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National policy measures. Right approach to foreign direct investment flows

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Abstract. *2011 was a difficult year for all the countries, developed and emerging ones. For overcoming the negative effects of the financial crisis, many economies have established as purpose to adopt new economic policies regarding the foreign direct investment flows (FDI), even to stimulate the flows or to reduce it (protectionism measures). So, there can be identified two categories of national policies: measures for the FDI flows stimulation and measures whose aim was the weighting of FDI developing, through restriction and regulation. In the first category we could include the liberalization measures and promotional and faciletation policies. In this study we evidenced that the fundament of the second category of policies is the belief that the FDI outward lead to job exports, to a raise of unemployment and a weakness of the industrial base.*

Many reports on FDI flows, here we talk about those made by UNCTAD, show that the regulation and restriction policies are seen as a possible protectionism, especially in the agricultural and extractive industries, where there have been required nationalization processes and divestments. Even more, the economies which adopted this kind of policies have been less interested in investing abroad, the outward of FDI being affected and globally the total outward decreased.

Keywords: national policies; foreign direct investments (FDI); liberalization measures; promotion and facilitation policies; restriction and regulation policy measures.

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Introduction

This study aims to highlight the progress of national economic policies adopted in 2011 and 2012 regarding the foreign direct investment flows.(1) Many states have adopted different categories of economic policy measures, which, in one way or another, positively or negatively affected FDI flows. The three types of measures indentified in the national laws are part of the following policies:

- *FDI liberalization policies*, FDI being considered a mean of national economic recovery after the economic crisis and a mean of economic development;
- *Promoting and facilitating policy* whose main objective represents the motivation of the already existing investors by offering different incentives, which determine a greater extent FDI inflows and outflows development;
- *Restriction and regulatory policies* adopted in order to provide economic protection against foreign investors that ensure state control in strategic sectors.

Conceptual framework

Based on the researches conducted in the field of investment and analyses published in the World Investment Report of 2012, we can say that, globally, regardless of their level of development, countries continued the liberalization and promotion processes of FDI flows and adjustment in existing policies in the new context determined by the specific manifestations of the financial crisis. Simultaneously, new policies have been adopted, especially for the mining industry, with a strong restrictive, which significantly affected net flows of foreign investment.

In 2011, based on data from a total of 44 countries, 67 economic measures were adopted related to FDI. Of these, 52 had as main objective investment liberalization, promotion and facilitation and the remaining 15 were measures aimed directly restricting and regulating investment flows.(2)

The first category of policies identified in the present study, such as policies of liberalization, promotion and facilitation of foreign direct investment flows, are based on the flows development, by offering special incentives to foreign investors, varied from country to country, and by reducing discrimination in the investment field where applicable. These incentives policies are adopted mainly by countries which wish to develop themselves as FDI host countries, thereby increasing their FDI inflows.

From the same point of view it is adopted the second category of national policy based on restricting and regulating FDI flows. These are based on restricting the entry of new investments and on shaping of new regulations concerning the access of the new foreign investors on the host countries territory. In this case, FDI inflows declined significantly in some sectors, these policies being designed as means of national security, safety food preservation of existing industrial policies, establishing control over strategic industries. Among these economies, for example, may be mentioned countries like Argentina, India, Indonesia and Congo.

In 2011, worldwide, countries continued to liberalize and promote foreign direct investment flows in various industries to support growth and economic development. In Table 1, are numerically presented policies adopted by industry regarding the FDI.

Table 1

Number of policies related to FDI, by industry in 2011

Industry	Number of policy measures	Favorable (liberalization/promotion/ facilitation measures)	Restrictive (restriction and regulation measures)
Agribusiness	2	1	1
Extractive industry	7	3	4
Manufacturing	7	5	2
Electricity, water and gas	2	2	0
Transport, storage and communication	7	6	1
Financial services	6	3	3
Other services	4	4	0

Source: UNCTAD, Investment Policy Monitor database.

Based on the data in the table above, first we could note that the mining industry, transport, logistics and communications, financial and production sectors have been the focus of economic policies makers. Testimony is the large number of economic measured adopted in these areas, a higher number that from the previous year. However, most measures aimed to boost foreign investments. Most of the resource-rich countries have adopted economic policy on FDI, mainly due to governments wish to control their own resources and even to nationalize them (egg. Colombia, Ghana, Guatemala, Peru, Venezuela). Another reason for the adoption of such measures on these types of industries is the negative impact on the environment. At the same time, these countries seek to boost the service sector, especially electricity, gas and water, but also transportation and communications. We provide below an example of some measures taken at national level in liberalization foreign direct investment and promotion and facilitation, as well of investment restriction.[3]

Policies adopted to liberalize FDI in the period 2011-2012 are most commonly found on the Asian continent and concern agriculture, services and financial media.

- *India;* restrictions on foreign ownership were relaxed by allowing foreign capital to become majority or wholly. For example, the Ministry of Industry and Trade, the Consolidated FDI Policy Circular dated 31 March 2011, allowing foreign investors to wholly own capital in certain parts of the agricultural sector, especially livestock, in fisheries and aquaculture, but well defined conditions on investors must meet. Even before India adopted other measures favorable to foreign investment. These include the reduction or cancellation of fees for investment goods such as electric power equipment capacity. India has to support the subsidy of petroleum products and electricity consumption. Through these measures, India is trying to attract investors especially in poor sectors of its economy. In addition, the country is developing its host country component, representative of the emerging countries.
- *Russia;* according to Federal Law Number 322 - FZ, dated 17 November 2011, Russia has relaxed condition on the percentage of capital that foreign investors may hold in companies that extract oil resources. This percentage increased from 10% to 25%, and the extent measure is to stimulate foreign mergers and acquisitions.
- *Brazil;* for the first time, the country adopted a law liberalizing and developing communications sector. According to Law No. 12485, from the Official Gazette of September 13, 2011, the state decided to give up to the limit of 49% ownership for foreign investors in communications. As a result, foreign investors may hold a business in this sector entirely, which is an important incentive for relocation within the country and attracting new foreign investments in a specific area for economic development. Moreover, the law allows investors to create new types of promotional packages to increase and diversify production. These measures are an expression of pro-competitive interventions, in turn the premise of benefits to consumers.

These are just some examples which show that, during this period, countries continued to adopt policy to encourage foreign direct investment flows. There were other policies that were given new incentives for investors in other sectors too, such as renewable energy manufacturing industry, communications and information technology, education and healthcare. Some countries have taken important steps towards establishing, configuring or extending special economic zones through various trade treaties negotiated at international organizations.

Previous policies are complemented by other measures to promote and facilitate FDI. Many other countries have made strides in this respect and at the same time.

- *Angola,* in accordance with New Private Investment Law from May 20 2011, introduced a new system of incentives for domestic and foreign investors, applied when investments are made in developing areas and areas such as agriculture, manufacturing, port and airport infrastructure, telecommunications, energy, etc.
- *China* has published an extensive list of privileged industries where foreign investment are granted facilities, and other industries shortlist in which restrictive measures are applied to the same type of flows. Through the National Programme "National Development and Reform Commission, Catalogue for the Guidance of Foreign Investment Industries", entered into force on 30 January 2012, China offers incentives to investors who are involved in sectors vital to Chinese economy, such as energy efficiency, environmental protection and high-technology.
- *USA;* according to a United States Department of Commerce decision, USA has created an initiative called "SelectUSA" by seeking to attract foreign direct investment and, at the same time, to determine domestic investors who have relocated abroad to repatriate investments. This initiative seeks practical USA in sourcing investment process. National program "SelectUSA" was created at the federal level to present the US as an ideal location to invest and provide easy access to federal programs and services related to business investment. This federal program is actually for several industries: aerospace, engineering, biotechnology, chemicals, consumer goods industry, media, energy industry, environmental technology, retail, pharmaceuticals etc. As a result, many transnational companies (TNCs) have chosen to invest in the United States. In this category we find, for example, Canon (which has opened a new plant in Newport News, Virginia, creating over 1,000 new jobs), Caterpillar (which has invested in a new plant about 150 million dollars) or Ikea (which opened the first factory in the United States of America in Danville, Virginia, creating over 700 jobs).

In many countries, liberalization and promoting the FDI are accompanied by measures to restrict and regulate investment flows, whose content is the introduction of new barriers to investment and strengthening existing procedures. Some examples are relevant in this respect.

- *India,* according to the Ministry of Commerce and Industry, Press Note No. 3, 8 November 2011, introduced a new rule regarding mergers and

acquisitions of foreign direct investment. Thus, all the mergers proposals from pharmaceutical sector must be approved by the government. Before this rule, all foreign mergers and acquisitions were effected between companies according to their internal rules, without government interference. In this area, considered deficient, the state proposes to control. India has highly skilled workforce and increased investments in R & D. It is expected that regulatory policy to allow the state to better meet public health objectives without affecting foreign investments.

- *Indonesia,* through a Presidential Decree, no. 24/2012, of 12 February 2012, decided to reduce the share of foreign investors in certain sectors. Thus, foreign companies which were active in coal mining, minerals and metals are determined that in five years after the start mining, from 2012 gradually give up some of its shares in favor of state-owned enterprises or private, domestic shareholders. Following this process of gradual disinvestment most of the companies with foreign capital will return in a relatively short period intern. By adopting this restrictive measure, Indonesia blocks and even eliminate foreign investors from the mining industry.
- *Congo* adopted in December 2011 a law through which Congolese land can be owned only by citizens born in Congo or companies that have a Congolese majority shareholder. Note that this law (Loi No. 11/022 from December 24th 2011 Fundamenteaux Relatifs Principes of Porte de l'Agriculture) is certainly restrictive, the state is blocking the access of foreigners in a strategic sector of the economy. However, there are concerned also other foreign investment in communications and infrastructure.
- *Argentina,* by Law No. 26.741 (May 7, 2012) and 26.737 (28 December 2011), expropriated 51% of the capital of two Spanish companies operating in the gas operation. However, it was limited the right of holding land by the foreigners to a maximum of 15%. Again farming is seen as a strategic area, with significant contribution to economic growth. The restriction model of land property, however, is different from that adopted by the Congo.

As a conclusion of these types of measures restricting and regulating FDI flows, we can see that, especially in Latin America and Africa, concerns are focused on excessive purchases of land by large foreign companies. It is noted that the state wants these foreign entities to be controlled by the government, to avoid possible ecological consequences of an excessive exploitation, but also considers the implications for economic rural development. The legislation adopted today shows that states are no longer certain victims of the foreign

companies operating in extracting resources sector. They are often used by the transfer of ownership of agricultural resources for their bodies, even to the use of the constitutional right of expropriation for "public good".(4) Restrictive measures on agriculture consider the strategic nature of the sector's contribution to food security and economic growth. These measures were considered to be essential for sustainable economic growth and can be described as having a powerful protective character.

Through all the steps initiated we can see that the concern of making the investments more dynamic in general and the foreign investment in particular has a global dimension. Overall, these measures exert the most diverse influences, with consequences that occur not only in the short term, but in long term.

During 2011-2012, all countries experienced negative effects of the economic crisis, some of them facing extreme rate of unemployment and the collapse of industries. These countries have sometimes acted towards FDI outflows slaughter, entrusted that such a flow contributes greatly to the export of jobs, reducing domestic investment and weakening industrial base. Therefore, avoid export of jobs and the unemployment rate slowing and, more generally, economic stability, are justifying economic policy measures directed against FDI outflows. Argentina, for example, asked all insurance companies operating in that area that by the end of 2011 to repatriate all their assets. By this way in sourcing investment is considered as a factor to improve the balance of payments.

Such a situation is a major concern in Latin America, but also in other developing countries. Instead, in the countries of the European Union (EU), according to the study "Impacts of EU Outward FDI on the EU Economy", published by Copenhagen Economics in 2010, FDI outflows from the European Union seems not to have had an negative impact on employment. In fact, investment firms outside the European Union it seems to be even favorable to employment. According to the same study, this finding suggests that the negative impact on the labor market from low export domestically produced goods and services is offset by the increase in terms of competitiveness and their investors expanded access to international market opportunities.

To implement policies restricting output flows of FDI and stimulate domestic investors to repatriate their investments, some countries like Brazil, Ecuador, South Africa, India and Argentina, have introduced incentives and other measures to facilitate. For example, India has allowed companies controlled by government to repatriate investments without any approval from the Reserve Bank of India, even when asset value returned is less than the initial investment. In other words, repatriation, even made in loss, is seen as a good measure, which responds to current economic policy objectives. Many

other measures have been implemented as a solution to the negative effects of the financial crisis. Some countries have taken steps to improve the business climate. In other cases they resorted to increasing corporate taxes (especially for foreign mining companies in Africa, Latin America and the Caribbean), changes in competition law, regulations, labor market, the introduction of new immigration rules and other laws concerging the companies. All these types of policies influenced considerably the business climate, although the effect was not always successful.

According to the same global report on investment, the European Union is in the process of negotiating the terms of trade and investment liberalization, and the conditions for investment protection. It is very important to know EU Member States position, since all countries belonging to the European Union account for a quarter of global GDP. In relation to the rest of the world, the EU is a net exporter of capital. From this point of view, the EU is a major investor, whose decisions have an impact globally. EU Council issued Directives underlying investment protection negotiations on free trade with Canada, Singapore and India. However, the EU Council has adopted directives for free trade with Egypt, Jordan, Morocco and Tunisia, which also include provisions on investment protection. All these types of economic policies plead for a FDI liberalization and stimulation, but at the same time have a strong protective component.

Conclusions

Despite the mitigation of negative effects, such as those related to lower GDP and employment, the global economy was still in a state of prolonged crisis. Policies pursued at national or regional level acts affinities and also significant differences. In this context, measures of economic policy in relation to FDI are common issues of concern and debate, on the agenda of all global-oriented institutions. Economies have adopted as we already said policies for stimulating the FDI flows, which are considered an opportunity to develop and recover economic disparities or measures against foreign investors, limiting or restricting FDI. Implementation of these policy measures involves several challenges, such as the liberalization and promotion of the flows or the manner of making investments abroad, so as not to adversely affect the host economy and jeopardized their presence.

The countries that adopted policies restricting FDI should take into account that all these measures can have unpredictable effects beyond those expected. For example, Argentina's expropriation, all its nationalization programs, all assignments can damage the economy in medium and long term, and, therefore, instead of an economic recovery of the country it could be

registered actually a major economic contraction. In addition, the relationship between government and transnational companies become one tense, investors are more reluctant for a long time to invest in a risky economy with uncertain climate.

It also requires the evaluation of economic openness on FDI as attracting FDI can help establish a climate that reduces the uncertainty in the economy. If the country offers a skilled workforce and good infrastructure, these are advantages for attracting flows. Conversely, labor more productive, more efficient infrastructure and high technology are the consequences of good foreign investment targeted. It is imperative that a country is able to retain existing investors and attract new investors, without cause, sooner or later, to repatriate their investments voluntary. And obviously, motivate local companies to keep production and operations in the country of origin are closely linked to the creation of more favorable conditions capacity with those in other countries.

Now that the crisis calls into question some of the global problems, many countries adopt protectionist policies, based on their relationship with promoting sustainable development. If a country promotes the idea of "green investment" a lot of opportunities and benefits can be created, attracting new foreign direct investment, especially in the energy efficiency.

Conversely, increasing environmental protection could both directly and indirectly discourage foreign direct investment. If there is a severe policy of environmental protection, there is a risk that host countries may not be able to attract FDI flows in industries such as mining, agriculture, manufacturing and other sectors which, in one way or another, could affect environment. Same problem concerns the countries of origin but in the FDI output. In this last situation, companies are not stimulated to invest in countries where such policies exist. However there must be a balance between adopted policies because an adopted protectionist policy should not be always seen as a policy against FDI flows. In such times, countries like those mentioned throughout this study want to have control over the most important sectors of the economy. From this perspective, the adopted measures increase the degree of state intervention in the economy, whether we talk about developed countries or emerging countries. And the idea of reconsidering the fundamentals of the economy tends to be increasingly a point of debate within government and academic field, trying to outline a model of sustainable development capable of performing not only to overcome the crisis, but also to avoid a new crisis.

As a general conclusion, we can underline the sovereignty of individual countries towards adopting those policies they deem desirable for the future of the world economy. In general, each type of economic policy objectives is not negative a priori, even when there are promoted regulatory and restricting investment flows policies. Although these policies tend to be regarded as policy

"against FDI flows", a careful analysis reveals that this package of associated measures is a basis for effective control intention of the market and investments and promoting efficient management of attracting new investment foreign sectors to support economic and social progress. Countries that joined too enthusiastic at the idea of liberalization in foreign investment, ignoring key issues pertaining to the premises and consequences, have suffered losses from the crisis. Not accidentally, the same developing countries were among the most active in the qualitative transformation of foreign investment law. Both the liberalization measures and those promoting a "new kind of protectionism", all with the ultimate objective economic welfare, require major changes in the very foundations of the economy.

Notes

(1) In support of the present study showing the national policy measures adopted concerning the FDI flows we used some information from UNCTAD statistics and from Investment Policy Monitor, national laws and other studies realized in Europe.
(2) According to World Investment Report, Chapter III, Recent Policy Developments, p. 77.
(3) Those exemples, as well as others from this study are based on World Investment Report 2012, *Towards a New Generation of Investment Policies,* Chapter 3, being completed by other information from laws from the national economies mentioned in the text.
(4) According FAO, 2011, *Land Grabbing: Case studies in 17 countries of Latin American and the Caribbean*, p. 30.

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