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Foreign Investment Flows in a Shifting Geoeconomic Landscape

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ABSTRACT

The economic shocks from the pandemic and rising geoeconomic tensions have triggered an accelerated restructuring of foreign investment flows in global value chains. As the previous determinants of foreign investment are rapidly changing, many new risks and opportunities abound for developing countries looking to attract FDI into their economies. This paper therefore looks at some of the important issues affecting foreign investment flows to developing countries both now and in the future. It then lays out some policy imperatives which can help countries ensure that the inbound foreign investment is responsible, sustainable and contributes to achieving the national development priorities.

Les chocs économiques provoqués par la pandémie et les tensions géoéconomiques croissantes ont contribué à accélérer la restructuration des investissements étrangers dans les chaînes de valeur mondiales. Les déterminants de l'investissement étranger évoluant rapidement, les pays en développement désireux d’attirer de tels investissements sont confrontés à de nouveaux et nombreux risques et opportunités. Le présent document examine donc certains des principaux enjeux, actuels et futurs, liés aux investissements étrangers dans les pays en développement. Il présente ensuite certains impératifs sur le plan politique qui peuvent aider les pays à s'assurer que ces investissements sont responsables, durables et contribuent à la réalisation des priorités nationales en matière de développement.

Las perturbaciones económicas fruto de la pandemia y del aumento de las tensiones geoeconómicas han provocado una reestructuración acelerada de los flujos de inversión extranjera en las cadenas de valor mundiales. Dado que los determinantes anteriores de la inversión extranjera están cambiando con rapidez, abundan los nuevos riesgos y oportunidades para los países en desarrollo que tratan de atraer la inversión extranjera directa a sus economías. Es por esto que en este informe se examinan algunas cuestiones importantes que afectan a los flujos de inversión extranjera hacia los países en desarrollo, tanto en la actualidad como en el futuro. También se exponen algunos imperativos de política que pueden ayudar a los países a garantizar que la inversión extranjera entrante es responsable y sostenible, y contribuye a lograr las prioridades nacionales en materia de desarrollo.

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1. INTRODUCTION

The past three decades before the COVID-19 pandemic generally saw an unprecedented rise in global growth and economic integration, with proliferation of value chains within and across regions. This was accompanied by a rise in foreign direct investment (FDI), which was seen as an important tool for boosting industrialization and economic development in developing and least developed countries.

Despite the diverse narratives around globalization and cross-border financial flows, much of mainstream thinking driving foreign investment to developing countries had stressed on its perceived benefits as a catalyst for economic growth, job creation and sustainable development[2].

However, the recent multiple crises stemming from the impacts of the COVID-19 pandemic, climate change, the conflict in Ukraine and increased inflation and debt burdens around the world have disrupted many of the certainties of the neoliberal models of development, based on deregulation and opening of economies to foreign capital[3]. As one commentator has emphasised, we are facing "a slow-motion tidal wave of risks that will wash over our economy in the next decades — namely climate change, demographics, deglobalization and artificial intelligence. Their effects will range somewhere between economic regime shift and existential threat to civilization"[4].

The market-led approaches to foreign investment[5] are being seriously challenged today, with the critiques coming from their own erstwhile promoters[6]. Advanced economies are formulating new policies that push their multinational corporations to invest in diversified value chains and on-shoring of production for some strategic sectors[7].

On the other hand, the value and need for foreign investment in developing and least developed countries have only increased in the face of these crises, as emerging economies require access to capital and technology to move forward with their economic transformation and sustainable development. At the same time, there is an even greater realization that inward FDI must be responsible, lead to inclusive growth and serve the national development plans and priorities of the host State.

The existing regulatory and policy framework governing foreign investment, comprising policies, rules and legal instruments such as national investment laws, international investment agreements (IIAs), investment chapters in free trade agreements, among others can affect how FDI is attracted and allocated in a country's economic sectors. This framework

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[2] Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1.

[3] Jonathan D. Ostry, Prakash Loungani, and Davide Furceri, "Neoliberalism: Oversold?", *Finance & Development*, Vol. 53, No. 2 (June 2016). Available from https://www.imf.org/external/pubs/ft/fandd/2016/06/ostry.htm.

[4] Richard Bookstaber, "The Slow-Motion Tidal Wave Consuming Our Economy", *New York Times*, 27 March 2023. Available from https://www.nytimes.com/2023/03/27/opinion/economy-economic-models-climate-change-demographics-deglobalization-ai.html.

[5] Working Group of the Capital Markets Consultative Group (CMCG), "Foreign Direct Investment in Emerging Market Countries", 18 September 2003. Available from https://www.imf.org/external/np/cmcg/2003/eng/091803.HTM.

[6] Jonathan Masters, James McBride, and Noah Berman, "What Happens When Foreign Investment Becomes a Security Risk?", Council on Foreign Relations, 3 January 2023. Available from https://www.cfr.org/backgrounder/what-happens-when-foreign-investment-becomes-security-risk.

[7] Melanie Rojas *et al.*, "Reshoring and "friendshoring" supply chains", Deloitte Insights, 24 March 2022. Available from https://www2.deloitte.com/xe/en/insights/industry/public-sector/government-trends/2022/reshoring-global-supply-chains.html.

is also being reviewed in many countries to see how such policy instruments can be updated to the new economic realities and above all promote national economic development.

Particular attention is being paid to the investor-State dispute settlement (ISDS) mechanisms included in some of these instruments, which has been characterised as a "challenge to democracy and the rule of law"[8]. While discussions on 'procedural reforms' of ISDS have been ongoing at the United Nations Commission on International Trade Law (UNCITRAL) since 2017, all the envisaged outcomes from this process and their subsequent implementation are still some way off[9].

This paper therefore seeks to provide a macro perspective of foreign investment and its determinants from the vantage point of developing countries and the Global South. After the introduction, part 2 of this paper looks at the historical determinants of FDI, as well as the recent developments that have influenced global FDI flows such as the COVID-19 pandemic, climate change and geopolitical tensions. It then considers how these and other relevant factors are likely to determine FDI flows to developing countries' supply chains in the near to medium term.

Part 3 highlights some important considerations for developing countries when creating and implementing their laws and policies on foreign investment governance, and how they could be adapted for building resilience in supply chains and dealing with the new and emerging global landscape for foreign investment. The final section provides some conclusions which can help the Global South in efforts to capture and maximize the benefits of foreign investment for sustainable development.

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[8] Human Rights Council, Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, A/HRC/30/44, 14 July 2015.

[9] The UNCITRAL Working Group III currently estimates that its work on ISDS reform options will continue into 2026. See: UNCITRAL, Report of Working Group III on the work of its resumed fortieth session (Vienna, 4 and 5 May 2021), A/CN.9/1054, 27 May 2021. Available from https://undocs.org/en/A/CN.9/1054.

2. THE DETERMINANTS OF FOREIGN INVESTMENT: PAST AND PRESENT

At the outset, it is useful to recall that 'foreign investment' is an umbrella term, encompassing flows that are very heterogeneous and seek different efficiency increases in host and home States. For instance, firms could also be seeking horizontal or vertical integration (or a combination thereof) through their foreign investments, directed towards different goals, such as gaining market share or having greater control over the supply chain. The distinctions between portfolio investments, greenfield and brownfield investments are also relevant in this regard. The existence of this wide spectrum underlines that foreign investment is not a monolith and should be accorded a more granular approach.

2.1. Traditional factors influencing foreign investment flows

The rise in foreign investment flows globally over the past three decades has been driven by a multiplicity of factors, *inter alia* technological progress, lowering of trade barriers, leveraging low labour costs, expansion into dynamic new markets, and emergence of global value chains. There are many theories around the determinants of international investment[10], and many of the relevant factors are region, country and sector specific[11]. There also exists extensive literature[12] on the motivations of foreign investors' activities in host States, which have even identified different priorities at the firm level[13]. Similarly, meta-analysis of empirical studies on FDI determinants over the years have shown wide divergences in relevant factors[14], as well as evolutions in line with global developments[15]. This section therefore does not seek to provide a detailed assessment of all determinants of foreign investment, but rather considers some general trends and the factors that have traditionally influenced them.

Looking at foreign investment flows from a historical perspective, the role of transnational corporations has been critical. Much of what would be recognized as foreign investment by Multinational Enterprises (MNEs) today can be traced to the 1600s, when "Europe's colonial trading houses ventured (often violently) beyond the old continent in search of commercial opportunities. By the start of the 20th century the global stock of foreign direct investment, a rough proxy for the prevalence of multinational businesses, was hovering at 10% or so of world GDP"[16].

Since the 1990s, the rapid pace of urbanisation and industrialization across the developing world and particularly in Asia, created many new investment opportunities for foreign investors

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[10] Dinkar Nayak and Rahul N. Choudhury, "A selective review of foreign direct investment theories", ARTNeT Working Paper Series No. 143 (Bangkok, ESCAP, 2014). Available from https://www.unescap.org/sites/default/files/AWP%20No.%20143_0.pdf.

[11] Simona Rasciute and Paul Downward, "Explaining variability in the investment location choices of MNEs: An exploration of country, industry and firm effects", *International Business Review*, Volume 26, Issue 4 (2017), pages 605-613. Available from https://doi.org/10.1016/j.ibusrev.2016.12.002.

[12] David Riker and Heather Wickramarachi, "A Review of Economic Literature on Foreign Direct Investment", Economics Working Paper Series, Working Paper 2020–04–B (U.S. International Trade Commission, April 2020). Available from https://www.usitc.gov/publications/332/working_papers/a_review_of_economic_literature_on_foreign_direct_investment_04-30-20.pdf.

[13] Yang Feng & Yang Wang, "A Literature Review on the Location Determinants of FDI", *International Business Research*, Canadian Center of Science and Education, vol. 14, no. 4 (2021), pages 126-134.

[14] Polyxeni Kechagia and Theodore Metaxas, "Sixty Years of FDI Empirical Research: Review, Comparison and Critique", *The Journal of Developing Areas*, vol. 52, no. 1 (2018), pp. 169–81. Available from https://www.jstor.org/stable/26417001.

[15] See: UNCTAD World Investment Report: Trends and Determinants, 1998. Available from https://unctad.org/system/files/official-document/wir1998_en.pdf.

[16] "Are Western companies becoming less global?", *The Economist*, 16 March 2023. Available from https://www.economist.com/business/2023/03/16/are-western-companies-becoming-less-global.

looking for cheaper labour, lower taxes and new markets. Transnational corporations were at the forefront of this action, with their foreign investment activities being classified into "natural-resource-seeking, market-seeking, efficiency-seeking, and created-asset-seeking ones"[17]. Where they chose to invest was dependent on "the attractiveness of potential host countries in terms of the location-specific advantages sought by firms (as well as the marketing efforts made to bring a country's advantages to the attention of TNCs)"[18].

Country specific factors such as fiscal incentives, anticipated returns on investment, trade barriers, economic integration in global value chains, size of host market, available infrastructure, economic growth prospects, cost and skill of labour and ease of capital transfers, among many others[19] are commonly cited as relevant determinants of FDI flows[20] to developing countries. The stability and 'certainty' offered by the legal regime of a country, as well as the strength of its national institutions have also been emphasised as important elements for attracting foreign investment[21]. On the part of the investor, the size and anticipated length of the investment, the sector and industry, the mode of entry as well as the capital and technology available also form relevant considerations.

In addition, the extensive fragmentation of the operational units of multinational corporations such as its headquarters, departments for research & development, marketing, manufacturing, customer service etc. as well as their subsidiaries and group companies being located in different jurisdictions has been contributing to foreign investment flows via intra-firm capital transactions.

This has also been closely linked to the rise of long and complex global value chains, where manufacturing a single finished product might require components sourced from hundreds of suppliers based in many different countries. A recent World Bank report recalls how FDI "has been the primary driver of global value chain (GVC) expansion in the past several decades. Mutually reinforcing dynamics occur between FDI and GVC participation"[22]. There can be many reasons for a transnational corporation to invest in setting up a subsidiary in a host country, with research suggesting that different types of FDI is "correlated with distinct macro-institutional and tax indicators. This implies that, from a TNC's perspective, the perceived attractiveness of potential host countries and, ultimately, TNCs' decisions where to invest, are different for different types of subsidiaries"[23].

There is of course wide variation in the factors influencing FDI flows to developing and least developed countries in different regions. On the African continent for instance, the

[17] Karl P. Sauvant and Padma Mallampally, "Strengthening Investment Promotion Regimes for Foreign Direct Investment in the Least Developed Countries", Occasional Policy Papers Series on the Least Developed Countries, No. 1 (UN-OHRLLS, 2015), p. 3. Available from https://www.un.org/ohrlls/sites/www.un.org.ohrlls/files/strengthen_invest_promotion_regimes_fdi_ldcs.pdf.
[18] Ibid.
[19] G. De Vita and K. Lawler, "Foreign Direct Investment and its Determinants: A Look to the Past, A View to the Future", in *Foreign Investment in Developing Countries*, H.S. Kehal,eds. (London, Palgrave Macmillan, 2004). Available from https://doi.org/10.1057/9780230554412_2.
[20] Marcelo José Braga Nonnenberg and Mario Jorge Cardoso Mendonca, "The Determinants of Direct Foreign Investment in Developing Countries (January 2004). Available from http://dx.doi.org/10.2139/ssrn.525462.
[21] S. Chaudhuri and U. Mukhopadhyay, "Role of FDI in Developing Countries: Basic Concepts and Facts", in *Foreign Direct Investment in Developing Countries* (New Delhi, Springer, 2014). Available from https://doi.org/10.1007/978-81-322-1898-2_1.
[22] Christine Zhenwei Qiang, Yan Liu and Victor Steenbergen, *An Investment Perspective on Global Value Chains* (Washington, DC, World Bank, 2021). Available from https://openknowledge.worldbank.org/entities/publication/49fa218e-d636-55a7-94ac-7e5b552aa73c.
[23] Arjan Reurink & Javier Garcia-Bernardo, "Competing for capitals: the great fragmentation of the firm and varieties of FDI attraction profiles in the European Union", *Review of International Political Economy*, vol. 28, no. 5 (2021), pp. 1274-1307, DOI: 10.1080/09692290.2020.1737564.

determinants of FDI at the continental level[24] are not the same at the regional level[25], not to mention the differences within the various regions themselves[26]. Of course, such distinction can even exist at the lowest geographical levels, as even adjacent areas within a country may provide unique investment opportunities to foreign investors.

While the 2008 global financial crises was a watershed moment for global FDI which fell more than 20 percent in its aftermath[27], the impacts of this were unevenly distributed, with some emerging economies actually increasing their share of inward FDI despite the slowdown[28]. In the decade after, global investment growth has remained weak in most emerging economies, and since 2020, has been further subjected to various shocks, including the COVID-19 pandemic[29] and the conflict in Ukraine. The following section therefore looks at some of the more recent issues that are determining global FDI flows.

2.2. Recent changes in FDI determinants following the COVID-19 pandemic

As the global community has been emerging out of the shadow of the pandemic, it has had to confront a ‘perfect storm’ of cascading crises that “threaten to devastate the economies of many developing countries”[30]. The multi-dimensional crises of food, energy and finance is exacerbating vulnerabilities exposed by the COVID-19 pandemic, the conflict in Ukraine and climate change-induced natural disasters[31], creating a new rise in global uncertainty (see Figure 1). This has been further exacerbated by a sharp increase in the risk of ‘geoeconomic fragmentation’[32], with indicators suggesting a further slowdown in global growth in the near future[33]. FDI flows to developing countries are particularly sensitive to such risks and uncertainties, and the rapidly evolving geoeconomic landscape have impacted on foreign investment in developing countries’ supply chains, both positively and negatively, depending on their geoeconomic importance.

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[24] A.G. Mijiyawa, “What Drives Foreign Direct Investment in Africa? An Empirical Investigation with Panel Data”, *African Development Review*, vol. 27 (2015), pp. 392-402. Available from https://doi.org/10.1111/1467-8268.12155.

[25] E. Korsah, R.B. Amanamah and P. Gyimah, "Drivers of foreign direct investment: new evidence from West African regions", *Journal of Business and Socio-economic Development*. Available from https://doi.org/10.1108/JBSED-12-2021-0173.

[26] H.A. Meressa, “Determinants of foreign direct investment inflows to COMESA member countries: an integration of institutional and socio-economic factors”, *Journal of Innovation and Entrepeneurship* Vol. 11 (2022). Available from https://doi.org/10.1186/s13731-022-00262-z.

[27] United Nations Conference on Trade and Development (UNCTAD), “Global FDI in Decline due to the Financial Crisis, and a Further Drop Expected”, Investment Brief Number 1 (2009). Available from https://unctad.org/system/files/official-document/webdiaeia20095_en.pdf.

[28] UNCTAD, *World Investment Report 2010*, p. 6. Available from https://unctad.org/system/files/official-document/wir2010_en.pdf.

[29] O. Al-Kasasbeh, A. Alzghoul, K. Alghraibeh, “Global FDI inflows and outflows in emerging economies Post-COVID-19 era”, *Future Business Journal*, Vol. 8, No. 1 (2022), doi: 10.1186/s43093-022-00167-z.

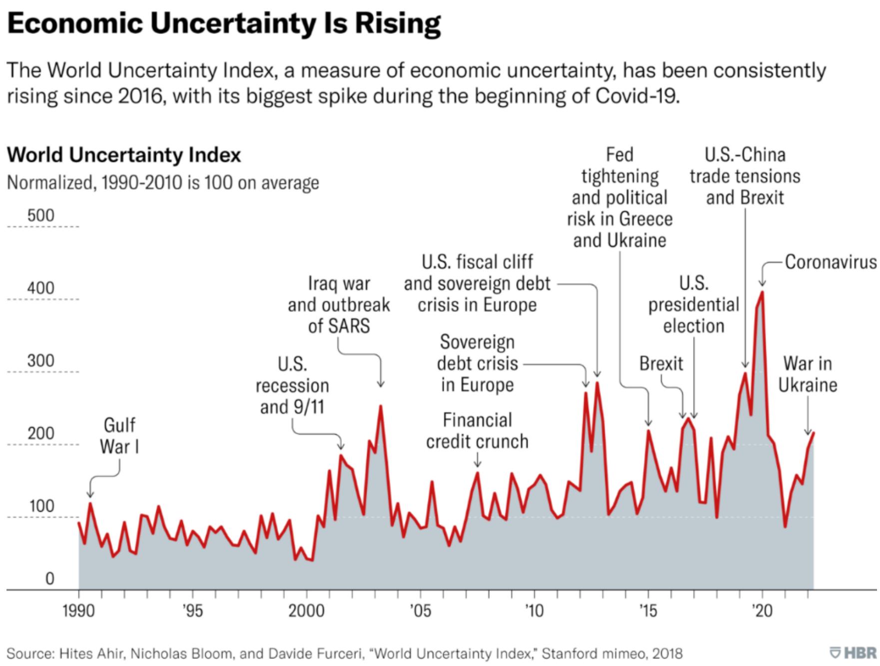
[30] United Nations Secretary-General’s press conference at launch of Report entitled: “Global Impact of War in Ukraine on Food, Energy and Finance Systems”, , 13 April 2022. Available from https://www.un.org/sg/en/content/sg/press-encounter/2022-04-13/secretary-generals-press-conference-launch-of-report-entitled-global-impact-of-war-ukraine-food-energy-and-finance-systems.

[31] Rebeca Grynspan, “Weathering a 'perfect storm' of cascading crises”, UNCTAD, 25 May 2022. Available from https://unctad.org/news/blog-weathering-perfect-storm-cascading-crises.

[32] Kristalina Georgieva, Gita Gopinath, Ceyla Pazarbasioglu, “Why We Must Resist Geoeconomic Fragmentation—And How”, IMF Blog, 22 May 2022. Available from https://www.imf.org/en/Blogs/Articles/2022/05/22/blog-why-we-must-resist-geoeconomic-fragmentation.

[33] United Nations Department of Economic and Social Affairs (UN DESA), *World Economic Situation and Prospects 2023.*

Figure 1



While not being exhaustive, this section looks at some factors that are going to play a prominent role for determining FDI flows in the near future.

2.2.1. Investors responding to geo-political developments

The rise in global uncertainty has growing implications for FDI flows going forward, as capital exporting countries prioritize their national security imperatives, green transition strategies and perceived geopolitical risks over continued openness to all foreign investment. Experiences from the pandemic, the global supply chain crisis and signals from home State governments is likely to precipitate a paradigm shift in how investors make their foreign investment decisions. As El-Erian aptly notes,

> "the combination of geopolitical shocks, corporate strategies, and changing societal values will affect trade and investment patterns along four main axes. As companies opt for resilience over efficiency, they will increasingly shift their approach to supply chains from "just in time" to "just in case". This will come at a time when security concerns gain greater weight in commercial considerations, and companies will move away from risk-sharing and general partnerships to more narrowly designed arrangements."[34]

In addition to seeking increased market efficiencies, investors would need to consider political risks emanating from both home and host States, as well as possible weaknesses in supply chains for critical industries and infrastructure. Diversifying their suppliers, reducing over-concentration of production in a single jurisdiction and increasing regionalization of the supply chain has become more important (see Figure 2).

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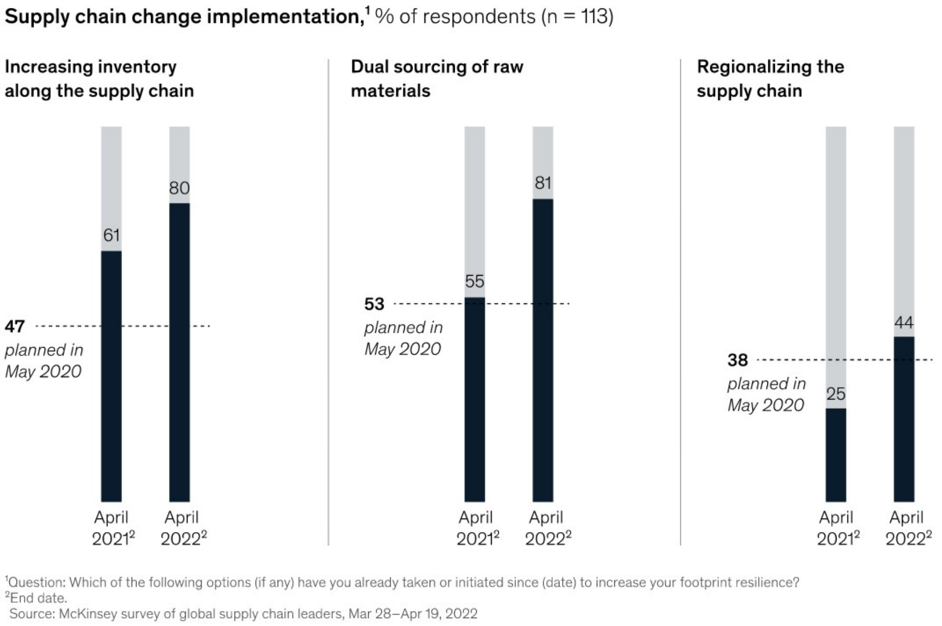
[34] Mohamed El-Erian, "From near-shoring to friend-shoring: the changing face of globalization", *The Guardian*, 9 March 2023. Available from https://www.theguardian.com/business/2023/mar/09/from-near-shoring-to-friend-shoring-the-changing-face-of-globalisation.

Figure 2



Further, investors could also look towards increasing the use of 'on-, near- and friend-shoring' arrangements to build further resilience in their investments. However, as per the International Monetary Fund (IMF), this reconfiguration of global supply chains and setting up of higher barriers to investment "could make it more difficult for developing nations to sell to the rich world, gain know-how, and build wealth. Advanced economies would also have to pay more for the same products, stoking inflation"[35].

At the same time, the ongoing GVC reconfiguration is also going to affect developing countries' poverty alleviation efforts. A World Bank report highlights that in the scenario where "[a] "hostile" environment with a shift toward global reshoring could drive an additional 51.8 million people into extreme poverty, whereas a more "friendly" one could lift 21.5 million additional people out of poverty by 2030 relative to the baseline"[36].

For investors, these additional costs are weighed against the potential risks of future supply chain disruptions, and thus being viewed as an investment into building resilience[37]. Some market analysts have suggested a "relatively gradual alignment between investors' strategies with the signals emanating from the geopolitical sphere"[38]. There is also some concern that geopolitical cooperation and globalization will evolve into a fragmented world with competing blocs at the cost of economic efficiency[39]. Some analysts have projected "a cost of $1.5tn to support friend-shoring and onshoring of supply chains including those for advanced

[35] Georgieva *et al.,* "Why We Must Resist Geoeconomic Fragmentation—And How".

[36] Paul Brenton, Michael J. Ferrantino, and Maryla Maliszewska, *Reshaping Global Value Chains in Light of COVID-19: Implications for Trade and Poverty Reduction in Developing Countries* (Washington, DC, World Bank, 2022). Available from https://www.worldbank.org/en/topic/trade/publication/global-value-chains-in-light-of-covid-19-trade-development-climate-change.

[37] James B. Rice, Jr., Walid Klibi, and Kai Trepte, "Overcoming the Financial Barriers to Building Resilient Supply Chains", *Harvard Business Review*, 1 November 2022. Available from https://hbr.org/2022/11/overcoming-the-financial-barriers-to-building-resilient-supply-chains.

[38] Tania Sollogoub, "Geoeconomics and direct investment: the self-fulfilling power of expectations", Credit Agricole Group, 17 May 2022 (Updated 9 February 2023). Available from https://www.credit-agricole.com/en/news-channels/the-channels/economic-trends/geoeconomics-and-direct-investment-the-self-fulfilling-power-of-expectations.

[39] BlackRock, "2023 Global Outlook", BlackRock Investment Institute, p. 11. Available from https://www.blackrock.com/corporate/literature/whitepaper/bii-global-outlook-2023.pdf.

semiconductors and critical minerals"[40]. This scenario presents both risks and opportunities for developing countries looking to attract foreign investment into their economies[41], as investors are considering a '+1 strategy' to diversify and build resilience in their supply chains.

There is already evidence of shifting FDI trends in supply chains, though it is easier for some industries to move than others (see Figure 3). This is reflected in recent FDI ventures, with the United Nations Conference on Trade and Development (UNCTAD) reporting that between 2020-2022, "Investment projects in global value chain (GVC)-intensive industries, where investment trends are affected by exposure to supply-chain risks and restructuring pressures, rose by 5 per cent in number and by 34 per cent in value"[42]. The strong push to move away from a 'just-in-time' model to building resilient and sustainable supply chains is going to become entrenched in investment decisions in the near to medium term[43].

Figure 3 – Industry sectors most likely to move

	Economic factors	Non-economic factors	Share of exports (%) with shift potential		Market capitalisation, USD bn
			Low	High	
Pharmaceuticals	◔	●	38	60	6044
Apparel	●	◔	36	57	868
Communication equipment	◔	●	34	54	2720
Medical devices	◑	◕	37	45	2760
Transportation equipment	◕	◔	29	43	564
Textiles	●	○	23	45	113
Furniture	●	○	22	45	90
Aerospace	◔	◑	25	33	1137
Computers & electronics	◕	◔	23	35	111
Electrical equipment	◕	◔	23	34	1519
Machinery & equipment	◑	◔	19	25	1332
Automotive	◔	◑	15	20	1611
Semiconductors and components	○	●	9	19	2570
Chemicals	○	◔	5	11	2477

○ Low ● High

Note: Non-economic factors include policy-driven shifts (eg, essential goods for national security). Market capitalisation as of 13 August 2020.
Source: *Risk, resilience and rebalancing in global value chain*, McKinsey, 6 August 2020, Thomson Reuters, Swiss Re Institute

[40] Daniel Blake, "Moving towards a multipolar world need not be a bad thing", *Financial Times*, 31 July 2023. Available from https://www.ft.com/content/33888a23-2cdf-4b04-bd16-8529acdc386c.
[41] Sara Hsu, "Which Asian Nations Can Benefit From the 'China Plus One' Strategy?", *The Diplomat*, 11 June 2021. Available from https://thediplomat.com/2021/06/which-asian-nations-can-benefit-from-the-china-plus-one-strategy/.
[42] UNCTAD, *World Investment Report 2023*, p. 22.
[43] Jennifer Williams-Alvarez, "CFOs Focus on Building Resilient Supply Chains, Even as Pandemic Disruptions Fade", *Wall Street Journal*, 26 April 2023. Available from https://www.wsj.com/articles/cfos-focus-on-building-resilient-supply-chains-even-as-pandemic-disruptions-fade-8192831f.

2.2.2. Home States seeking economic diversification

The ongoing 'polycrisis' has increased the urgency of the need for economic diversification in host states[44]. Its importance for developing countries had been captured in important multilateral outcomes such as the 2030 Agenda for Sustainable Development and more recently the Doha Programme of Action for Least Developed Countries (LDCs), 2022-2031[45]. When channelled properly, FDI can play an important role in this process[46], particularly where linked with the diversification of exports[47]. For instance, some studies suggest that FDI can have "a positive impact on export diversification as it enhances developing countries' domestic productive capacities through technological diffusion and spillovers; through MNCs facilitating access to foreign markets, and augmenting domestic capital and government resources needed to propel diversification of productive sectors"[48]. However, some countries also face the risk of crowding out of domestic investment and even premature deindustrialization if their domestic firms are unable to compete with the incoming foreign investment, or are forced to specialize in commodities, resource-based manufacturing and low productivity services[49].

Many low income developing countries generally have limited diversity in their exports, which generally comprise of raw commodities (see Figure 4). This creates pressure to both diversify away from such commodity led exports, as well as to localize processing within the country, with policies being oriented towards these goals. For example, the African Union Commodity Strategy seeks to "enable African countries to add value, extract higher rents from their commodities, integrate into global value chains and promote vertical and horizontal diversification anchored in value addition and local content development"[50].

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[44] Pathways to economic diversification in commodity-dependent developing countries, Note by the UNCTAD secretariat, TD/B/C.I/MEM.2/53, 20 July 2022. Available from https://unctad.org/system/files/official-document/cimem2d53_en.pdf.

[45] Doha Programme of Action for the Least Developed Countries for the Decade 2022-2031 (DPoA), A/RES/76/258, 6 April 2022, para. 9.

[46] Adrienne Klasa, "How FDI can help emerging markets to diversify", FDI Intelligence, 22 May 2019. Available from https://www.fdiintelligence.com/content/feature/how-fdi-can-help-emerging-markets-to-diversify-74800.

[47] UNCTAD Secretariat Note, Promoting value addition and the enhancement of domestic productive capacity through local economic empowerment, TD/B/C.I/EM.10/2, 7 August 2019. Available from https://unctad.org/system/files/official-document/ciem10d2_en.pdf.

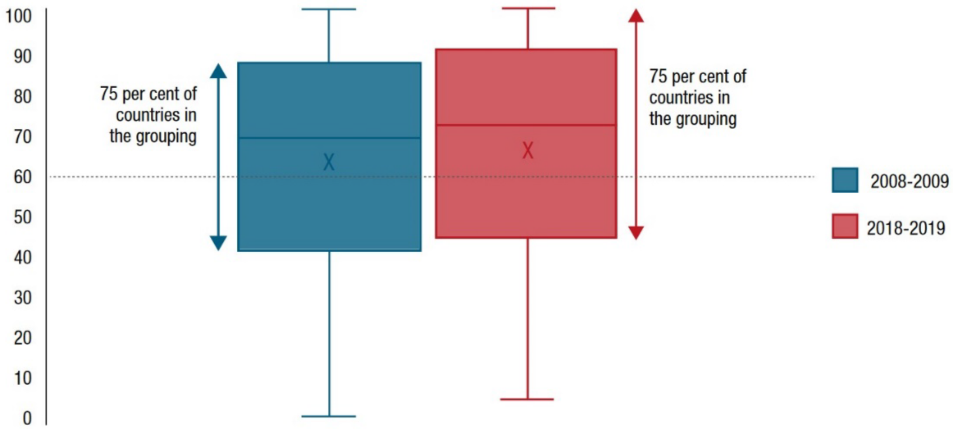
[48] G. Gamariel, M. Bomani, L. Musikavanhu & J. Juana, "Foreign direct investment and export diversification in developing countries", *Risk Governance and Control: Financial Markets & Institutions*, Vol. 12,No. 1, pp. 74–89. Available from https://doi.org/10.22495/rgcv12i1p6.

[49] Mario Castillo & Antonio Martins, "Premature deindustrialization in Latin America," Desarrollo Productivo 205 (Naciones Unidas Comisión Económica para América Latina y el Caribe (CEPAL), 2016).

[50] African Union, "Africa's Commodities Strategy; Value Addition for Global Competitiveness", 1 September 2021. Available from https://au.int/en/pressreleases/20210902/africas-commodities-strategy-value-addition-global-competitiveness.

Figure 4 - Commodity dependence

Figure 5.
Commodity dependence in developing countries, 2008–2009 and 2018–2019
(Percentage)



Source: UNCTAD, based on UNCTADstat database.
Note: The dotted line indicates the threshold of the commodity export dependence category (60 per cent); horizontal lines in boxes indicate the median of the data set; and crosses indicate averages.

Source: UNCTAD, State of Commodity Dependence 2021, p. 7

At the same time, host States seek to attract FDI from a diverse set of investors, who can invest, bring technology and add value to different levels in the supply chain. In addition, there are also efforts to bring in investors from different jurisdictions, as this can prevent a single investor or home State from gaining excessive prominence in the host State's economy[51].

Deepening capital markets in emerging economies is also a priority area. As one paper shows, "capital market development is strongly correlated with the depth of the institutional investor base", and that "a broad and diversified investor base supports liquidity, depth and stability of the capital markets"[52]. Institutional investors can play a key role in developing nascent financial markets[53], which can boost investment flows through providing higher levels and lower costs of financing.

The use of FDI to gain access to modern technology and technical know-how, though a challenging task, has been a core tenet of economic diversification policies, as it can enable upward movement in global supply chains towards more high value outputs. Research has shown how domestic firms can experience productivity gains through building linkages with foreign firms, especially for the transfer of foreign technology along supply chains[54]. However, this effect is pronounced when the investors operate within the appropriate regulatory environment, especially those including policies which encourage the direct transfer of technology and knowledge between firms[55].

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[51] James Guild, "How Indonesia Manages the Risks of Foreign Investment", *The Diplomat*, 19 July 2023. Available from https://thediplomat.com/2023/07/how-indonesia-manages-the-risks-of-foreign-investment/.
[52] Working Group established by the Committee on the Global Financial System, "Establishing viable capital markets", CGFS Papers No. 62, January 2019. Available from https://www.bis.org/publ/cgfs62.htm.
[53] Hans Genberg, "Capital Market Development and Emergence of Institutional Investors in the Asia-Pacific Region", *Asia-Pacific Development Journal*, Vol. 22, No. 2 (December 2015). Available from https://www.unescap.org/sites/default/files/Paper%201-Genberg.pdf.
[54] D. Rigo, "Global value chains and technology transfer: new evidence from developing countries", *Review of World Economics*, Vol. 157 (2021), pp. 271–294. Available from https://doi.org/10.1007/s10290-020-00398-8.
[55] Carol Newman, John Rand, Theodore Talbot, Finn Tarp, "Technology transfers, foreign investment and productivity spillovers", *European Economic Review*, Volume 76 (2015), Pages 168-187. Available from https://doi.org/10.1016/j.euroecorev.2015.02.005.

Initiatives for economic diversification are gaining further importance in the context of climate change adaptation and mitigation measures, as countries vulnerable to climate change with high reliance on climate sensitive sectors such as tourism, agriculture, fisheries etc. seek to expand to new sectors or by promoting adaptation measures in vulnerable sectors to increase their resilience[56].

2.2.3. Climate Change and the energy transition

Another significant factor that will influence FDI flows will be the policies being put in place by countries for fighting against climate change and moving to a green, low-carbon economy. Several countries have already adopted just transition policies[57], including in their Nationally Determined Contributions (NDCs)[58], that will require massive capital mobilization, including new foreign investments, to fully achieve their objectives[59]. For instance, South Africa estimates that it "will require at least US$250 billion over the next three decades to transform the energy system, with at least US$10 billion allocated toward 'climate justice outcomes'"[60].

There has been a recent wave of new actions being taken to support a 'green transition'. Some advanced economies have unveiled new 'green' industrial policies, supported with billions of dollars in subsidies[61] and other incentives, which have prompted a flurry of new investments[62] in clean energy[63]. For instance, the European Union has come out with its Green Deal Industrial Plan, which "aims to simplify, accelerate and align incentives to preserve the competitiveness and attractiveness of the EU as an investment location for the net-zero industry"[64]. The African Union has also been proactive on this issue, and the recent 'African Leaders Nairobi Declaration on Climate Change and Call to Action' committed to "[d]eveloping and implementing policies, regulations and incentives aimed at attracting local, regional and global investment in green growth and inclusive economies"[65].

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[56] UNFCCC Technical paper, The concept of economic diversification in the context of response measures. Available from https://unfccc.int/files/cooperation_support/response_measures/application/pdf/technical_paper_economic_diversification.pdf.

[57] See for example, the Just Transition Framework in South Africa, at https://www.climatecommission.org.za/just-transition-framework.

[58] Christiane Beuermann and Victoria Brandemann, "Just Transition in National Climate Plans: An Analysis of Case Studies from South Africa, Costa Rica and Ukraine", FES, October 2021.

[59] See: UNCTAD, A Global Just Transition, COP27 High Level Event Series Background Note, https://unctad.org/system/files/non-official-document/UNCTAD_Just_Transition_BACKGROUND_NOTE_COP27.pdf

[60] Just Transition Framework in South Africa, p. 24.

[61] Bryce Baschuk, "How US Green Deal Has Opened Floodgates for Subsidies", *Washington Post*, 27 April 2023. Available from https://www.washingtonpost.com/business/energy/2023/04/27/why-eu-objects-to-us-green-subsidies-tax-breaks-quicktake/f1285eda-e4e7-11ed-9696-8e874fd710b8_story.html.

[62] Amanda Chu and Oliver Roeder, "US manufacturing commitments double after Biden subsidies launched", *Financial Times*, 16 April 2023. Available from https://www.ft.com/content/b1079606-5543-4fc5-acae-2c6c84b3a49f.

[63] Zack Budryk, "Treasury Department says nearly 200 clean energy projects announced since IRA", *The Hill*, 22 June 2023. Available from https://thehill.com/policy/energy-environment/4061199-treasury-department-says-nearly-200-clean-energy-projects-announced-since-ira/.

[64] European Commission, Communication: A Green Deal Industrial Plan for the Net-Zero Age, 1 February 2023. Available from https://commission.europa.eu/document/41514677-9598-4d89-a572-abe21cb037f4_en.

[65] African Leaders Nairobi Declaration on Climate Change and Call to Action, p. 3.

BOX 1

While not a new approach in itself, the use of fiscal incentives to promote investment in the renewable energy sector had some unexpected consequences for the host States. As Jorge Viñuales writes,

> "In the aftermath of the 2008 economic crisis, when good investment opportunities were scarce, many companies but also financial intermediaries invested heavily in renewable energy projects supported by green industrial policies. These policies were seen as offering a relatively predictable, safe and very significant return on investment, particularly when compared to the underwhelming investment alternatives available at the time. The uptake was so high that several countries struggled to pay the subsidies, which, depending on the cases, could have represented genuine windfall profits for investors at a time of national economic restraint (…) a range of measures were adopted to limit the return on investment to more sustainable levels. Such measures included taxes, levies as well as adjustments in the tariff rate, volume and time-horizon of the investments. That, in turn, hit the profitability of many investors, who sought to rely on investment agreements to recoup the expected profits"[66].

However, there are indications that the new 'green transition' incentives from developed nations come with their own strings attached, such as mandatory domestic manufacturing and local content requirements, raising concerns that they might be trade distortive[67] or violate existing investment agreements[68]. As one IMF blog suggests, "a subsidy race between the world's largest economies to lure green investment (…) could undermine the level playing field in global trade, contribute to geoeconomic fragmentation and impose large fiscal costs. (…) Emerging market and developing economies with scarcer fiscal resources would find it particularly difficult to compete for investments with advanced economies in a more protectionist world, which could also hinder the transfer of technology to these nations. Ultimately, the cost of the green transition might go up"[69].

The key determinants of investment in the energy transition share many features with investment in other sectors (see Figure 5). However, the needs and available investment opportunities in climate change-related areas are immense and growing. For instance, the Independent High-Level Expert Group on Climate Finance has underscored the need to mobilise $1 trillion per year in external finance by 2030 for emerging markets and developing countries to enable the transformation of the energy system; respond to the growing vulnerability of developing countries to climate change; and invest in sustainable agriculture[70]. Similarly, initiatives like the International Solar Alliance aim at unlocking $1 trillion of investments in solar energy solutions by 2030, while increasing access to technology and reducing financing costs[71].

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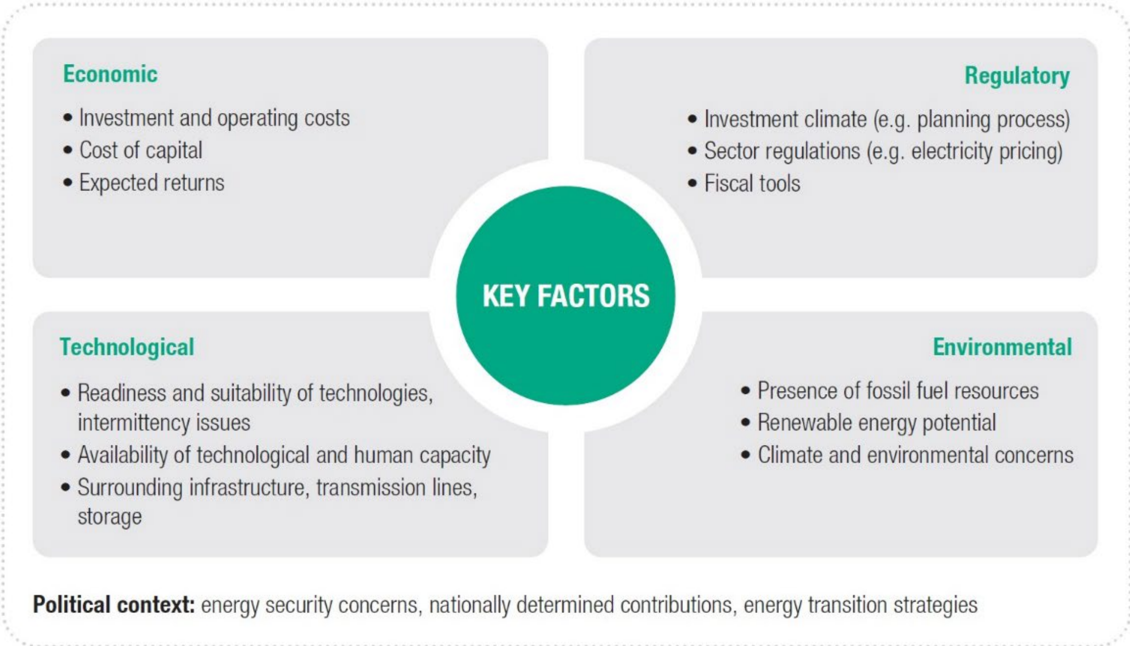
[66] Jorge Viñuales, *The International Law of Energy* (2022), p. 422.
[67] Silvia Amaro, "EU says it has serious concerns about Biden's Inflation Reduction Act", CNBC, 7 November 2022. Available from https://www.cnbc.com/2022/11/07/us-inflation-reduction-act-eu-raises-concerns-risks-wto-dispute.html.
[68] Troy Stangarone, "Inflation Reduction Act Roils South Korea-US Relations", *The Diplomat*, 20 September 2022. Available from https://thediplomat.com/2022/09/inflation-reduction-act-roils-south-korea-us-relations/.
[69] Alfred Kammer, "Europe, And the World, Should Use Green Subsidies Cooperatively", IMF blog, 11 May 2023. Available from https://www.imf.org/en/Blogs/Articles/2023/05/11/europe-and-the-world-should-use-green-subsidies-cooperatively.
[70] Vera Songwe, Nicholas Stern, Amar Bhattacharya, *Finance for climate action: scaling up investment for climate and development*, Report of the Independent High-level Expert Group on Climate Finance (November 2022).
[71] International Solar Alliance, About. Available from https://isolaralliance.org/about/background.

Figure 5 – Drivers and determinants of energy transition investment



Source: UNCTAD.

Source: UNCTAD World Investment Report 2023, p. 152

As one paper recently found, "firms with high climate risk exposure are more likely to reduce FDI in response to the target country's physical climate risks", and that "in the future, one should expect an increased attention of the firms to climate risks that may lead to substantial reallocation of global capital and production as climate-related shocks intensify"[72].

2.2.4. Human Rights Due Diligence requirements

The increasing adoption of mandatory human rights due diligence (mHRDD) legislation in some advanced economies[73] is also likely to influence FDI flows, especially in those sectors and supply chains which are highly prone to human rights violations and abuses[74]. However, the effectiveness of such laws for fulfilling their stated objectives has been questioned, with Prof. Deva characterising current efforts as "half-hearted attempts to tame business-related human rights abuses and hold the relevant corporate actors accountable"[75].

In its 2018 report, the United Nations (UN) Working Group on Business and Human Rights highlighted how HRDD practices have emerged as "part of a wider trend of greater focus on managing the social impact of business and integrating environmental, social and governance considerations into mainstream investment decision-making. It is increasingly being

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[72] Grace Weishi Gu, Galina Hale, "Climate risks and FDI", *Journal of International Economics*, 2023. Available from https://doi.org/10.1016/j.jinteco.2023.103731.

[73] See: Daniel Uribe, Beyond Corporate Social Responsibility: Strengthening Human Rights Due Diligence through the Legally Binding Instrument on Business and Human Rights, South Centre Research Paper 198, October 2021. Available from https://www.southcentre.int/research-paper-138-october-2021/.

[74] Serena Dibra, "The increasing global supply chain risks in retail manufacturing", *Thomson Reuters*, 18 May 2022. Available from https://www.thomsonreuters.com/en-us/posts/international-trade-and-supply-chain/preventing-supply-chain-risk/.

[75] S. Deva, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?", *Leiden Journal of International Law*, Vol. 36, No. 2 (2023).

recognized that proper human rights due diligence and the integration of human rights risks improve risk management overall — and are good for both people and investments”[76].

Some investors have themselves called “on all governments to develop, implement, and enforce mandatory human rights due diligence requirements for companies headquartered or operating within their own jurisdictions or, where appropriate, to further strengthen these regulatory regimes where they already exist”[77]. This suggests greater acceptance of increased corporate regulation concerning their human rights and environmental impacts.

Foreign investors whose home States have adopted mHRDD laws may become subject to legal liability in the home State for human rights violations or abuses that have occurred within their supply chains. This creates a strong motivation for investors to, one, invest from the very beginning in downstream ventures that are fully human rights compliant; and two, seek to maintain such compliance throughout the life of the investment. This is complemented by seeking out opportunities in those host States that are perceived to be in better compliance with their obligations under national and international law, as this can reduce the risk of human rights violations or abuses occurring due to the investment.

In addition, both investors and host States incur possible reputational risks due to human rights violations or abuses in the supply chain. There is “evidence that shaming can create tangible economic costs for repressive regimes in the form of FDI loss. This effect is stronger than effects of human rights abuse itself on FDI”[78]. As empirical research has demonstrated, “investors seem to reward countries’ commitment to human rights regimes either because they care about their own reputation, or because they can use the host country’s improved reputation to deflect responsibility in front of others (e.g., shareholders, potential investors, or consumers)”[79].

There is a strong push towards grounding corporate activities in the human rights paradigms, rather than continuing attempts to insert human rights into business. The latter has not proven itself to be effective beyond establishing voluntary guidelines and corporate social responsibility activities, with barely any visible impacts on foreign investments or supply chains. Yet, as a 2021 report by the UN Working Group has emphasised, “Realizing human rights should be a core purpose of attracting foreign investment, rather than human rights merely becoming an exception in international investment agreements to justify the host State’s regulation of investment and investors. In addition, States should ensure that investment contributes to inclusive and sustainable development and that the provisions of agreements are designed to achieve this goal.”[80]

2.2.5. Technological advancements and the Digital Transformation

Digital technologies and associated infrastructure will continue rising in importance as factors for bringing in FDI, though it can have both positive and adverse impact on the economies of

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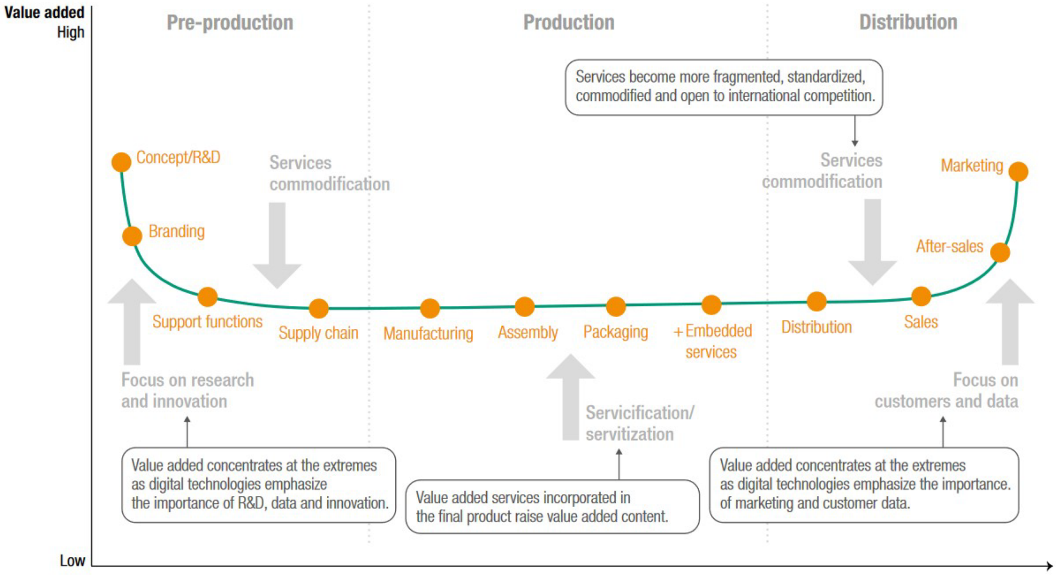
[76] United Nations General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/73/163, 16 July 2018, para. 86.
[77] Investor Alliance for Human Rights, “The Investor Case for Mandatory Human Rights Due Diligence”. Available from https://investorsforhumanrights.org/sites/default/files/attachments/2020-04/The%20Investor%20Case%20for%20mHRDD%20-%20FINAL_0.pdf.
[78] Krishna Chaitanya Vadlamannati, Nicole Janz, Øyvind Isachsen Berntsen, “Human Rights Shaming and FDI: Effects of the UN Human Rights Commission and Council”, *World Development*, Volume 104, 2018, Pages 222-237.Available from https://doi.org/10.1016/j.worlddev.2017.11.014.
[79] Ana Carolina Garriga, “Human Rights Regimes, Reputation, and Foreign Direct Investment”, *International Studies Quarterly*, Volume 60, Issue 1 (March 2016), Pages 160–172. Available from https://doi.org/10.1093/isq/sqw006.
[80] Working Group on the issue of human rights and transnational corporations and other business enterprises, Report on Human rights-compatible International Investment Agreements (IIAs), A/76/238, 27 July 2021. para. 53.

host States[81]. The digitalization of the supply chain gained much prominence in the wake of the pandemic[82], with countries prioritizing the use of digital solutions wherever possible. Investors also responded in a similar manner, investing heavily in digitizing their supply chains and putting the required infrastructure and skills in place. Despite the supply chain crisis abating, investors have continued to back startups focused on increasing supply chain digitalization[83].

As the real and the digital economy increasingly converge, the permeation of digital technologies in manufacturing and services supply chains provides both opportunities and challenges for developing countries seeking greater value addition, though its effect are not uniform across all stages of the production process (see Figure 6). The Group of 77 (G77) and China has acknowledged "the fundamental role of access to technology and knowledge sharing. (…) Innovation and knowledge are fundamental in order to attain the SDGs, moreover, they are crucial in relation to the positive impacts investments may have on development"[84].

Figure 6 – Impact of digitalization on value added



Source: UNCTAD.
Note: Servicification is intended as carrying out manufacturing as a service, in a contract manufacturing relationship. Servitization is intended as the incorporation of embedded services in products.

Source: UNCTAD World Investment Report 2020, p. 143

At the same time, a recent paper has highlighted how the greater adoption of technology, use of robots and computerized manufacturing could "reduce the advantage of producing in low labor cost countries while additive manufacturing technologies such as 3D printing could

[81] Le Thanh Ha & Nguyen Thi Thanh Huyen, "Impacts of digitalization on foreign investments in the European region during the COVID-19 pandemic", *Development Studies Research*, Vol. 9, No. 1, pp. 177-191, DOI: 10.1080/21665095.2022.2074863.
[82] Rebeca Grynspan, "Here's how we can resolve the global supply chain crisis", UNCTAD, 18 January 2022. Available from https://unctad.org/news/blog-heres-how-we-can-resolve-global-supply-chain-crisis.
[83] Marc Vartabedian, "Investors Continue to Back Logistics Tech", WSJ, 27 April 2023. Available from https://www.wsj.com/articles/investors-continue-to-back-logistics-tech-97063b1a.
[84] Statement by Ecuador on behalf of the Group of 77 and China in Geneva at the Trade and Development Board, sixty-seventh executive session, 5 February 2019. Available from https://unctad.org/system/files/non-official-document/tdbex67_stat_Ecuador_G77_item4_en.pdf.

shorten and reinforce the trend towards regionalization of value chains"[85]. However, there are many impediments faced by developing countries which require to be scaled before they can make full use of increasing supply chain digitalization. Factors such as the lack of digital skills in the labour force, inadequate digital infrastructure, limited support from the government, and lack of appropriate policy frameworks all play a role in determining if the country can make use of the digital opportunities[86]. The recent proliferation of artificial intelligence has also raised concerns about economic disruptions, widening wealth inequalities and elimination of existing jobs[87].

The availability of finance is also a critical factor, as investors need to put up large amounts of capital for digitalization. While the upfront investment required in building digital supply chains may be significant, the return on investment would consider the "potential reduction in supply chain disruptions, increased efficiency, and improved customer satisfaction"[88] as justification.

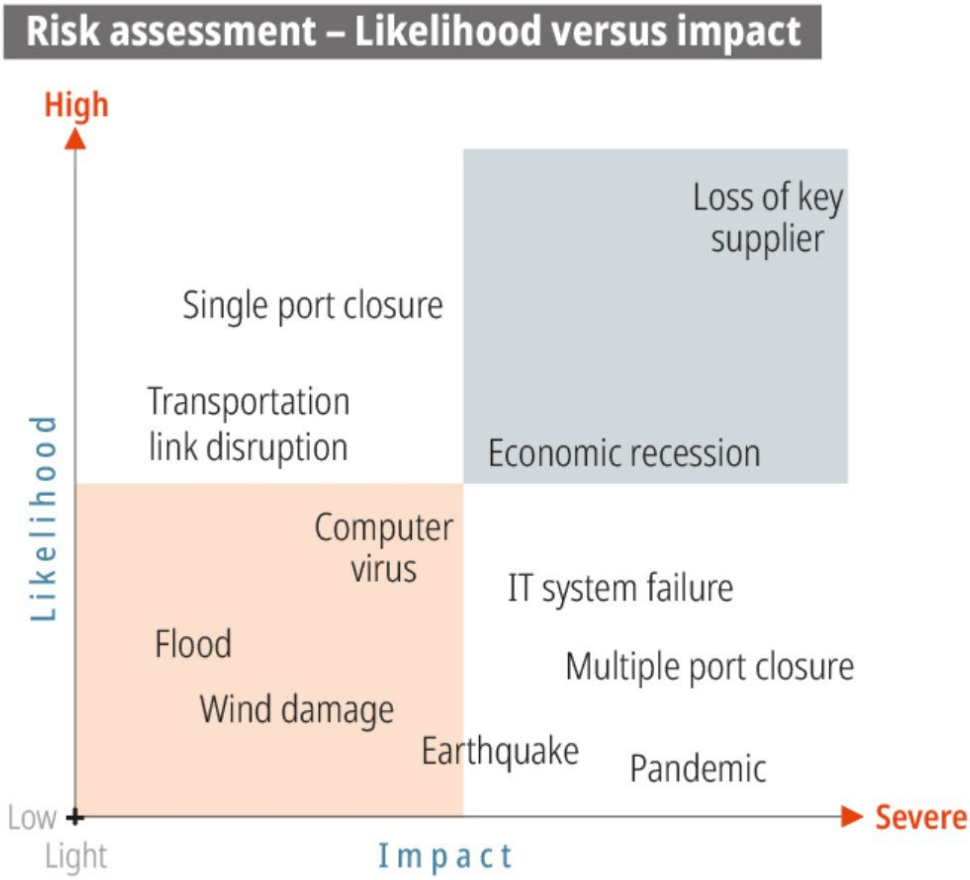
There will also be divergences between what is sought by investors in digital technology enterprises as compared to more traditional enterprises making use of digital tools in their business operations. For the former, elements such as availability of high-quality digital connectivity and digital skills, regulations around data security and privacy[89], ease of e-commerce operations and cross border data flows[90] are of high importance. However, UNCTAD has noted that, "Digital MNEs have grown partly in addition to, partly at the cost of, but mostly separate from traditional MNEs. And the digitalization of the supply chains of those traditional MNEs has in large part been bolted on to their existing international production configurations"[91].

2.2.6. Other relevant factors

The elements captured above are non-exhaustive, as all host States would have their own unique circumstances and imperatives which will influence their FDI flows. Factors such as the external sovereign debt, corruption, political stability among others will continue being relevant for foreign investors. Risk assessments at the national level will also remain an important tool for both investors and host States (see Figure 7).

[85] R. Lema and R. Rabellotti, "The Green and Digital Transition in Manufacturing Global Value Chains in Latecomer Countries", UNCTAD Background Paper (Geneva, 2023).
[86] Ibid.
[87] Steven Greenhouse, "US experts warn AI likely to kill off jobs – and widen wealth inequality", *The Guardian*, 8 February 2023. Available from https://www.theguardian.com/technology/2023/feb/08/ai-chatgpt-jobs-economy-inequality.
[88] Adnan Al-Banna, Zaid A. Rana, Mohamed Yaqot & Brenno C. Menezes, "Supply Chain Resilience, Industry 4.0, and Investment Interplays: A Review", *Production & Manufacturing Research*, Vol. 11, No.1, DOI: 10.1080/21693277.2023.2227881.
[89] Satyanand, Premila Nazareth, "Foreign Direct Investment and the Digital Economy", ARTNeT on FDI Working Paper Series, No. 2, July 2021, Bangkok, ESCAP, p. 19. Available from https://artnet.unescap.org/fdi.
[90] UNCTAD, *Digital Economy Report 2021 - Cross-border data flows and development: For whom the data flow*, UNCTAD/DER/2021. Available from https://unctad.org/system/files/official-document/der2021_en.pdf.
[91] UNCTAD, *World Investment Report 2020*, p. 127.

Figure 7 - Risk assessment[92]



The easy availability of finance as seen over the past decade is likely to shrink with continuing increase in interest rates by central banks[93], which is likely to have negative spillovers on FDI. There are indications that the "transition to contractionary monetary policy in the post-COVID-19 period may cause significant constraints on the FDI inflows to developing countries. Therefore, it may be expected that favourable financial conditions for foreign direct capital inflows to developing countries will disappear in the post-COVID-19 period"[94].

[92] Organisation for Economic Co-operation and Development (OECD), "Keys to Resilient Supply Chains". Available from https://www.oecd.org/trade/resilient-supply-chains/identify-potential-risks/.
[93] "Central banks stay the course as inflation fight gets tougher, BIS says", BIS, Press Release, 25 June 2023. Available from https://www.bis.org/press/p230625.htm.
[94] Ö. Karahan, M. Bayır, "The effects of monetary policies on foreign direct investment inflows in emerging economies: some policy implications for post-COVID-19", *Future Business Journal*, Vol. 8 (2022). Available from https://doi.org/10.1186/s43093-022-00152-6.

BOX 2

While the current confluence of crises is unprecedented, the increasing uncertainty affecting foreign investment flows is not. Prof. Sornarajah has characterised the actions of States in the ‘period of uncertainties’, which commenced with the 2008 global financial crisis as follows,

“Developed states find it necessary to protect interests other than those of their corporations. Protectionist sentiment in the guise of national security is seen to be re-emerging. Transfer of jobs out of the state into cheaper locations causes anxiety. States now are moving away from the partnership they had with their private corporations and taking measures solely in the public interest, which means that they cannot subscribe to an international law that inflexibly protects foreign investments”[95].

As developing countries move forward in their efforts to recover from the lasting effects of the COVID-19 pandemic and fight climate change, they need to encourage and attract FDI that is responsible, sustainable and will serve their national development and just transition goals. The following section therefore considers some important policy perspectives for developing countries in this regard.

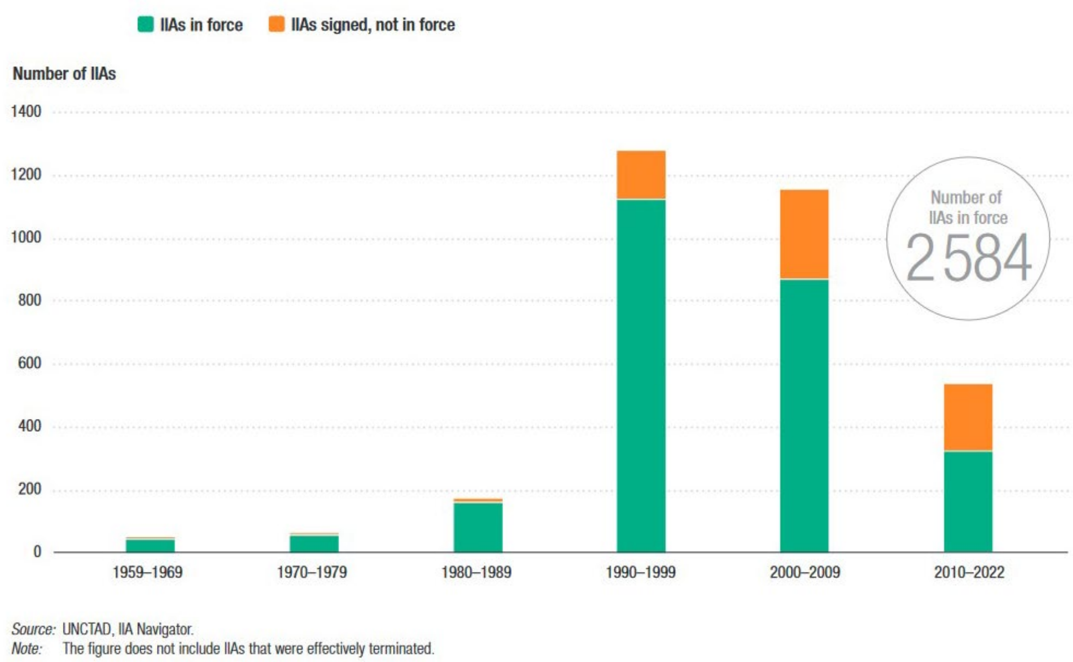
[95] M. Sornarajah, *Resistance and Change in the International Law on Foreign Investments*, (Cambridge, 2015), p. 406.

3. ADOPTING A RENEWED APPROACH TO INVESTMENT GOVERNANCE

With changing geo-economic realities and the risks posed by climate change, there is a need for developing countries to have a regulatory framework that is nimble and flexible enough to quickly adapt to a change in circumstances and deal with external shocks, while also complying with their international obligations. Renewed assessments of the level of integration into global value chains is being juxtaposed with the need to increase resilience in domestic economies against external shocks, even though both may be mutually complementary[96].

The existing regime governing international investment was largely developed in the post-colonial era. While the first bilateral investment treaty was signed in 1959, exponential growth in the conclusion of such treaties only arrived in the 1990s[97] (see Figure 8).

Figure 8 - Stock of IIAs 1959-2022



Source: UNCTAD World Investment Report 2023

However, a legal regime predicated solely on providing 'certainty' and regulatory stability to foreign investors has become an anachronism today. States are now required to respond and adapt to the rapidly evolving challenges of the polycrisis, and having sufficient policy space is absolutely critical for this. The risks posed by ISDS[98] cannot be countenanced in the face of this. In parallel, the strengthening of sustainability and inclusiveness as a core element of

[96] Yi Feng, Chien-Chiang Lee, Diyun Peng, "Does regional integration improve economic resilience? Evidence from urban agglomerations in China", *Sustainable Cities and Society*, Volume 88 (2023)Available from https://doi.org/10.1016/j.scs.2022.104273.

[97] UNCTAD, "Bilateral Investment Treaties Quintupled during the 1990s", 15 December 2000. Available from https://unctad.org/press-material/bilateral-investment-treaties-quintupled-during-1990s.

[98] Special Rapporteur on human rights and the environment, Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights, A/78/168, 13 July 2023. See also, AFP, "Governments risk 'trillions' in fossil fuel climate litigation", *France24*, 12 November 2021. Available from https://www.france24.com/en/live-news/20211112-governments-risk-trillions-in-fossil-fuel-climate-litigation.

economic development[99] has laid bare the shortcomings of an investment regime focused solely on investment protection[100]. This section therefore looks at some possible ways this could be considered by developing countries at the national level.

3.1. Innovating investment policy

The legal and policy framework for regulating foreign investment generally covers the entire lifecycle of the investment and plays a significant role in ensuring the benefits it can bring to the domestic economy of the host State. Governments have several policy tools which can be used to attract, retain and expand foreign investments within their territory. This includes the use of incentives, facilitation initiatives and providing aftercare services to investors, among many others. Today, the fundamental challenge for many investment policymakers from developing countries is the balancing of sustainable development priorities with attracting quality FDI.

Some efforts have been made at the international level to come up with approaches for developing investment policies. For instance, the Group of Twenty (G20) Guiding Principles for Global Investment Policymaking[101], agreed in 2016, are non-binding and aim to provide general guidance. UNCTAD's Investment Policy Framework[102] consists of an overarching set of core principles that serve as design criteria for operational guidelines on national investment policies; design and use of IIAs; and promotion of investment in the Sustainable Development Goals (SDGs). The Organisation for Economic Co-operation and Development (OECD)'s Policy Framework for Investment[103] looks at different policy areas affecting investment from an investor perspective, claiming that "its aim is to maximise the broader development impact from investment and not simply to raise corporate profitability".

Some countries have sought to channel their outward FDI into ensuring that critical supply chains can be diversified[104] and made resilient to external shocks, while others have created more restrictions in market access for some foreign investors[105]. For instance, there has been an uptick in the use of investment screening measures in the EU Member States[106] focusing

[99] Expert Mechanism on the Right to Development, Study on the Right to development in international investment law, A/HRC/EMRTD/7/CRP.2, 9 March 2023. Available from https://www.ohchr.org/sites/default/files/documents/issues/development/emd/session7/A_HRC_EMRTD_7_CRP.2%20for%20the%20web.pdf.

[100] K.F. Olaoye and M. Sornarajah, "Domestic Investment Laws, International Economic Law, and Economic Development", *World Trade Review*, Vol. 22 (2023).

[101] G20, Guiding Principles for Global Investment Policymaking, 2016. Available from https://www.oecd.org/daf/inv/investment-policy/G20-Guiding-Principles-for-Global-Investment-Policymaking.pdf.

[102] UNCTAD, Investment Policy Framework for Sustainable Development, 2015. Available from https://unctad.org/system/files/official-document/diaepcb2015d5_en.pdf.

[103] OECD, Policy Framework for Investment 2015. Available from https://www.oecd-ilibrary.org/finance-and-investment/policy-framework-for-investment-2015-edition_9789264208667-en.

[104] "G7 to vow diversifying of supply chains, filling bank regulatory gaps – draft", *Reuters*, 13 May 2023. Available from https://www.reuters.com/markets/g7-finance-chiefs-agree-scheme-diversify-global-supply-chain-draft-communique-2023-05-12/.

[105] "Ottawa restricting foreign state-owned investments in critical minerals", CBC News, 29 October 2022. Available from https://www.cbc.ca/news/politics/ottawa-critical-minerals-plan-1.6634386.

[106] S. Bauerle Danzman & S. Meunier, "Naïve no more: Foreign direct investment screening in the European Union", *Global Policy* Vol. 14 (Suppl. 3), pp. 40–53. Available from https://doi.org/10.1111/1758-5899.13215.

on enhancing 'economic security'[107]. Similarly, the USA has been strengthening screening measures for both inbound[108] and outbound[109] foreign investment.

Given that developing and least developed countries are still largely recipients of foreign investment, the FDI policies in some States are geared towards developmental aims such as job creation, transfer of technology, strengthening capacities of domestic firms and supporting their integration into global value chains, e.g. the Kenya Investment Policy 2019 (KIP) aims at *inter alia* creating an enabling investment climate and effective institutional framework; maximizing mobilization and utilization of domestic capacity by encouraging its inclusion in the value chain; and promoting investment for inclusive growth and sustainable development[110]. It also links to their national development plan, Kenya's Vision 2030 and the Agenda 2063 of the African Union.

The desired outcomes of such policies also shape the kinds and scope of investment incentives offered by the host State, depending on their respective capacities. For instance, India launched a Production Linked Incentive Scheme for manufacturing in the country, which has been credited for an increase of 76% in FDI in the manufacturing sector[111]. Adopting a targeted, sectoral approach can support firms which have the highest potential to engage in greater value addition and move up in the global value chain, which can boost economic growth and productivity.

FDI regulations should also be complementary to the policies for micro, small and medium enterprises (MSMEs), as well as industrial policies which have seen a recent resurgence[112]. Deepak Nayyar has emphasised that "catching up in industrialization is not simply about imitating, following and learning from leaders, because that is a moving target which becomes more elusive with technical progress. It is just as important to think ahead of the curve, anticipating technological changes on the horizon, and leapfrog though innovation to become a leader in some sectors…"[113]. Thus, it becomes imperative to tailor different policies towards strengthening national MSMEs and help channel more responsible FDI to them. Aligning FDI policies and investment incentives to a similar orientation can mutually support these policy outcomes[114].

[107] European Commission, "An EU approach to enhance economic security", 20 June 2023. Available from https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3358.
[108] White House, "Executive Order on Ensuring Robust Consideration of Evolving National Security Risks by the Committee on Foreign Investment in the United States", 15 September 2022. Available from https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/15/executive-order-on-ensuring-robust-consideration-of-evolving-national-security-risks-by-the-committee-on-foreign-investment-in-the-united-states/.
[109] White House, "Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern", 9 August 2023. Available from https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/09/executive-order-on-addressing-united-states-investments-in-certain-national-security-technologies-and-products-in-countries-of-concern/.
[110] Kenya Investment Policy - Faster Investment Growth for Sustainable Development, 2019, p. 24. Available from https://www.invest.go.ke/news/publications/#1638189628679-ee4c4a6f-f695.
[111] Press Information Bureau, "PLI Schemes contribute to increase in production, employment generation, and economic growth", Ministry of Commerce & Industry, Government of India, 13 June 2023. Available from https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1932051.
[112] Ricardo Hausmann, "Why Industrial Policy Is Back", Project Syndicate, 26 January 2023. Available from https://www.project-syndicate.org/commentary/why-economists-have-rediscovered-industrial-policy-by-ricardo-hausmann-2023-01.
[113] Deepak Nayyar, "The return of industrial policy is welcome but it needs far more", Mint, 12 January 2023. Available from https://www.livemint.com/opinion/columns/the-return-of-industrial-policy-is-welcome-but-it-needs-far-more-11673544864852.html.
[114] J. Zhan, "Global investment trends and policies at times of uncertainty", in *Yearbook on International Investment Law & Policy,* L. Sachs, L. Johnson, J. Coleman, eds. (Oxford, United Kingdom, Oxford University Press, 2018).

Investment facilitation measures are increasingly being included in investment policies at the national level, and are also finding space in some new generation IIAs[115]. There is a notable shift in focus from provisions on traditional investment protection to investment facilitation instead. In particular, Brazil's promotion of its model Cooperation and Facilitation Investment Agreement highlights its positive approach to "meet, in a concrete, pragmatic and proactive manner, investors' needs, without neglecting development strategies and policy space for host countries"[116]. The recently concluded plurilateral discussions on an Investment Facilitation Agreement at the World Trade Organization (WTO)[117] also suggests a growing interest among some countries in strengthening this issue.

Finally, preserving sufficient regulatory space is essential for governments to be able to act in the public interest. The use of exclusions, carve-outs, more precise drafting and clarifying the scope of nebulous standards like 'fair and equitable treatment' in bilateral investment agreement can be critical in this regard.

3.2. Effective implementation

A concern often highlighted by host governments around FDI is the gap that exists between the formulation of national policies, their compatibility with international legal obligations and their implementation at the local level. Often, weak links could be found in the domestic regulations themselves or in the host States' compliance with obligations contained in their investment agreements and other treaties. This requires an examination of possible friction points and how they could be addressed.

3.2.1. Assessing national frameworks

The domestic laws of the host State can impact foreign investments in different ways, as adoption of economic, political, environmental and human rights measures might require adjustment on part of the investor to comply with the new requirements. Many developing countries have also adopted a dedicated national law on investment or investment codes, which might include the possibility of ISDS, e.g. UNCTAD lists 122 such laws for the 134 member states of the G77 and China[118].

If a foreign investor perceives that their interests are being undermined or harmed due to a policy change, they have the ability to raise an ISDS claim against the host State under available investment treaties, contracts or national investment laws. However, such a possibility is rarely at the forefront of policymakers' concerns when adopting new policies, especially when there is no obvious link between the policy and the investor's interests.

However, the surfeit of treaty-based ISDS claims over the past years (with an average of 75 cases per year between 2012 - 2021)[119] has given more prominence to the use of 'litigation risk assessment' for ISDS when a new policy or regulation is being formulated. For example, in Canada, van Harten and Scott have found that the trade ministry plays an important but not

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[115] UNCTAD, "Investment Facilitation in International Investment Agreements: Trends and Policy Options", IIA Issues Note 3, September 2023.
[116] Government of Brazil, The Cooperation and Facilitation Investment Agreement. Available from https://www.gov.br/produtividade-e-comercio-exterior/pt-br/arquivos/CFIA-Presentation-EN.pdf/@@download/file/cfia-presentation-en.pdf.
[117] WTO Structured Discussions on Investment Facilitation for Development, Statement by the Co-Coordinators, INF/IFD/W/51, 6 July 2023. Available from https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/IFD/W51.pdf&Open=True.
[118] UNCTAD Investment Policy Hub, Investment Laws Navigator. Available from https://investmentpolicy.unctad.org/investment-laws.
[119] UNCTAD, *World Investment Report 2023*, p. 78. UNCTAD data shows 1257 known treaty based ISDS cases between 1987-2022.

all-encompassing role in vetting proposals for trade and ISDS risks, which also meant that environmental policy measures were being assessed through the lens of possible ISDS disputes[120].

Several countries have also been reviewing their legal instruments containing ISDS clauses or those giving recourse to arbitration for foreign investors. Kenya for instance, has been undertaking a legal risk assessment of its domestic regulations on commerce and investment through establishing a governmental group, in line with the recommendations of the KIP. There are many reasons why a country might embark on such a review, including "a reassessment of tax incentives provided in the law, experience of a costly investment dispute, advice from an international organization, development of new regional or international investment frameworks, the need to reflect new investment policy objectives, and concerns about national security, among others"[121].

Countries can therefore consider taking actions on two fronts, addressing both existing and future policies where frictions with investors could arise. By undertaking a review of their national legislations, they can identify the policy areas susceptible to disputes, particularly focusing on those including provisions on ISDS. Secondly, any future regulations, especially those having larger impacts on foreign investors and supply chains, could be subjected to *ex ante* litigation risk assessment by the government, which would help identify possible triggers for future investment disputes and act to minimize such risks. However, such assessments must be balanced and undertaken with an intersectional lens to ensure that the trade and investment priorities do not override other sustainable development, environmental or human rights concerns. Particular attention should also be paid to the risk of 'regulatory chill' arising in such contexts[122].

3.2.2. Promoting alignment between national and international rules

For countries, it is useful to design their regulatory measures to be in compliance with their international obligations; as well as to require foreign investments and investors to comply with applicable international standards and best practices, as it can reduce risks and disruption in the supply chain. This is particularly true when it comes to the environmental and human rights concerns in supply chains, where government regulations need to ensure the maintenance of a floor, rather than allowing a race to the bottom.

Firms already undertake significant due diligence processes before committing funds to the investment. However, these processes usually do not include non-financial considerations that are relevant to the operation of the investment. In this context, an important tool is the use of *ex ante* impact assessment of the investment on human rights, the environment as well as people and communities who might be affected. This is captured in Guiding Principle 18 of the United Nations Guiding Principles on Business and Human Rights (UNGPs), which suggests that "business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships"[123]. The use of such assessments is also applicable in the

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[120] Gus Van Harten and Dayna Nadine Scott, "Investment Treaties and the Internal Vetting of Regulatory Proposals: A Case Study from Canada", Osgoode Legal Studies Research Paper Series 151 (2016). Available from https://digitalcommons.osgoode.yorku.ca/olsrps/151.

[121] Jonathan Bonnitcha, Suzy H. Nikiéma and Taylor St. John, *Rethinking National Investment Laws: A study of past and present laws to inform future policy-making*, IISD, July 2023. Available from https://www.iisd.org/system/files/2023-07/rethinking-national-investment-laws-en.pdf.

[122] See: Roslyn Ng'eno, Preserving Regulatory Space for Sustainable Development in Africa, SouthViews No. 246, 5 April 2023 at https://www.southcentre.int/southviews-no-246-5-april-2023/. See also, Cosmo Sanderson, "Regulatory chill" of ISDS stalling fight against global warming, says report, Global Arbitration Review, 08 April 2022 at https://globalarbitrationreview.com/regulatory-chill-of-isds-stalling-fight-against-global-warming.

[123] UN Guiding Principles on Business and Human Rights, Guiding Principle 18, p. 19. Available from https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

context of economic policymaking by States, including those affecting supply chains, which can have adverse consequences for the enjoyment of human rights[124].

Taking the specific example of climate change and the energy transition, the Office of the High Commissioner on Human Rights (OHCHR) has highlighted how actions to achieve the goals of the 2015 Paris Agreement can pose specific risks to human rights along the supply chain due to investments in extraction of minerals necessary for clean energy technologies[125]. At the same time, as Johnson points out, there are potential tensions between IIAs and climate policy objectives, and risks that such instruments could be used to impede countries' climate change-related measures if the State's "actions or omissions harm investor rights or even mere expectations"[126]. For instance, the Energy Charter Treaty (ECT) has been in the spotlight as an obstacle for the green transition (see Box 3). Even a 'modernization' of the treaty appeared insufficient for its European member states, which are currently in the process of withdrawing from the ECT[127].

BOX 3

The risks posed by ISDS to countries adopting such climate change related measures were well illustrated in a dissenting opinion by Philippe Sands, who castigated the approach taken by the majority of the arbitral tribunal, emphasising that,

> "It also has the unfortunate effect of setting in soft stone a regulatory framework that must necessarily be allowed to change in the face of technological changes that reduce reliance upon greenhouse gas emitting fossil fuels. In this way, I fear that the Majority's approach (which is by no means an isolated one) tends to undermine efforts to allow states to take the actions necessary to address the serious threat of global warming and climate change. By making certain technologies more expensive than they need be, the approach offers support for those who see the ECT as setting out obsolescent rules that reflect a bygone era, a legal carbuncle negotiated in an earlier age that will limit efforts truly to transform energy supply systems and offer protections to our common environment"[128].

Similarly, UNCTAD has highlighted that "the process of planning the energy transition requires a logical path from NDCs to investment policy measures that address the specific challenges of promoting investment in the energy sector"[129]. Thus, the regulatory approaches for facilitating FDI in green and sustainable supply chains must be considered at the intersection of the existing regimes for investment, human rights and the climate, among others.

3.3. Managing disputes

There has been increasing focus among developing countries on the prevention, mitigation and avoidance of investment disputes. The role of institutions such as investment promotion

[124] Report of the Independent Expert on foreign debt and human rights, Guiding principles on human rights impact assessments of economic reforms, A/HRC/40/57, 19 December 2018.
[125] Office of the UN High Commissioner for Human Rights, *Sustainable Global Supply Chains: G7 Leadership on UNGP Implementation*, Report for the 2022 German Presidency of the G7, January 2022, pp. 18-19.
[126] L. Johnson, Chapter 4: FDI, international investment agreements and the sustainable development goals, in *Research Handbook on Foreign Direct Investment* (Cheltenham, UK, Edward Elgar Publishing, 2019). Available from https://doi.org/10.4337/9781785369858.00011.
[127] Jorge Liboreiro, "In U-turn, Brussels recommends EU-wide exit from controversial Energy Charter Treaty", EuroNews, 7 Feb 2023. Available from https://www.euronews.com/my-europe/2023/02/07/in-u-turn-brussels-recommends-eu-wide-exit-from-controversial-energy-charter-treaty.
[128] Dissent on Liability and Quantum of Philippe Sands, Award, RENERGY S.à r.l. v. Kingdom of Spain, ICSID Case No. ARB/14/18, 6 May 2022.
[129] UNCTAD, *World Investment Report 2023*, p. 176.

agencies, regulatory authorities and domestic dispute resolution mechanisms such as ombudspersons can play an important role in preventing disputes while ensuring the promotion and retention of FDI in the country. Accordingly, UNCTAD has underscored that, “In the context of investor–State disputes, dispute prevention may involve the establishment of adequate institutional mechanisms to prevent disputes from emerging and avoid the breach of contracts and treaties on the part of government agencies (…) In addition, the implementation of dispute preparedness mechanisms allows governments to identify more easily potential areas where disputes with investors can arise and respond to the disputes where and when they emerge”[130].

The first point of contact for investors is usually the authorities at the lower levels of government where the investment is located. However, they may not have the relevant skills or expertise to be able to resolve such grievances, or have sufficient understanding of the issues arising from IIAs,e.g. in Vietnam, “[t]he provincial investment authorities build their awareness and expertise related to the IIA mainly through the international investment disputes that have taken place in their locality. The legal officers in Ho Chi Minh City are better aware of the state obligations under IIA, as they have been dealing with most international investment dispute cases in Vietnam. This problem might potentially lead to the enactment of inaccurate decisions and/or measure by the local government against foreign investors and their investment project(s) in the locality, breaching the provisions of the IIA”[131].

It is useful that the moment the host State is made aware of a possible grievance, it can be acted upon to prevent it from escalating into a dispute. In addition, the early stage provides an opportunity to start collecting relevant information about the investment, the regulatory clearances given, the reason for the grievance etc. which can serve as evidence if the dispute does indeed escalate further.

Several developing countries have created dedicated mechanisms for preventing and managing their investment disputes, which could be a single contact point or an inter-institutional committee, responsible for prevention, management or both[132]. For example, Valderrama has highlighted the dispute prevention practices adopted by Peru, which include the establishment of “a coordination and response system called SICRECI (*Sistema de Coordinación y Respuesta del Estado en Controversias Internacionales de Inversión*) with the mandate to represent the state, from the reception of the investor’s notice of dispute until the compliance with and enforcement of the final award terminating the dispute”[133]. However, the adoption of such dispute prevention strategies and institutions entails significant costs[134].

Finally, some countries have been opting out of treaty-based ISDS altogether, and providing effective access to remedies to investors through different means. While State-State dispute settlement remains a possibility for most investment disputes, attention should also be given to increasing the use of contract-based investor-State dispute resolution, which includes a

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[130] UNCTAD, “Investor–State Disputes: Prevention and Alternatives to Arbitration”, UNCTAD Series on International Investment Policies for Development, 2010, p. xiv-xv. Available from https://unctad.org/system/files/official-document/diaeia200911_en.pdf.

[131] Tran Viet Dung, "Vietnam’s Experiences with International Investment Agreements Governance: Issues and Solutions", in *Asian Yearbook of International Law* (Leiden, The Netherlands, Brill | Nijhoff, 2021). Available from https://doi.org/10.1163/9789004501249_005.

[132] UNCITRAL Working Group III, Compilation of best practices on investment dispute prevention and mitigation, March 2023. Available from https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/wg_iii_compilation_on_dispute_prevention_and_summary.pdf.

[133] C.J. Valderrama, “Investor-State Dispute Prevention: The Perspective of Peru”, in Public Actors in International Investment Law. European Yearbook of International Economic Law, C. Titi,eds. (Springer, Cham., 2021). Available from https://doi.org/10.1007/978-3-030-58916-5_7.

[134] Lise Johnson, Lisa E. Sachs & Ella Merrill, “Investor-State Dispute Prevention: A Critical Reflection”, *Dispute Resolution Journal*, Vol. 75, No. 4 (2021). Available from https://scholarship.law.columbia.edu/sustainable_investment_staffpubs/202.

clearly defined scope and terms of the dispute, and could be carried out in an administering institution in the host State itself, thereby reducing costs and time[135].

[135] Danish, “Could COVID-19 trigger ‘localizing’ of international investment arbitration?”, Investment Policy Brief, No. 21 (Geneva, South Centre, 2021). Available from https://www.southcentre.int/investment-policy-brief-21-april-2021/.

4. Conclusion

The shock to GVCs from the COVID-19 pandemic and increasing geopolitical tensions has been immense, though its effect was to accelerate an already emerging trend towards greater diversification and resilience. While globalization cannot be fully rolled back, it is in retreat with focus for both countries and corporations again shifting to the local and regional level[136]. It becomes important to recognize that a worldwide restructuring of supply chains is inevitably underway, and its full extent and impacts are still unfolding.

This was particularly recognized by a recent G20 outcome under the Indian presidency, entitled "G20 Generic Framework for Mapping GVCs" which is a voluntary mapping framework to help countries identify risks and opportunities for building resilience within their GVCs[137]. It further acknowledges that "participation in GVCs also partially depends on the capacity of countries to attract global production, including by promoting and fostering linkages between foreign enterprises and domestic companies, particularly MSMEs" and reiterated "the importance of promoting open, inclusive, non-discriminatory, predictable and transparent conditions that foster sustainable investment"[138].

Thus, for all countries and governments, having a regulatory framework that can capture the maximum benefits of this transformation in global supply chains is essential. By assessing their relative strengths and providing targeted measures, it is possible for governments to support their national firms and MSMEs to capture a greater portion of the value added in GVCs, and move into economic activities with more productivity and higher returns.

Foreign investment will play an important role in continuing economic recovery from the pandemic and external shocks. Particular attention will need to be paid to the critical evolving drivers of FDI in the near and medium term, as challenges such as climate change, geoeconomic and digital transformation impact the resilience of the supply chain. Firms are already building in stock buffers and spare capacity nearer to their markets to minimize the risk of disruption, even though the associated costs will increase.

Domestic and international legal and policy frameworks governing investment will have to be adapted to this new reality, while ensuring the host State remains an attractive investment destination for FDI. However, expecting full stability in the regulatory regime may be counterproductive in the current age of uncertainty when governments need to act to develop sustainably and meet the challenge of climate change and a just transition.

Specific attention needs to be given to efforts for limiting negative externalities or adverse impacts on investments in the GVC, which also includes ensuring the protection of the environment and respecting human rights. There is now a 'business case' for the use of mandatory human rights due diligence legislations, complemented by the systematic integration of human rights in supply chains, which can provide greater sustainability as well as economic returns for foreign investors.

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[136] Adrian Wooldridge, "Deglobalization Is Not Just for Countries", Bloomberg, 20 July 2023. Available from https://www.bloomberg.com/opinion/articles/2023-07-20/deglobalization-is-not-just-for-countries#xj4y7vzkg.
[137] G20 Trade and Investment Ministers' Meeting Outcome Document and Chair's Summary, Jaipur, Rajasthan, 25 August 2023. Available from https://www.g20.org/content/dam/gtwenty/gtwenty_new/document/G20_Trade_and_Investment_Ministers_Meeting.pdf.
[138] Ibid., para. 19.

The experiences of countries from the termination of their investment treaties and its limited impact on FDI flows[139] has raised some questions about the necessity of such treaties for economic development. Others have sought to harness their economic integration initiatives to foster foreign investments that will contribute to achieving their national priorities. The focus therefore is shifting towards holistic sustainable development, deepening industrialization and bringing in foreign investment that is sustainable, responsible, inclusive, and in line with the national development objectives.

Going beyond insular economic development paradigms, there is a movement from an investment regime for protecting foreign investors alone to one that addresses the needs of all stakeholders and upholds their rights and obligations. The push for greater liberalization in developing country supply chains had undercut protections for labour and environment while providing additional incentives to foreign investors, including privileged access to international arbitration.

However, the race to the bottom is contingent on the lack of a floor, with the bottom plunging ever deeper for developing countries in their quest to attract foreign investment. The changing geo-economic landscape has added to the single minded quest for profits, with resilience and sustainability also carving out a space alongside national security concerns. The extent to which the Global South countries and its people can benefit from this depends on decisions they can take to adapt their investment policies to the changing scenario and those countries' needs and priorities.

[139] "Termination of Bilateral Investment Treaties Has Not Negatively Affected Countries' Foreign Direct Investment Inflows", Public Citizen Research Brief, April 2018. Available from https://www.citizen.org/article/termination-of-bilateral-investment-treaties-has-not-negatively-affected-countries-foreign-direct-investment-inflows/.

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