China moves the G20 on international investment (also in Chinese and op ed.)

Karl P. Sauvant
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by
Karl P. Sauvant *

During China’s Presidency of the Group of Twenty (G20), culminating in the G20 Hangzhou Summit in September 2016, important decisions were taken that could shape the future of international investment law and policy. China was the driver, given its fear of FDI protectionism and of discriminatory treatment toward its outward investors.

First, the Summit endorsed 1 nine “Guiding Principles for Global Investment Policymaking,” agreed in July 2016 by the G20 Trade Ministers, 2 and prepared by their Trade and Investment Working Group to provide overall guidance to investment policy making: avoidance of FDI protectionism; openness, non-discrimination, transparency, and predictability; investment protection, including dispute settlement; transparency in investment rule-making, involving all stakeholders; coherence in rule-making, consistent with sustainable development; the right to regulate; investment promotion and facilitation; responsible business conduct; and international cooperation.

Reaching agreement was a challenge, with G20 members having to compromise in a short period in the face of disparate views on key issues. The Principles, therefore, were formulated in general language, and certain issues such as specific protections could not be agreed. Other notions could not be clarified, such as that investment promotion and facilitation should include maximizing benefits for host countries; that investment, best to contribute to sustainable development, should exhibit certain sustainability characteristics; and that “responsible business conduct” should include obligations, in such areas as those addressed, for instance, in the OECD Guidelines for Multinational Enterprises. More generally, the G20 Principles remain focused on the obligations of host countries, with only modest references to investor obligations and no mention at all of home country obligations.

China, with help from Canada as Working Group co-Chair, brought about a compromise, aided by its links to other members of the BRICS group and supported by the Secretariats of UNCTAD, the OECD, the WTO, and the World Bank. Agreement was possible
because the Principles are general in nature, are non-binding and keep the focus on host country obligations. Overall, they are a desirable step toward outlining a comprehensive international investment framework and preparing the ground for an eventual plurilateral or multilateral investment regime.

Going forward, it is important for governments to build on the Principles. For example, a review (e.g., a gap analysis) could be undertaken of the extent to which international investment agreements already reflect the Principles and the ways in which new agreements take them into account. Another possibility would be for international organizations to monitor future treaty practice in light of the Principles and periodically to report on the results of such monitoring, or to invite countries to report on implementation of the Principles in their own policies. Finally, the Principles could be elaborated through the addition of annotations. The key is for governments actually to work with the Principles. As a first step, then, the Principles need to be widely disseminated.

Second, China’s Presidency has laid the groundwork for something concrete, relatively non-controversial and in the interest of all countries, namely, the facilitation of higher FDI flows to developing countries, and especially the least developed among them. The Trade Ministers “encourage[d] UNCTAD, the World Bank, the OECD and the WTO to advance this work within their respective mandates and work programmes.” Various international organizations have initiated such work.

Encouraging, too, is India’s proposal for an “Agreement on Trade Facilitation in Services” at the WTO, explicitly covering Mode 3 (i.e., commercial presence) of the General Agreement on Trade in Services. FDI (akin to “commercial presence”) in services accounts for roughly two-thirds of total FDI. Such an Agreement could become a stepping-stone for a broader international support program for sustainable investment facilitation. In the near/medium term, one way to make progress would be to prepare G20 “Guiding Principles for Global Investment Facilitation,” drawing on the precedent of the “Guiding Principles for Global Investment Policymaking.”

Finally, the G20 decided to maintain its Trade and Investment Working Group. This Group could remain a valuable additional platform for intergovernmental discussion regarding governance of international investment in a non-rule-making setting, and can serve as an incubator for related ideas.

Germany, holding the G20 Presidency in 2017 and co-chairing the Working Group, can move the G20’s investment policy work forward. However, given the controversies surrounding some investment issues, and given Germany’s federal elections set to take place in the fall of 2017, that country’s focus is likely to be on investment facilitation. Argentina, holding the G20 Presidency after Germany and having an interest in FDI facilitation, could build on whatever work has been done to achieve additional concrete results.
Considering the difficulty of the investment issue and the shortness of time, the agreements reached by the G20 represent important accomplishments. The challenge, now, is to build on them.

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3 Ibid., para. 18.
5 See Karl P. Sauvant, “We need an international support programme for sustainable investment facilitation,” Columbia FDI Perspectives, No. 151, Jul. 6, 2015.

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中国推动 G20 国际投资议题

Karl P. Sauvant*

在中国担任 G20 主席国期间，G20 峰会于 2016 年 9 月在杭州谢幕，会上通过的一些重要决议足以影响今后的国际投资法律和政策。鉴于对 FDI 保护主义和针对中国对外投资者歧视性待遇的担忧，中国成为了这些决议的推动者。

首先，2016年7月经G20贸易部长认可，峰会确定了九条“全球投资政策制定指导原则”，并由贸易和投资工作组对投资决策提供全面指导，具体原则包括：避免 FDI 保护主义；开放性、非歧视性、透明性、可预测性；投资保护，包括争端处理机制；投资规则制定的透明性，涉及全部利益相关者；规则制定与可持续发展的一致性；监管调整；投资的促进和便利化；尽责的商业行为和国际合作。

面对在关键问题上的截然不同的观点，G20成员需要在短期内进行妥协，在这种情况下达成一致具有一定挑战性。因此G20原则以一般性语言进行阐述，并且在某些特定问题如具体的保护政策上无法达成一致。还有一些其他观念不能被阐明，如投资的促进和便利化应包括最大化东道国的利益；投资应呈现出某些可持续性特征，以推动可持续发展；“尽责的商业行为”应包括一些领域内的义务，如OECD跨国公司准则中提及的领域。更一般地说，G20原则仍然聚焦于东道国义务，却较少涉及投资者义务，并从未涉及母国义务。

在工作组联合主席加拿大的协助和金砖五国成员、联合国贸易与发展会议（UNCTAD）秘书处、经济合作与发展组织（OECD）、世界贸易组织（WTO）以及世界银行的支持下，中国推动各国达成了妥协。G20原则在本质上具有的普遍性、无约束力、和重点关注东道国责任使得协议的达成具备了可行性。总之，在推动综合国际投资框架制定以及最终诸边或多边投资制度制定的过程中，G20原则是令人满意的一步。

展望未来，在这些原则的基础上开展工作对政府而言是很重要的。例如，一些分析（如缺口分析）可以针对国际贸易协定已经在多大程度上反映了这些原则以及新的
协定如何将这些原则纳入自身体系展开。此外，国际组织可以根据这些原则监控未来条约的实施情况并定期报告监测结果，也可以邀请相关国家报告这些原则在他们政策中的履行情况。最后，这些原则可以通过添加注释来详细阐明。所有这些的关键都是政府要切实地参与这些原则。而要实现政府参与，那么第一步，就是这些原则能够被广泛传播。

第二，中国作为轮值主席已经以一种相对无争议和兼顾所有国家利益的方式为一件具体之事打下了基础，即流向发展中国家，尤其是流向最不发达国家的外国直接投资（FDI）的进一步便利化。贸易部长们“鼓励UNCTAD、世界银行、OECD 和WTO 在各自的授权范围和工作计划内推进这项工作”，而众多国际组织都已经开始了这项工作。

同样令人振奋的是，印度在WTO 上提议制定“服务贸易便利化协定”，并明确提出以此协定覆盖服务贸易总协定的模式 3（即商业存在）。服务业FDI（类似于“商业存在”）约占FDI 总量的 2/3。这样的协定有可能为可持续投资便利化赢得更广泛的国际支持。在短期或中期，在此问题上能够取得进展的一条途径可能是在借鉴“全球投资决策指导原则”的基础上，准备G20 的“全球投资便利化指导原则”。

最后，G20 决定保留其贸易和投资工作小组。这个小组将会在非规则制定框架下开展关于国际投资治理的政府间讨论的有效附加平台，并充当相关想法的“孵化器”。

德国将在2017 年担任G20 主席和工作小组的联合主席，它将进一步推动G20 的投资政策工作。但是，鉴于一些贸易议题尚存争议，而且德国联邦选举将于2017 年秋季举行，德国的关注点很可能是投资便利化。阿根廷在德国之后担任 G20 主席，它一向青睐FDI 便利化，因此可能会在届时现有工作的基础上完成额外的具体工作成果。

考虑到投资问题的难度之大和时间之短，G20 达成的协定已经是重大成就。而现在挑战是以在这些协定的基础上继续推进。

（南开大学国经所陈江滢、杨旭晗翻译）

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3 同前，第18段
4 见WTO国内工作组，“Concept Note for an Initiative on Trade Facilitation in Services,” 文件号：S/WPDR/W/55, 2016年9月27日
5 见Karl P. Sauvant, “We need an international support programme for sustainable investment facilitation,” Columbia FDI Perspectives, No. 151,2015年7月6日
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After successes at Hangzhou G20, it’s Germany’s turn to keep momentum going

By Karl P. Sauvant | January 13, 2017, Friday
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Sustainable Investment, a joint center of Columbia Law School and the Earth Institute,
Columbia University. Shanghai Daily condensed the article.