Collective Action Agendas on Investment: A Synthesis

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Components of the international policy agenda on investment	**Main issues/key considerations**	**Treatment under existing international arrangements**	**Treatment under the Doha Development Agenda mandate on investment**	**Appropriate collective action response**
Investment protection	• Bilateral investment treaties (BITs) and regional integration agreements (RIAs) likely afford a higher overall level of protection to home country investors; limited scope/interest for introducing investor-state arbitration into the WTO • Potential gains for developing countries from “one-stop” WTO disciplines on investment protection: economies of scale in rule-making; potential signalling benefits viz foreign	• Addressed comprehensively in BITs and RIAs • No WTO disciplines deal directly with investment protection matters	• Not addressed	• BITs and RIAs likely preferred locus of continued rule-making advances

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	investors; means to redress BITs-related asymmetries			
Investment liberalisation	• Barriers to entry primarily affect investment in services (up to 85% of discriminatory or presence-impeding measures are maintained in service sectors) • Foreign investors in manufacturing often accorded better than national treatment by host countries (via investment incentives)	• Treated in a number of BITs and more extensively in many RIAs • Addressed solely under GATS for investment/commercial presence in services (GATS covers some two-thirds of global FDI flows) • No WTO disciplines govern the liberalisation of investment in manufacturing, mining or agriculture	• Calls for a GATS-like, positive list, approach to liberalisation commitments (including in respect of pre-establishment)	• WTO/GATS already targets a high percentage of investment restrictions (barriers to entry and post-entry operating restrictions) • Challenge to strengthen the investment liberalisation properties of the GATS, through changes to means of scheduling commitments so as to lock in the regulatory *status quo* • Limited coherence/value-added from a separate multilateral regime for investment in manufacturing

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Investment distortions	• Performance requirements: e.g. local content or trade-balancing requirements are concentrated in manufacturing • Investment incentives also predominant in manufacturing; distortions arise mainly *within* regions; limited evidence of incentive-bidding along North-South lines • Investment-related trade measures (IRTMs) tilt forces of comparative advantage in favour of home countries: tariff peaks/escalation, contingent protection	• Comprehensive disciplines on performance requirements under the TRIMs Agreement • Weak indirect disciplines on the granting of investment incentives via the Agreement on Subsidies and Countervailing Measures (ASCM) • IRTMs subject to various existing WTO disciplines (e.g. anti-dumping; safeguards; TBT; market access negotiations).	• Not addressed, except mandated work on disciplines governing the relationship between regional trade agreements and the multilateral trading system	• Need to clarify the scope of prohibited measures under the TRIMs Agreement and assess its developmental effects • Need to collect data on the nature, country and sectoral incidence of investment incentive schemes; disciplines best addressed at the regional level • Much scope for reducing the distorting effects of IRTMs via traditional market access negotiations and tightening of WTO disciplines on contingent protection and RIAs

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	instruments, standards-related barriers, discriminatory sectoral rules of origin in RIAs			
Good governance	• Enhancing regulatory transparency • Combating bribery and corruption • Promoting corporate social responsibility • Enhancing corporate governance • Promoting policy dialogue on "best practices" in investment promotion	• Transparency obligations are found in all existing WTO agreements relating to investment (e.g. TRIMs, GATS, TRIPs, GPA, ASCM, DSU)	• Focus on transparency only	• Most governance-enhancing issues are best addressed outside the WTO, through existing agreements and arrangements at both the regional and multilateral levels (e.g. OAS, OECD, UN). Mix of binding and non-binding disciplines; hard vs. soft law approaches; mix of disciplines affecting state and private actors; enforcement via peer review or trade sanctions; significant scope for expanding developing country involvement through

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				greater capacity building efforts (via World Bank or regional development bank funding)