ipea Instituto de Pesquisa Econômica Aplicada

Título do capítulo	CAPÍTULO 10 **NATIONAL SECURITY AS A CRITERION FOR FDI IN INDIA**
Autor(es)	Santosh Pai
DOI	DOI: https://dx.doi.org/10.38116/9786501305431cap10

Título do livro	**Instrumentos de avaliação de investimentos externos no mundo e seus debates no Brasil**
Organizadores	Michelle R. Sanchez-Badin Renato Baumann
Volume	1
Série	-
Cidade	Rio de Janeiro
Editora	Instituto de Pesquisa Econômica Aplicada (Ipea)
Ano	2025
Edição	1a
ISBN	9786501305431
DOI	DOI: https://dx.doi.org/10.38116/9786501305431

CAPÍTULO 10

NATIONAL SECURITY AS A CRITERION FOR FDI IN INDIA

Santosh Pai[1]

1 INTRODUCTION

India does not have a comprehensive regulatory framework to screen foreign direct investments (FDI) across sectors and regions. Majority of FDI in India since 1991 has flowed under the "automatic route" where no prior government approval is required. Even where FDI is subject to government approval, a security clearance is mandatory only in sectors deemed to be sensitive for investments from certain "countries of concern". A significant departure was made from this framework in April 2020 when the Indian Government published Press Note 3,[2] which made every investment from countries that share a land border with India or where beneficial interests of any investment were held by citizens of such countries, subject to government approval. Since an overwhelming majority of investments that qualify for scrutiny under Press Note 3 originate from China, this process has become the de facto national security screening mechanism for FDI in India.

This chapter is divided into five sections. The first section describes the investment screening mechanism for FDI that operated in India from 1991 when economic reforms were launched until 2017 when the Foreign Investment Promotion Board (FIPB) was abolished, and thereafter until 2020 when Press Note 3 was implemented. The second section examines data on FDI inflows from China during the period 2000-2020 to provide context for analysis of Press Note 3. The third section describes the FDI screening mechanism established under Press Note 3 in 2020. The fourth section examines data on investment proposals, approvals and actual FDI flow under Press Note 3 since 2020. The fifth section highlights some lessons from India's regulatory experience in screening FDI.

1. Bachelor of Arts and Bachelor of Laws (B.A.LL.B.) (Hons.) degree from National Law School of India University (NLSIU), Bangalore; Master of Laws (LL.M.) in Chinese Law from Tsinghua University, Beijing; and MBA from Vlerick Business School, Belgium (Peking University Campus).

2. More information at: India (2020a).

2 THE FIPB AND THE FOREIGN EXCHANGE MANAGEMENT ACT (FEMA), 1999 (1991-2020)

The Statement of Industrial Policy (*Policy*)[3] which launched India's economic reforms in 1991 is a good starting point to examine the issue of screening FDI from a national security standpoint. Foreign investments before 1991 were approved on an ad-hoc basis with no uniform regulatory process. The Policy opened 47 industries to majority foreign investment (up to 51%), out of which 34 were placed under the "automatic" route, i.e. foreign investments in these industries were allowed without prior government approval. Although it was not explicitly spelt out in the Policy, this meant that foreign investments in only 13 industries had a formal screening process including for national security purposes. Conversely, the remaining 34 industries placed under the "automatic route" were deemed to be "non-sensitive", thus not warranting any formal scrutiny.

An inter-ministerial body called the FIPB was constituted to examine FDI proposals requiring government approval and make recommendations to the Government. The primary function of the FIPB was to negotiate with several large international firms, approve direct foreign investment in selected areas, and manage the flow of FDI into the country. It was expected to speed up the approval process, ensure transparency on the source of funds, and ensure that the funds were used correctly, in the manner intended. The single window clearance approach was also expected to smoothen the investment process for foreign investors.

The FDI Policy, Press Notes and other guidelines formulated by the Department for Promotion of Industry and Internal Trade (DPIIT) in the Ministry of Commerce and Industry would form the basis of the FIPB decisions. The FIPB would coordinate between different administrative ministries and departments for receiving comments on the FDI proposals. The FIPB was initially constituted under the Prime Minister's Office. However, it was subsequently transferred twice; first, to the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce in July, 1996, and then to the Department of Economic Affairs (DEA) in January, 2003.

The recommendations of the FIPB were approved through a three-tier approval mechanism. The first tier comprised the FIPB acting as a committee of senior officials to examine and make recommendations on each proposal. The second tier was the Empowered Committee on Foreign Investment (ECFI) chaired by the Finance Minister for considering recommendations of the FIPB for projects valued up to Rs. 300 crore. The final tier was the Cabinet Committee on

3. More information at: Industrial Policy and Development. Available at: https://www.indiabudget.gov.in/budget_archive/es96-97/7%20Industrial%20Policy%20and%20Development.pdf.

Foreign Investment (CCFI) which took decisions on projects in which the total investment was more than Rs. 300 crore. The monetary limits and competent authority were altered twice, consequent to the transfer of the FIPB to DIPT and DEA. At the time of the abolition of the FIPB, proposals of up to Rs. 5000 crores were approved by the Finance Minister, and beyond that by the Cabinet Committee. Proposals that were rejected at the Ministerial level could be referred to the Cabinet Committee for re-consideration.

The permanent members of the FIPB were Secretaries to the Government of India who oversaw certain selected ministries. These were the Secretaries of the DEA, DPIIT, Department of Commerce, Ministry of External Affairs (Economic Relations), Ministry of Overseas Indian Affairs, Department of Revenue (DoR), and Ministry of Small and Medium and Micro Enterprises. When national security concerns were involved, inputs were presumably also sought from the Home Ministry which was responsible for internal security and various intelligence agencies that operate under its purview.

As FDI flowed into more sectors, the complexity of legal and regulatory issues surrounding foreign exchange transactions increased. The antiquated statutory framework under Foreign Contribution (regulation) Act, 1976 whose primary objective was to prevent drain of foreign exchange reserves before liberalization was no longer adequate. To fulfil this need, the FEMA, 1999 introduced a comprehensive regulatory framework to govern transactions involving foreign exchange. Various notifications were issued to regulate specific categories of transactions. The Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May 2000 also referred to as "FEMA 20") which came into effect on June 1, 2000, contained an umbrella for regulatory issues concerning FDI. Successive subordinate legislation such as Master Circulars which amended sectoral caps or modified procedures for FDI were issued with reference to FEMA 20. From 2010 onwards, the DIPP, Ministry of Commerce and Industry, Government of India, started issuing a "Consolidated FDI Policy Circular" on yearly basis on March 31st of each year consolidating amendments in the preceding twelve months.

Under FEMA, all types of foreign investment from Pakistan and Bangladesh required government approval. This was clearly a provision to safeguard national security. Apart from this, investments in sensitive sectors such as telecom, defense and railway infrastructure were also screened from a national security perspective especially when such investments originated from "countries of concern" or "unfriendly entities" (For example, see language in Consolidated FDI policy effective from April 1, 2010 in Section 5.38 Telecommunication). The relevant authorities involved in such security clearances were the Ministry of Home Affairs and the relevant Ministry which supervised the industry in question.

With progressive liberalization of the FDI caps in various sectors, there was a significant decline in the number of proposals that were brought before the FIPB. By 2015, more than 90% of the total FDI inflow in India was under the automatic route. The successful implementation of e-filing and online processing of FDI applications also made some aspects of the FIPB superfluous. The FIPB was finally abolished in February 2017.

The phasing out of the FIPB was a complex administrative task that involved the redistribution of the powers and responsibilities among various ministries. A detailed roadmap for the transition was prepared after several rounds of consultations between senior officials and industry experts. The functions of the FIPB were allotted to various ministries, depending on the industry involved. There were eleven notified sectors requiring government approval viz, Mining (Ministry of Mines, Defence/cases relating to FDI in small arms Department of Defence Production, Ministry of Defence), Broadcasting, Print media, Civil Aviation, Satellites (Department of Space), Telecom (Department of Telecommunications, Ministry of Communications), Private Security Agencies, Trading-Single, Multi brand and Food Products (DIPP), Financial services not regulated or regulated by more than one regulator (DEA), Banking (Department of Financial Services) and Pharmaceuticals. Cases involving investments under automatic route from "countries of concern" requiring security clearance as per the FEMA, FDI Policy and security guidelines were to be dealt with by the Ministry of Home Affairs.

DIPP prescribed a detailed and comprehensive "Standard Operating Procedure" to process FDI applications. The detailed guidelines ensure consistency of treatment and uniformity of approach across sectors. In some cases, provision was made for inter-ministerial consultation.

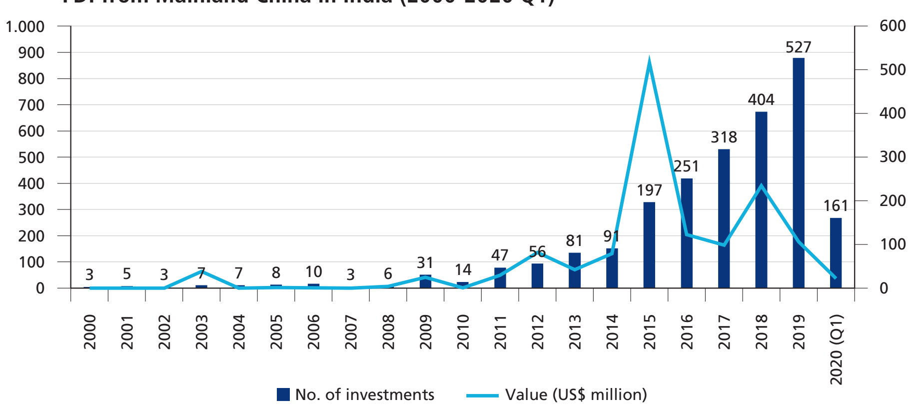
Specific departments under each Ministry were also made responsible for monitoring of the compliance with conditions imposed during the FDI approval. They were also made responsible for monitoring of investments under previous FIPB approvals. In case the proposal is to be rejected, or where the approval is subject to additional conditions that are not provided in the FDI Policy, then the prior concurrence of DIPP is required.

3 CHINESE INVESTMENTS IN INDIA BEFORE PRESS NOTE 3 (2000-2020)

Since the FDI screening process under Press Note 3 is primarily focused on investments from China it is pertinent to examine the trends of FDI from China in the twenty-year period preceding Press Note 3. According to data published by the Government of India, in the period from April 1, 2000 to March 31, 2020, India received direct FDI inflows amounting to US$ 2.3 billion from Mainland China. "Direct" FDI here refers to investments that are remitted directly from a bank account in China to the bank account of an Indian company. It is a well-established fact that a majority of outbound investment flows from China are "indirect", i.e. routed through third countries including tax havens. Hence, the actual quantum of FDI inflows from China can be substantially larger. Estimates for total Chinese investments in India are in the region of US$ 10 billion. Indian startups alone attracted US$ 4 billion of investments from Chinese investors between 2015 and 2020. However, for the current purpose, we can treat the official dataset consisting of direct FDI flows as a proxy for Chinese investments in India since the sector-wise and year-wise distribution of indirect FDI flows are likely to closely mirror those of direct FDI flows albeit with a higher magnitude.

These direct FDI flows from China were not of significant value or frequency until 2014 when the "Make in India" program was launched. Thereafter, the number of investment transactions per year grew rapidly and peaked at 527 transactions in 2019. The value of annual FDI flows peaked in 2015 itself when investments worth US$ 859 million were received in a single year. These included a slew of high-profile investments in capital intensive sectors such as automobiles and power.

FIGURE 1
FDI from Mainland China in India (2000-2020 Q1)

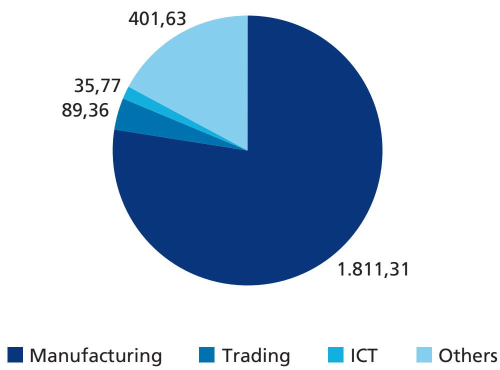


Source: FDI Newsletters, DPIIT, Ministry of Commerce and Industry, Government of India.

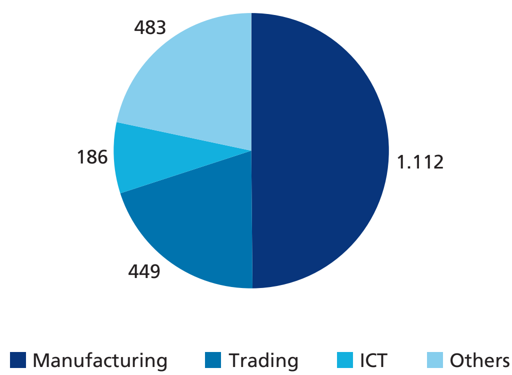
In the twenty-year period under review, the manufacturing sector received US$ 1.8 billion and accounted for 77% of the investments by value followed by trading (US$ 89.36 million, 4%) and Information And Communication Technology (ICT) (US$ 35.77 million, 2%).

FIGURE 2
Sector-wise distribution in value and number of investments

2A – Sector-wise distribution (US$ 1 million)



2B – Sector-wise distribution (No. of investments)



Source: FDI Newsletters, DPIIT, Ministry of Commerce and Industry, Government of India.
Authors' elaboration.

The dataset reveals a total of 2230 investment transactions involving direct FDI from Mainland China, out of which 2098 were under the automatic route with no formal government approvals required, 103 were acquisitions of existing shares in Indian companies where again there is no FDI screening process although underlying transactions might be subject to regulatory compliances and 29 were made under the approval route. Even within the 29 transactions under the approval route, only 21 investment transactions involved investments from Chinese companies as the rest were issuance of shares under Employee stock ownership plan (ESOP) schemes to non-resident Indians in China. In other words, an overwhelming majority of direct investments amounting to US$ 2.3 billion received from Mainland China over a period of twenty years were not subjected to a formal screening process.

4 PRESS NOTE 3 AND OTHER NATIONAL SECURITY MEASURES IMPLEMENTED SINCE 2020

Prior to 2020, investments in India originating from the People's Republic of China (PRC) were not subject to special scrutiny unless they were in sensitive sectors such as telecom, defence or railway infrastructure which required a security clearance. The onset of the Covid-19 pandemic which caused India's stock indices to plummet and a stock exchange filing in April 2020 which disclosed that the stake held by the People's Bank of China in India's largest non-banking mortgage lender had exceeded 1% jolted the Indian regulators to take immediate action. On April 17, 2020, the DPIIT issued Press Note No. 3 (2020) to curb "opportunistic takeovers/acquisitions of Indian companies" by amending the FDI policy to include a proviso which stated, "an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route" (India, 2020a).

The corresponding provision in Foreign Exchange Management (Non-debt Instruments) Rules, 2019, was also amended on April 22, 2020. The countries which share a land border with India are Afghanistan, Bangladesh, Bhutan, China, Myanmar, Nepal and Pakistan. However, since 99% of the direct investments made in India from countries which share a land border since 2000 were from China, it was obvious that the main target of this new screening mechanism was China. With this, both direct and indirect investments from China were made subject to a government approval on grounds of national security. This placed them on the same footing as investments from Pakistan and Bangladesh that were earlier subject to government approval.

The term "beneficial owner" used in Press Note 3 is not defined either in the FDI Policy or any FEMA regulations. Hence, at first glance, it appears that there is no minimum threshold of Chinese beneficial ownership required to trigger a requirement for an approval under Press Note 3. However, the Prevention of Money-laundering Act,[4] 2002, defines beneficial owner in case of a company as:

> the beneficial owner is/are the natural person(s) who (whether acting alone or together or through one or more juridical persons) has a controlling ownership interest (more than 25%) or who exercises control through other means.

And "control" is defined to include the right to appoint majority of the directors or to control the management or policy decisions, including by virtue of shareholding or management rights or shareholders agreements or voting agreements. A similar test is prescribed in Reserve Bank of India's (RBI's) Know

4. More information at: The Prevention of Money Laundering Act. Available at: https://fiuindia.gov.in/files/AML_Legislation/pmla_2002.html.

Your Customer (KYC) Direction dated February 25, 2016. In practice, Indian banks authorised to receive FDI remittances often obtain KYC undertakings from the remitting party to satisfy themselves that provisions of Press Note 3 are not triggered.

In the month following publication of Press Note 3, there were clashes between Indian and Chinese troops along the border areas in the Galwan valley which led to a rapid deterioration of political ties. Soon after this, starting in June, 2020, the Indian Government started banning internet applications operated by Chinese companies in India on the grounds of national security under Section 69A of the Information Technology Act, 2000. As of March 23, 2022, a total of 320 internet applications were banned according to a response provided in Parliament. Majority of these internet applications were operated by companies registered outside India. So although this measure did not amount to an expropriation of existing foreign capital in India it effectively closed the door to future investments in the internet sector by Chinese companies. In terms of the extant FDI policy, this was tantamount to declaring the internet industry as “sensitive”.

On July 23, 2020, the Ministry of Finance introduced an amendment under Rule 144 of the General Financial Rules, 2017, which gave powers to the Department of Expenditure to issue orders in writing or impose restrictions, including prior registration and/or screening requirements, on procurement from bidders from a country or countries, or a class of countries, on grounds of defence of India and/or national security. Pursuant to this, the Department of Expenditure issued Order (Public Procurement No. 1)[5] dated July 23, 2020, which states that any bidder from a country which shares a land border with India will be eligible to bid in any procurement whether of goods, services or works (including turnkey projects) only if the bidder is registered with Registration Authority constituted by the DPIIT (India, 2020b).

This restriction prevented direct participation of Chinese companies in public procurement tenders floated by Government departments or Public Sector undertakings. However, it was not immediately clear whether goods and services procured from Chinese companies which held a significant cost advantage compared with alternative sources could be supplied as part of these public procurement contracts. On February 8, 2021, a clarification was issued as follows:[6]

> a bidder is permitted to procure raw material, components, sub- assemblies etc. from the vendors from countries which shares a land border with India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as sub-contracting (ONGC, 2021).

5. More information at: India (2020b).
6. More information at: ONGC (2021).

In other words, a successful bidder in a public procurement contract could partially source goods and services from Chinese companies but could not entirely subcontract its obligations to a Chinese company. This marked the end of the road for Indian subsidiaries of Chinese companies that were set up for the sole purpose of undertaking public procurement projects either as contractors or subcontractors in sectors such as steel and power. Majority of them were State-owned enterprises that won large projects on the basis of their competitive bids, strong balance sheets and cheap suppliers' credit from Chinese banks.

In total, three types of regulatory measures have been implemented against Chinese companies since 2020 on the grounds of national security, namely, the scrutiny of investments, ban on internet applications and the prohibition on participation in public procurement tenders. According to news reports, several other measures such as tax investigations, enquiries into non-compliances under company law, freezing of bank accounts, etc. have also been launched against Chinese companies. However, in the absence of a regulatory announcement it is difficult to determine whether such instances amount to steps taken in furtherance of national security.

5 IMPACT OF PRESS NOTE 3

Data on FDI approvals granted under Press Note 3 is not published on a regular basis. On March 16, 2022, in response to a question in Parliament, the Ministry of Commerce and Industry disclosed that 347 applications were received since April 18, 2020 out of which 66 were approved, 193 were rejected or closed or withdrawn, and 88 applications were still under consideration. Further, the Ministry also stated that the value of investments involved in the 347 applications received until then amounted to approximately INR 75,951 crore out of which the 66 approvals granted accounted for approximately INR 13,624.88 crore. The industry-wise break-up of the approvals granted is reproduced below.

TABLE 1
Industry-wise break-up of approvals granted under Press Note 3 until March 16, 2022

S.No	Sector	Number of proposals	Total value of investments in INR crore
1	Automobile Industry	7	79.61
2	Chemicals (Other Than Fertilizers)	5	82.25
3	Computer Software and Hardware	3	10.68
4	Drugs and Pharmaceuticals	4	5037.00
5	Dye-Stuffs	1	5.44
6	Education	1	0.10

(Continues)

(Continued)

S.No	Sector	Number of proposals	Total value of investments in INR crore
7	Electrical Equipments	1	20.00
8	Electronics	8	1575.79
9	Food Processing Industries	2	5.93
10	Information and Broadcasting (Including Print Media)	1	3.00
11	Machine Tools	1	37.80
12	Miscellaneous Industries	8	241.92
13	Non-Conventional Energy	6	2810.00
14	Petroleum And Natural Gas	1	20.00
15	Power	1	755.00
16	Services Sector (Fin., Banking, Insurance, Non Fin/Business, Outsourcing, R&D, Courier, Tech. Testing And Analysis, Other)	11	2907.81
17	Telecommunications	1	0.00
18	Textiles (Including Dyed, Printed)	1	1.90
19	Trading	3	30.65
Total		**66**	**13,624.88**

Source: Written reply to a Parliament Question, Ministry of Commerce.

Based on the data cited above, the approval rate for FDI proposals under Press Note 3 is approximately between 17% (in value) and 19% (in number). In other words, for every hundred dollars of potential investment from countries that share a land border with India, only seventeen dollars' worth are approved, and nineteen out of hundred applications are approved.

Further, a review of FDI statistics since April, 2020, reveals that the conversion rate of approvals into actual investments is also quite low. Data on FDI received is published on a quarterly basis and categorized according to country of origin (not beneficial ownership) and recipient company. This makes it relatively easier to track investment funds received directly from Mainland China and Hong Kong. In the period April 2020-September 2022, information about FDI received under the approval route from Mainland China and Hong Kong is given below.

Given that approvals were accorded to FDI proposals worth US$ 1.6 billion between April, 2020 and March, 2022, but total FDI received between April, 2020 and September, 2022 is only US$ 78 million the conversion rate is in the low single digits. Of course this conversion rate might gradually improve as the time lag between approvals and FDI flows reduces, and Press Note 3 procedures are streamlined.

TABLE 2
FDI received under approval route from Mainland China and Hong Kong from April 2020-September 2022

Period	Jurisdiction	No. of investments	Value of FDI (US$)
April, 2020-March, 2021	Mainland China	-	-
	Hong Kong	-	-
April, 2021-March, 2022	Mainland China	5	2,143.871
	Hong Kong	26	46,206.857
April, 2022-September, 2022	Mainland China	11	7,095.082
	Hong Kong	5	22,852.011
Total			**78,297.820**

Source: FDI Newsletters, DPIIT, Ministry of Commerce and Industry, Government of India.

The average size of an investment from China in 2019 (pre-Press Note 3) was US$ 1.6 million. This has decreased to US$ 577,434 for approvals under Press Note 3. The share of the manufacturing sector in investments by value has remained steady at around 77% for investments before Press Note 3 and approvals under Press Note 3. The biggest impact of Press Note 3 has been in reducing the volume of "direct" investments from China from US$ 177.6 million in 2019 (from Mainland China alone) to around US$ 39 million per year (combined average for investments from Mainland China and Hong Kong from April 2021 to September 2022). However, it is difficult to estimate the impact of Press Note 3 on "indirect" Chinese investments.

Notwithstanding the ostensible impact of Press Note 3 in stemming flow of direct investments from China it is worthwhile to examine certain pitfalls that might aid in the design of future investment screening mechanisms.

6 LESSONS FROM PRESS NOTE 3

The biggest drawback of Press Note 3 is the substantial incentive it provides for Chinese investors to circumvent the screening process by routing their investments through opaque investment structures in third countries. Opaque investment structures such as nominee shareholders and trusts make it nearly impossible to determine beneficial ownership of investments and hence are quite effective in circumventing the provisions of Press Note 3. Although such investment structures were employed even before introduction of Press Note 3 for tax and administrative reasons there is now a clear and cogent incentive for Chinese investors to actively conceal the beneficial ownership of their investments in India. Theoretically it is possible for Chinese investors to route their investments through other countries and still apply for approval under Press Note 3. Indeed reputed multinationals which have holding structures in China or Hong Kong will certainly do so. Similarly large private equity funds which are registered in tax havens and have limited partners with Chinese nationality might also strive for full compliance by obtaining approvals. However, the low approval rate and uncertain timelines for processing applications will certainly deter the average Chinese investor from disclosing their beneficial ownership and obtaining approval under Press Note 3. This means that the share of "indirect" investments from China which was always larger than the "direct" investments will grow further and become more opaque. Consequently, it will become more difficult to identify and monitor Chinese investments in India.

Second, Press Note 3 does not prescribe any formal criteria for screening investment proposals. This gives the process an arbitrary flavor. From a cursory examination of the approvals granted so far it appears that: i) investments in manufacturing units have a higher success rate than trading or services sectors; ii) State-Owned enterprises from China have a lower chance of success in comparison with their private counterparts; iii) investments in joint ventures with Indian business groups are preferred rather than setting up of wholly-owned subsidiaries of Chinese companies in India; and iv) investments that form part of global supply chains linked to global brands are given preference. While any national government deserves wide discretionary powers when it comes to national security, a country seeking to boost FDI flows and entice global supply chains away from China might do well to articulate such positive or negative preferences.

Third, the timing of Press Note 3 has also proved problematic to India's balance of trade. The trade deficit with China has grown larger and faster after Press Note 3 with a decline in Chinese investments. In 2019, the trade deficit was US$ 51 billion with US$ 17 billion of exports and US$ 68 billion of imports but has touched US$ 87 billion in 2022 with exports declining to US$ 15 billion and imports growing to US$ 102 billion. Earlier it was believed that growth in Chinese investments in India will gradually lead to a decline in imports over the long term as finished products will be manufactured in India instead of being imported from China. Now with direct Chinese investments almost coming to a standstill both imports and consequently the trade deficit are growing rapidly.

Lastly, Press Note 3 has also created an information asymmetry between the government and external researchers who wish to study Chinese investments in India. This could have long term implications for decision making within industry circles and beyond. For example, when a company registered in a third country applies for and obtains approval for an investment in India on account of Chinese ownership it is nearly impossible for an external researcher to determine the identity of the Chinese investor or the proportion of Chinese ownership in such investing entity unless they undertake a search of the companies register in such third countries which can prove to be complicated. Such increased complexity in tracking Chinese investments in India does not bode well for informed discussions and policy making.

7 CONCLUSION

India's growing dependency on imports from China even as it curtails FDI flows is a contradiction that policy makers have to contend with until alternative sources for imports are found or the Indian manufacturing sector expands to deliver substitutes. With a new bilateral free-trade agreement (FTA) strategy it is already making up for lost time. In hindsight one can argue that the abolishment of the FDI screening process undertaken by the FIPB was premature. Perhaps lax supervision of Chinese investments for two decades led to underdevelopment of domestic capacity for balancing national security concerns with economic objectives. Increasing weaponization of supply chains coupled with India's ambitions to attract more FDI makes the need for a comprehensive national security screening mechanism stronger.

In a global environment where geopolitics is increasingly informing trade and investment decisions, India and other developing countries with democratic systems certainly have an opportunity to expand their shares in global supply chains dominated by China. To what extent and in which sectors they allow involvement of Chinese stakeholders in such efforts will be determined by a confluence of market and political forces. Some developed countries might prefer employing values-based legal tools such as the UK's Modern Slavery Act, France's Duty of Vigilance Act, Germany's Supply Chain Act and the EU's Due Diligence Directive to influence business decisions. The United States is relying on a more direct sanctions-like approach in high technology sectors on grounds of national security. As theories of free trade and competitive advantage make space for near-shoring and friend-shoring strategies it will be interesting to observe how multilateral institutions such as World Trade Organization (WTO) created to supervise free trade respond to these new realities.

REFERENCES

INDIA. Ministry of Commerce and Industry. Department for Promotion of Industry and Internal Trade. **Press Note No. 3**. New Delhi: DPIIT, April 2020a. Retrieved from: https://dpiit.gov.in/sites/default/files/pn3_2020.pdf.

______. Ministry of Finance. **Restrictions on Public Procurement from certain countries**. New Delhi: Press Information Bureau, July 2020b. Retrieved from: https://pib.gov.in/PressReleasePage.aspx?PRID=1640778.

ONGC – OIL AND GAS CORPORATION. **Guidelines for eligibility of Bidders from a Country sharing a land border with India**. Retrieved from: https://ongcindia.com/documents/77751/1767719/1378_189_04_2021.pdf/579c493e-e3d2-bc44-4305-c2df40cdcfe4.