreement inside and outside of the WTO. Scholars attribute China's interest in investment facilitation to its status as a net exporter of capital.[21] Multilateral rules on investment facilitation will reduce the transaction costs for Chinese firms and state-owned enterprises when investing abroad. However, China's economic status does not fully explain why the Chinese government sees the WTO as an appropriate venue in which to advance multilateral investment rules nor why it stopped short of pursuing investment protections. As this section discusses, China's interest in investment facilitation reflects a confluence of international and domestic pressures as well as its growing confidence on the world stage.

Chinese outward foreign direct investment (OFDI) has increased steadily since 2002, surpassing inward FDI flows for the first time in 2015 (see Figure 6.1) and OFDI stocks soon followed, exceeding inward FDI stocks in 2017 (see Figure 6.2). It is true therefore that China's interest in investment facilitation has grown in step with its status as a capital exporter. But its interests also reflect important changes in China's domestic economic and political landscape, which made this status possible.

Prior to the late 1970s, China's foreign economic policy was predominantly protectionist. The imposition of foreign investment on China after the Opium Wars and the Sino-Japanese War during the nineteenth century fostered resentment toward foreign capitalists in the decades that followed. Chinese leaders began instituting reforms aimed at liberalizing the domestic investment market as part of a broader program of 'opening up' the economy toward the late 1970s. By then, attitudes toward foreign investment had begun to warm amid growing demands for economic modernization. Foreign investment – and the promise of new technology, managerial skills, and access to foreign markets – came to be seen as

[20] As president of the G20 in 2016, China led the establishment of a Trade and Investment Working Group to provide direction on trade and investment policy. Working Group discussions led to the endorsement by trade ministers of a set of non-binding 'Guiding Principles for Global Investment Policymaking' which emphasized the need for investment promotion and facilitation.

[21] Cf. K. Singh, 'Do We Need a Multilateral Instrument on Investment Facilitation?', Madhyam Briefing Paper # 19, May 2017, online at: www.madhyam.org.in/wp-content/uploads/2017/05/Briefing-Paper-on-MIIF.pdf (last accessed 13 June 2023); Sauvant, 'China Moves the G20 toward an International Investment Facilitation Framework and Investment Facilitation'.

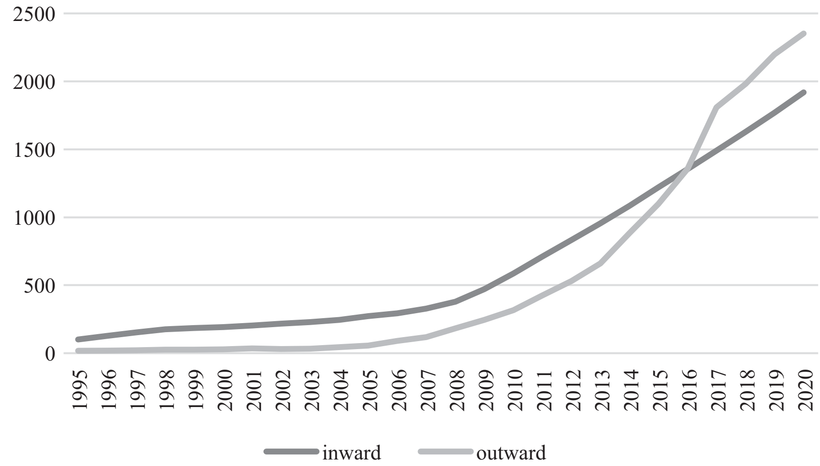

Figure 6.1 China FDI flows inward and outward (US$ billion).
Source: Own compilation based on data UNCTADStat, 'Foreign Direct Investment: Inward and Outward Flows and Stock, annual', online at: https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx (accessed 13 June 2023).

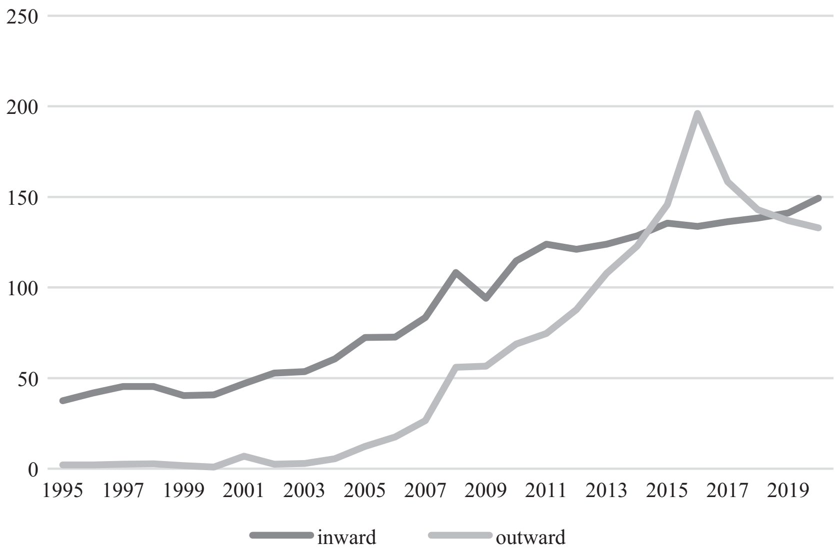

Figure 6.2 China FDI stocks inward and outward (US$ billion).
Source: Own compilation based on data from UNCTADStat, 'Foreign Direct Investment: Inward and Outward Flows and Stock, annual', online at: https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx (accessed 13 June 2023).

a necessary means to modernize industrial sectors where productivity lagged. Even then, FDI was restricted to special economic zones near urban centers where foreign investors received preferential terms, including tax incentives, export duty exemptions, and fiscal and foreign exchange privileges.[22]

The Chinese government began moving away from its ‘permissive’ approach toward an active program of FDI attraction in the mid-1980s. Further reforms were introduced in the 1990s, including the 1995 Interim Provisions on Guiding Foreign Investment and the Catalogue for the Guidance of Foreign Investment Industries, which aimed to attract FDI into favored sectors while protecting sensitive industry like banking, cultural industries, and telecommunications. China’s 10th Five-Year Plan marked an important departure. Launched in 2001, the Plan committed to encouraging national firms to go overseas.[23] Following the Plan, the Chinese government relaxed approval processes for overseas investment and established minor financial and diplomatic support to would-be investors. However, OFDI remained low and concentrated in a limited number of sectors. In 2012, China switched from a policy of ‘going in’ to a policy of ‘going out’, involving the more active promotion of Chinese FDI abroad. This policy was epitomized in the 2013 launch of the Belt and Road Initiative (BRI).[24]

The shift in Chinese foreign investment policy was for the most part a state-led initiative. In a one-party state, private enterprise lacked effective channels of influence in policymaking circles. Chinese OFDI was also dominated by a relatively small number of state-owned enterprises administered by the Central Government’s ministries and agencies (anywhere between 73.5 and 86.4 percent of OFDI between 2003 and 2006). The remaining share of FDI flows and stocks were made by SOEs

[22] M. J. Enright, ‘China’s Inward Investment: Approach and Impact’, in J. Chaisse (ed.), *China’s International Investment Strategy* (Oxford: Oxford University Press, 2019), at 23–27.

[23] K. Brown, *The Rise of the Dragon: Inward and Outward Investment in China in the Reform Period 1987–2008,* (Oxford: Chandos Publishing, 2008), at 149.

[24] Then called the ‘One Belt, One Road’ initiative, the BRI consists of the Silk Road Economic Belt, an economic land belt linking China with Central Asia, West Asia, the Middle East and Europe and the Maritime Silk Road, a trade route by sea extending from China through Southeast Asia, South Asia, Africa, and Europe. K. Zeng, ‘The Political Economy of Chinese Outward Foreign Direct Investment in “One-Belt, One-Road (OBOR)” Countries’, in J. Chaisse (ed.), *China’s International Investment Strategy: Bilateral, Regional, and Global Law and Policy* (Oxford: Oxford University Press, 2019), at 360–384.

administered by regional governments. The private firms' share of FDI was minimal: In 2005, private firms accounted for 1.5 percent of OFDI, and by the end of 2006, just 1 percent.[25]

According to Cheng and Ma,[26] the Chinese government's interest in promoting OFDI grew as a result of competitive pressures, such as the desire to secure key natural resources and technologies to feed its internal development. OFDI was directed toward sectors like agriculture, cattle breeding, fisheries, mining, manufacturing, and service industries. China's 11th Five-Year Plan (2006–2010) emphasized the need to secure the domestic energy supply by tapping foreign sources. OFDI in oil, gas, and other forms of energy helped feed China's massive growth rates. There was also a growing awareness that Chinese firms needed to compete in the global arena as foreign firms expanded their presence in China. As such, China sought to promote the multinationalization of select enterprises. But as Brown[27] observes, China also needed to find a new way of spending its massive foreign exchange reserves. By the mid-2000s, China had amassed over a trillion dollars in foreign reserves due largely to the country's trade deficit with advanced economies like the United Kingdom and the United States. Outward investment provided higher returns than purchasing additional United States' debt and helped alleviate excess liquidity in the Chinese economy.

Promoting OFDI also fit into China's non-material concerns. China's international reputation suffered after the June 4 incident. International concern over the country's human rights record remained high throughout the 1990s. As a result, the Chinese government undertook a rebranding exercise aimed at replenishing its soft power. Pledging investment and aid to developing countries was a means of improving China's image. And more developing countries came to view China as a positive role model for how a country could transform and modernize its economy through state intervention.[28] Over time, the Chinese Communist Party also came to depend increasingly on the promise of economic progress and poverty alleviation for its political appeal at home.

[25] L. K. Cheng and Z. Ma, 'China's Outward Foreign Direct Investment', in R. C. Feenstra and S. J. Wei (eds.), *China's Growing Role in World Trade* (Chicago: University of Chicago Press, 2010), at 560.

[26] Ibid., at 549.

[27] Brown, *The Rise of the Dragon*, at 146.

[28] Brown, *The Rise of the Dragon*, at 153, and Zeng, 'The Political Economy of Chinese Outward Foreign Direct Investment in "One-Belt, One-Road (OBOR)" Countries'.

Changing ideas about the role of foreign investment, global economic competition, and the search for soft power at home and abroad help explain the country's burgeoning interests in exporting capital. Yet, China's capital-exporting status does not fully explain why the Chinese government pursued investment facilitation measures at the WTO instead of bilateral and regional arrangements, which are easier to negotiate and where it arguably has greater bargaining power.

Understanding China's interest in investment facilitation requires understanding its own experience in resolving bureaucratic hurdles needed to achieve its investment policy objectives. Indeed, Chinese investors did not respond automatically to government incentives aimed at promoting OFDI. Administrative barriers dampened OFDI flows until investment facilitation measures were introduced. In the 1980s and 1990s, Chinese investors were required to obtain approval from the Central Government before undertaking an investment project. The regulation of OFDI was further dispersed across various government agencies with limited administrative capacity. According to Yang and others,[29] many would-be investors found the approval process slow, complicated, and opaque. Beginning in 2009, the Chinese government began introducing measures aimed at simplifying the approval process (e.g., by delegating the power of approval to local departments). As a result, the pace of overseas investment began to increase.

The Chinese government overhauled its outward investment regime again in 2013 to coincide with the launch of the BRI. The administrative review process was further streamlined and loosened, and vertical and horizontal cooperation among regulatory agencies was enhanced.[30] Then in 2017, the National Development and Reform Commission launched the National Investment Project Online Approval and Supervision Platform with the aim of enhancing the efficiency and transparency of investment governance. This platform is akin to an SEW in that it provides a single access point for domestic and outbound investors to the investment approval and supervision process. As a result of these changes and other measures aimed at improving its business environment, China rose on the World Bank's now defunct Ease of Doing

[29] G. Yang, T. Tang, B. Wang, and Z. Qi, 'Money Talks? An Analysis of the International Political Effect of the Chinese Overseas Investment Boom' (2020) 29 *Review of International Political Economy* 202–226.

[30] K. Gallagher and Q. Qi, 'Chinese Overseas Investment Policy: Implications for Climate Change' (2021) 12 Global Policy 262.

Business Index from 90th place in 2008 to 32nd in 2019. China's faith in investment facilitation measures may therefore reflect its own experience in tackling the bureaucratic obstacles needed to realize its capital-exporting status.

Efforts to multilateralize investment facilitation measures via the WTO reflect China's increasing willingness to occupy center stage in the global arena. China's confidence has grown in step with its economic clout. Chinese nationals have taken on leadership roles in several international institutions, including in UN agencies and the G20. Generally, China is not interested in restructuring or doing away with existing global economic institutions. The Chinese government has not offered new models of governance for global finance, trade, or investment. Rather, China has sought to repurpose Western laws and institutions so that they better suit the interests of new (i.e., developing country) actors and a wider array of political and economic models.[31]

It follows that China has taken a more assertive role in defining the future of the WTO, largely by layering on top of existing trade rules those that better suit the needs and interests of non-Western countries. For the first fifteen years of its membership, China's engagement within the WTO reflected a policy of 'active learning' aimed at building its capacity to navigate extant rules and structures. Much has changed in the last half decade. China has played an important role in several new joint statement initiatives, including investment facilitation and e-commerce. These initiatives have been framed as part of an effort to share the lessons of China's own economic success, which includes investment facilitation. China's permanent representative and Ambassador to the WTO Zhang Xiangchen[32] explained this goal best when he stated, 'China needs to make greater contributions and add Chinese wisdom to global trade liberalization and investment facilitation, as well as help create an in-time reform of the multilateral trade system'. The Chinese government learned from its own experience the added value of investment facilitation and now aims to export these lessons as part of a 'win–win' strategy.

It should also be noted that China continues to negotiate standard investment protections in bilateral and regional arrangements, including

[31] G. Shaffer and H. Gao, 'A New Chinese Economic Order?' (2020) 23 *Journal of International Economic Law* 607–635.

[32] X. Zhang, 'Two-Way Adjustment Leads to Smoother Operation of World Economy', 10 July 2018, online at: http://en.people.cn/n3/2018/0710/c90000–9479338.html (last accessed 13 June 2023).

the Regional Cooperation and Economic Partnership agreement concluded in 2020. China now belongs to the second-highest number of investment treaties out of any country in the world (next to Germany). And until recently, China was a rule-taker, not a rule-maker in treaty negotiations. However, China has become more assertive in treaty negotiations. According to Levine,[33] Chinese drafters demonstrate a desire to experiment with novel formulations that expand or narrow investment protections according to China's own interests, and recent treaties suggest that it has been successful. However, consolidating investment protections in the WTO is all but unfeasible, given the historic resistance of developing countries to these standards and the current legitimacy crisis engulfing BITs.

Championing investment facilitation measures is also more consistent with China's foreign policy principles of nonintervention and mutual gain. As advocates argue, investment facilitation measures are less constraining on the policy space of signatory governments and therefore offer greater flexibility to governments across different political and economic systems. Investment facilitation measures are also less threatening to host-countries with lingering concerns over Chinese OFDI. The majority of China's OFDI continues to be made by firms that have a close relationship with various levels of government, and most overseas investment by private firms continues to require government approval. Some countries have responded to the growth of Chinese investment with national security concerns as a result and have imposed new restrictions on Chinese investment. For instance, EU and the United States governments tightened the screening of Chinese investments amid concern that they might compromise national security.

Historically, China's foreign investment policy reflected its state interventionist tradition as well as the more traditional concerns of capital-importing countries. But by the end of 2012, China moved toward a strategy of 'going out', combining a more concerted effort to promote the internationalization of Chinese firms with a growing role on the world stage. China aims not to revise existing trade rules but to layer on top of them rules that are more inclusive and that better fit the perceived interests of Global South members. However, as discussed in

[33] M. Levine, 'Towards a Fourth Generation of Chinese Treaty Practice: Substantive Changes, Balancing Mechanisms and Selective Adaptation', in J. Chaisse (ed.), *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy* (Oxford: Oxford University Press, 2019), at 205–221.

the next section, China's efforts in layering may be hindered by the rather unstable foundations provided by the defunct Doha Development Agenda.

6.3.2 *India*

India was an early and vocal critic of the IFD Agreement. While some signs suggest its position has warmed, India's signature is absent from joint statement issued in favor of the IFD Agreement in December 2021. That is not to say that India opposes international rules on investment facilitation. India has signed a host of bilateral arrangements that include investment facilitation measures, including an Investment Cooperation and Facilitation Treaty with Brazil in January 2020. Rather, India's objections fall squarely on the inclusion of investment facilitation measures under the WTO. The Indian government frames its opposition with reference to two main points: First, Indian officials believe that no new issues should be added to the WTO agenda before the Doha Development Agenda is completed, and second, Indian officials are concerned that investment facilitation rules would constrain domestic policy space. This section details the domestic and international pressures that inform these concerns.

India has been a vocal proponent of developing country interests within the WTO since the organization's foundation in 1995. The Indian government strongly contests asymmetries in existing trade rules, particularly in the Agreement on Agriculture. As leader of the G33 coalition of developing countries, India has pressed for protections in agriculture that would promote food security, rural livelihoods, and rural development. India's habit of pushing back against the demands of advanced economies reflects the country's colonial past and the historic predominance of import substitution industrialization as a policy paradigm, which began under the Nehru government (1947–1964) shortly after the country's independence from Britain. Despite its pro-business rhetoric, the government of Narendra Modi and the Bharatiya Janata Party (BJP) (2014–present) has pursued what Elizabeth Chatterjee[34] calls a new developmentalist strategy combining liberalization (and the promotion of favored private industry) with the maintenance of selective intervention. Reflecting this strategy, the Modi government has sought to

[34] E. Chatterjee, 'New Developmentalism and Its Discontents: State Activism in Modi's Gujarat and India' (2020) 53 *Development and Change* 58–83.

navigate the global trade regime and promote the growth of externally oriented business while maintaining room for India's new developmental state. This time, however, India's concern for policy space pits it against other developing countries.

Somewhat ironically, discussions on an IFD Agreement were in part inspired by a 2016 proposal from the Indian government to discuss a Trade Facilitation in Services Agreement, which included measures to facilitate the commercial presence of foreign services providers. Yet, India's interests in multilateral investment rules are limited to services firms. FDI remains heavily politicized, particularly in light of recent public backlash against ISDS cases. India faced a wave of investment arbitration claims beginning in 2010, which brought public scrutiny to its investment treaty commitments. The Indian government launched a review of its BIT program, which resulted in the introduction of a new treaty model in 2015. The new model is aimed at better preserving the policy space and excludes provisions, which were the subject of controversy in ISDS cases. For instance, the model excludes the most-favored nation (MFN) clause likely as a result of India's experience in the White Industries case, in which the MFN clause was evoked to import provisions from another Indian BIT.[35]

The Indian government has also faced pressure from civil society and academics who oppose the agreement. They argue that the IFD Agreement may constrain the policy space, regardless of the purported technical nature of the agreement. Nedumpara and Chandy[36] observe that even seemingly innocuous requirements, for example, that the processing of investment applications be 'objective', can generate challenges for host-state policy, given that parties may disagree about what defines a policy's objectivity. Others have claimed that the IFD Agreement is not well suited to the Indian context. Singh,[37] for instance, observes that in India – as in other heavily federalized countries – the administrative impediments experienced by foreign investors often occur at the local levels where authority over the vetting and management of investment projects has been devolved. Resolving these impediments, he

[35] H. C. Moraes and P. M. Cavalcante, 'The Brazil–India Investment Co-operation and Facilitation Treaty: Giving Concrete Meaning to the "Right to Regulate" in Investment Treaty Making' (2021) 36 *ICSID Review* 304.

[36] J. J. Nedumpara and S. T. Chandy, 'Understanding the Invisible Elements of Brazil's Proposal, Discussion Paper No. 3', July 2018, online at: https://ctil.org.in/DiscussionPapers.aspx (last accessed 13 June 2023).

[37] Cf. Singh, 'Do We Need a Multilateral Instrument on Investment Facilitation?'.

argues, requires a 'bottom–up' approach that begins with local authorities. Such an approach would ensure local buy-in and democratic accountability while preserving countries' 'freedom to choose policy instruments that conform to the institutional architecture of the country concerned.'[38]

Critics also express concern over the potential adjustment costs associated with placing the IFD Agreement into force. Instituting an SEW can be a costly undertaking, given the human resources and capital needed to create and maintain a highly complex electronic platform. They have further noted that many economies that now lead FDI attraction did not have to cope with the costs of meeting high transparency standards at earlier stages of their own development and may have benefited from a lack of transparency in their investment market. Investment facilitation measures may not attract significantly high FDI inflows to justify the adjustment costs, given that FDI is determined by other factors (e.g., the size of domestic markets, the quality of infrastructure, labor costs, trade openness, taxation policy, and the political environment).[39] Civil society concerns over policy space and adjustment costs likely resonate with government officials because they feed into traditional concerns about asymmetry in the multilateral trading system.

To be sure, proponents of the IFD Agreement have attempted to address concerns over the policy space by incorporating into the Easter text language, which makes clear the exclusion of issues related to market access and the treatment of foreign investors from the treaty coverage. For instance, proposed wording in provision 3.2 of the Easter Text explicitly states that 'This Agreement shall not serve as a means to interpret any provisions of an International Investment Agreement of a member, and shall not be used as the basis for a claim or in any way by a claimant under the procedures for the resolution of investment disputes between investors and states provided for in an International Investment Agreement.' Wording in the preamble proposed by Brazil also recognizes members' commitment to promoting sustainable development, including social development, environmental protection, and the welfare of present and future generations. Members have also proposed language around SDT and potentially home-country and investor obligations to create more balance in the commitments made by stakeholders. So far,

[38] Ibid., at 10.
[39] Ibid.

these reassurances have not brought sceptics like India to the negotiating table.

India's desire to revitalize the Doha Development Agenda may pose a more existential threat to the IFD Agreement. India has been especially concerned with advancing negotiations on agriculture, which reflects the continued centrality of agriculture to the Indian economy. Namely, the Indian government hopes to secure new flexibilities that would help protect agricultural workers from import competition and alleviate food insecurity. Along with other G33 members, India has pressed for a special products exemption that would allow developing countries to shield some products from tariff cuts as well as a special safeguard mechanism that would enable governments to raise tariffs in response to an import surge. As Kristen Hopewell[40] explains, two-thirds of India's population depends on the sector, most of whom are poor, subsistence producers. Agriculture is also India's most politically sensitive sector as agricultural workers tend to be highly mobilized. Given their vulnerability to trade liberalization, agricultural workers tend to oppose further market opening and may only support further trade liberalization if these flexibilities are secured.

India is also concerned with securing a permanent solution to the public stockholding for food security and domestic subsidies – issues that were central to agricultural talks during the Doha rounds. India has struggled with food insecurity due to persistent poverty rates and drought. Under existing rules, a WTO member's food subsidies should not exceed 10 percent of the value of its agricultural production. India's food security programs, which provide subsidized food to over 800 million people, risk breaching this cap over time. The Indian government has sought a revision to these rules that would protect its food security programs from legal challenge. In December 2013, WTO members at the Bali ministerial meeting agreed to the Peace Clause, under which members agreed to refrain from challenging a breach in the prescribed cap committed by a developing country. They further committed to revisiting discussions with the aim of arriving at a more permanent solution during the 11th ministerial conference ("India to pitch for permanent solution for food security at the WTO", 2021). However,

[40] K. Hopewell, 'Heroes of the Developing World? Emerging Powers in the WTO Agricultural Negotiations and Dispute Settlement' (2021) 49 *Journal of Peasant Studies* 561–584.

public stockholding was left off the 12th ministerial conference agenda in June 2022.

Finalizing trade rules on agriculture and manufacturing is also essential to advancing discussions on trade in services, an area of strategic interest to India's long-term economic goals. As Hopewell[41] explains, India seeks to be a global leader in services, particularly given China's dominance of the global manufacturing sector. In the last two decades, India's services exports have grown faster than those of any other country in the world, and India seeks rules that would secure its leadership while helping it to expand into higher value-added service activities. However, influential member countries made it clear that only once terms were agreed on trade in goods could the WTO's negotiating agenda turn to services.

Concluding the Doha Development Round is therefore essential to several of India's short- and long-term political and economic interests. India sees the introduction of new issue areas on the WTO negotiating agenda as detracting from this goal. India, South Africa, and other developing countries have opposed several joint statement initiatives on this basis. At the December 2020 General Council meeting, India, Cuba, and the African Group presented a communique entitled *Strengthening the WTO to Promote Development and Inclusivity* (the Communique), which reminded members that they accepted the responsibility of addressing asymmetries in existing trade rules in 2001 as a pillar of the Doha Development Agenda. The Communique also stated that 'the slate of new rules proposed by some country members, while essential elements of the Doha Development agenda went unaddressed, was moving the WTO away from the principles enshrined in the Marrakesh Agreement', which gave the WTO an explicit developmental purpose. India continues to push back against the introduction of new agenda items and has been successful in generating support among like-minded countries. This may ultimately limit proponents' efforts at multilateralizing the IFD Agreement.

It should be noted that India's hesitation to negotiate new trade rules has been exacerbated by rising tensions with China, which many perceive to be a leader of the IFD initiative. India pulled out of the China-backed RCEP agreement after a standoff at the Sino-Indian border, citing concerns over the import of cheap Chinese goods. India's opposition to the IFD Agreement reflects a lingering concern for policy space, interest

[41] Ibid., at 581.

group pressure (for a return to the Doha Development Agenda), and geopolitical interests. Only some of these concerns may be accommodated within the context of the IFD Agreement negotiations.

6.3.3 Brazil

Like China, Brazil was an early and eager advocate of the IFD Agreement. The Brazilian government was the first to submit a full draft agreement, which it did just months after the initial Joint Ministerial Statement on Investment Facilitation for Development was released. The purported aim of Brazil's draft was to illustrate what a potential agreement could look like and to provide a base for further discussion. As a member of FIFD, Brazil also took part in informal discussions on the agreement and helped convene high-level meetings on investment facilitation to build support among WTO members. However, Brazil's position differs from that of China in that it reflects a stronger mix of defensive interests. This section discusses the domestic and international pressures that inform Brazil's interests in the IFD Agreement.

Brazil has also been a staunch defender of developing country interests at the WTO. Brazil resisted United States' efforts to place investment on the WTO's negotiating agenda during the Doha Development Round over concerns that it would secure the United States' economic advantage and constrain Brazilian policy space. While Brazil is one of the largest sources of FDI in Latin America, it is overall a net importer of capital. And like India, Brazil continues to press strongly for fairer and more balanced trade rules, including rules that would end 'agricultural trade-distorting domestic support entitlements'.[42] Brazil has therefore shared many of the concerns of its emerging economy counterparts.

Unlike China and India, Brazil stands out in the global politics of investment as one of few countries never to have ratified a BIT. Brazil joined other developing countries in the rush to signing BITs during the 1990s as part of a more general program of economic restructuring. Yet, the government fell short of ratifying the agreements due to congressional opposition. Legislators opposed the agreements over fears they

[42] Ministry of Foreign Relations, 'Remarks by Minister Ernesto Araújo in the WTO Informal Ministerial Meeting', 29 January 2021, online at: www.gov.br/mre/en/content-centers/speeches-articles-and-interviews/minister-of-foreign-affairs/speeches/remarks-by-minister-ernesto-araujo-at-the-wto-informal-ministerial-meeting (last accessed 13 June 2023).

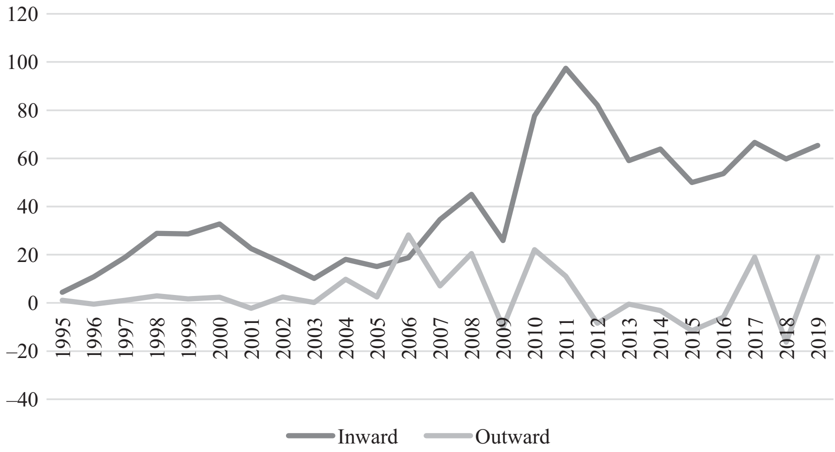

Figure 6.3 Brazilian FDI flows, 1995–2020 (US$ billion).
Source: Own compilation based on data from UNCTADStat, 'Foreign Direct Investment: Inward and Outward Flows and Stock, annual', online at: https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx (accessed 13 June 2023).

would constrain policy space and the possibility that they would disadvantage national investors. Concern for equality between national and foreign investors has dominated debates on foreign investment protections since the introduction of the Calvo Doctrine. And Brazil has been a strong objector of ISDS dating back to the negotiations that led to the establishment of the International Centre for the Settlement of Investment Disputes in the 1960s. FDI inflows accelerated throughout the late 1990s and early 2000s, regardless of the fact that the BITs were not in force (see Figures 6.3 and 6.4). This confirmed for many political elites that BITs were not necessary to securing Brazil's advantage in attracting FDI.[43]

An important change in Brazil's stance on international investment rules occurred in 2015 when the Brazilian government under Dilma Rousseff (2011–2016) launched a treaty-making program. In its first year, the program saw Co-operation and Facilitation Investment Agreements (ACFIs) signed with Mozambique, Angola, Malawi, Colombia, and Chile.

[43] G. Vidigal and B. Stevens, 'Brazil's New Model of Dispute Settlement for Investment: Return to the Past or Alternative for the Future?' (2018) 19 *Journal of World Investment & Trade* 475–512.

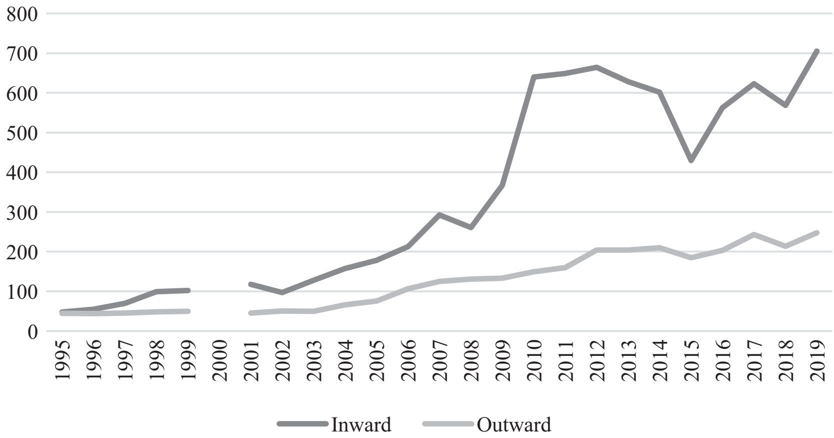

Figure 6.4 Brazil FDI stocks, 1995–2020 (US$ billion).
Source: Own compilation based on data from UNCTADStat, 'Foreign Direct Investment: Inward and Outward Flows and Stock, annual', online at: https://unctadstat.unctad.org/wds/TableViewer/tableView.aspx (accessed 13 June 2023).

Unlike BITs, Brazil's ACFIs excluded standard investment protections (e.g., on fair and equitable treatment and indirect expropriation) and ISDS in favor of provisions aimed at encouraging cooperation between contracting parties, the establishment of institutions that foster communication between investors and host-governments (i.e., national focal points), and the implementation of dispute prevention mechanisms. They also referenced corporate social responsibility and provided for state-to-state dispute settlement in lieu of ISDS.

Several factors appear to have driven Brazil's ACFI program. For one, Brazil's business interests became increasingly transnational. Following a brief but severe economic crisis in 2000, Brazil saw a massive expansion of its agricultural and natural resource industries. As a result, Brazil became a significant exporter of FDI, particularly to Latin America, Africa, and other emerging economies.[44] Unlike in China where the expansion of OFDI was state-led, in Brazil, growth in OFDI correlated

[44] J. N. de Alcântara, C. M. N. Paiva, N. C. P. Bruhn, H. R. de Carvalho, and C. L. L. Calegario, 'Brazilian OFDI Determinants' (2016) 17 *Latin American Business Review* 177–205.

strongly with cycles of inward FDI. Tomio and Amal[45] argue that inward FDI contributed to a learning process whereby Brazilian companies were encouraged to engage more in the global economy. In the 2010s, Brazilian investors began pushing the government to seek rules that would ease their outward investment.

According to Moraes and Cavalcante,[46] most investors did not press for BIT-like investment protections, but instead sought a framework that would help them ease their entry and operations in investment markets, such as navigating bureaucracies and licensing requirements. This reflects the widespread acceptance of the equal treatment principle: Brazilian firms for the most part accepted the idea that foreign investors would be given the same legal rights as domestic firms. The result was that the ACFI preserved the principle of equal treatment and excluded issues of market access and investment protection. A third likely factor behind Brazil's ACFI program was the conclusion of the TFA in 2013. Maggetti and Moraes[47] argue that Brazilian drafters were inspired by the idea that international treaties could be used to promote the facilitation of trade and investment as opposed to locking in rules with little flexibility. They took this idea forward into domestic policy debates.

According to some scholars, Brazil's ACFI program has made it a 'norm entrepreneur' in investment treaty law.[48] As one of the first countries to integrate investment facilitation measures into bilateral treaties and FTAs, Brazil demonstrated that a viable means of attracting FDI exists outside of the traditional BIT model. Indeed, Brazilian ACFIs demonstrate that governments can promote a better business environment while better preserving government policy space. Brazil has since concluded ACFIs as a stand-alone agreement or as chapters in FTAs with much of South America (excluding Bolivia and Venezuela) and with African countries (namely, Angola, Mozambique, Malawi, Ethiopia, and Morocco). It also successfully used its ACFI model to influence the design of the 2017 Intra-Mercosur Protocol on Investment Cooperation

[45] B. T. Tomio and M. Amal, 'Institutional Distance and Brazilian Outward Investment' (2015) 18 *M@n@gement* 78–101.

[46] Moraes and Cavalcante, 'The Brazil–India Investment Co-operation and Facilitation Treaty'.

[47] M. Maggetti and H. C. Moraes, 'The Policy-Making of Investment Treaties in Brazil: Policy Learning in the Context of Late Adoption', in C. A. Dunlop et al. (eds.), *Learning in Public Policy* (Cham: Springer, 2018), at 308.

[48] Vidigal and Stevens, 'Brazil's New Model of Dispute Settlement for Investment', at 475–512, and Maggetti and Moraes, 'The Policy-Making of Investment Treaties in Brazil'.

and Facilitation, suggesting that its entrepreneurial aims were not confined to bilateral arrangements.

Brazil's launch of its own treaty-making program aimed at securing investment facilitation measures makes it a natural champion of the IFD initiative. The IFD Agreement provides Brazil the opportunity to elevate domestic norms from the bilateral and regional levels to the pluri- and multilateral levels. This would explain Brazil's early delivery of its draft for an IFD Agreement, which was influenced heavily by its ACFI model. Like ACFIs, Brazil's draft agreement provides for cooperation across national focal points, establishes an SEW, and promotes the principle of corporate social responsibility.[49] Brazilian support for the IFD Agreement therefore fits into a broader effort to influence the future direction of international investment law.

Another explanation for Brazil's support of the IFD Agreement is that it helps demonstrate to the international community the government's commitment to the liberal trading order. Dilma Rousseff was replaced by Michel Temer as interim president in 2015 following a corruption scandal that gripped national and international headlines. The same year, Brazil's economy began to contract, with GDP growth declining to −3.5 and −3.3 percent in 2015 and 2016, respectively. The combination of a sensational corruption scandal and renewed economic crisis proved fertile ground for the rise of Jair Bolsonaro, a right-wing populist figure who espouses a commitment to economic and political freedom. The Bolsonaro government has used the WTO as a platform on which to build his government's reputation as a champion of the liberal international trading system. At the 2019 WTO informal ministerial gathering in Davos, Brazil's Minister of Foreign Affairs Ernesto Araújo (2019) reiterated the government's commitment to instituting 'long overdue reforms, to reduce costs, to deregulate, to facilitate business and entrepreneurship and to open up [Brazil's] economy'. Araújo also expressed a desire to reinvigorate the negotiating arm of the WTO, stating that 'Brazil is prepared to discuss any agenda or matter whatsoever . . . Brazil will be ambitious on all negotiation fronts, from investment facilitation to electronic commerce'. Araújo was also careful to highlight Brazil's openness to new SDT rules.

[49] WTO, 'Structured Discussions on Investment Facilitation, Communication from Brazil, JOB/GC/169', 1 February 2018, online at: https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=241891&Current (last accessed 13 June 2023).

It should also be noted that Brazil stands to benefit from the informational and material resources the IDF Agreement could help mobilize. Unlike other emerging powers who have seen steady improvements in their domestic business environment, Brazil continues to struggle with addressing the bureaucratic hurdles faced by foreign investors and domestic business. In 2019, Brazil was ranked 124th on the World Bank's Ease of Doing Business Index.

Brazil's support for the IFD therefore reflects defensive interests, including a preference for more flexible investment facilitation arrangements in lieu of more constraining investment protections. Brazil also shares a desire to address historic asymmetries in trade rules with India. However, Brazil is willing to forgo its desire to revisit old trade rules in the context of the IFD initiative as a means of reassuring WTO members of its support for the liberal trading order, at least under the current government. Political leadership and the desire to spread Brazilian norms on foreign investment governance help explain Brazil's eagerness to lead the IFD Agreement.

6.4 Conclusion

Much has changed in the global politics of investment in the last decade. The North–South dichotomies, which once dominated debates over investment rules and FDI attraction, no longer have the force they once did. Shifting patterns of investment mean that countries that were once the hosts of considerable FDI are now important home-states for MNEs, and home-states are now having to think more carefully about their interests as hosts. This has created an unprecedented opportunity for compassion and dialogue across countries that previously had little in common, at least in terms of the challenges they faced in governing foreign investment. Consensus appears to be growing around the need for open, transparent, and efficient administration of foreign investment projects as a result.

Controversies surrounding BITs and ISDS have also created demand for a rethinking of investment rules. Civil society groups, academics, and governments are raising important questions about what commitments governments should make to foreign investors and how they can preserve the policy space to tackle long-standing and escalating policy problems such as poverty and climate change. These discussions have created political opportunities for the development of a forward-thinking and inclusive rule book on investment that effectively promotes sustainable development.

The IFD Agreement provides a promising start, but lingering concerns about the policy space, adjustment costs, and inequality in the trading system will need to be resolved likely before progress is made. Some of these issues may need to be resolved outside of the IFD Agreement. However, drafters of the IFD Agreement also have an unprecedented opportunity to demonstrate country commitments to a fair and balanced set of rules as they consider provisions on home-country obligations, funding models, capacity building programs, and corporate social responsibility. Demonstrating this commitment will be essential in getting holdout countries on board and moving the agreement past legislators where concern for equality in domestic investment markets has dominated policy debates. Acknowledging that foreign investors and home-states bear responsibility in ensuring open, transparent, and sustainable investment practices in host-governments and communities may be an important step forward.

The IFD Agreement may succeed as a plurilateral arrangement, but plurilateralism is far from ideal, particularly if it excludes key power brokers like India and the United States, the latter of which could ultimately play an important role in any funding arrangement and capacity building programs. But multilateralizing the IFD Agreement likely requires that WTO members come to terms with the more fundamental debates about the WTO's future role in trade and investment governance. In the least, this might require moving past the stalemate which has crippled the dispute settlement mechanism, and at most, it will require rejuvenating the Doha Development Agenda as a means to finally resolve profound asymmetries in the global trade rules. The IFD Agreement provides a promising route for the promotion of foreign investment and sustainable development, but the trickiest and perhaps most important hurdles have yet to come.