

Investment Facilitation Agreement (IFA)

Why in news?

India did not join the recently conducted Investment Facilitation Agreement (IFA) negotiations because of the flaws in the investor-state dispute settlement claims.

What is an Investment Facilitation Agreement (IFA)?

- IFA is a trade agreement proposed by the ***World Trade Organization***.
- **Aim** - To create legally binding provisions by facilitating investment flows.
- It requires states to augment regulatory transparency and predictability of investment measures.
- **Informal Dialogue** - In 2017, a group of developing and least-developed country Members launched an Informal Dialogue on Investment Facilitation for Development in the WTO.
- **IFA negotiations** - It was formally launched in 2020 negotiations as 'Agreement on Investment Facilitation for Development' (IFD Agreement).
- **Eligibility** - Participation in this joint initiative is *open to all WTO Members*.
- **India** - *India did not join the IFA negotiations* which is backed by more than 100 countries.

What are the concerns of India?

- **Investor-state dispute settlement (ISDS)** - India opposes to join the investment facilitation agreement negotiations for fear of investor-state dispute settlement claims.
- ISDS is a system through which individual companies can sue countries for alleged discriminatory practices.
- ISDS is a neutral, international arbitration procedure.
- **Future IFA** - There are apprehensions that foreign investors could use IFA to bring claims under the existing BITs.
- **Most favored nation (MFN)** - Foreign investors may use the **MFN** provision in BITs to borrow or import stipulations from the IFA.
- **Fair and equitable treatment (FET)** - Foreign investors may use the provision of fair and equitable treatment present in BITs to challenge non-compliance with IFA.
- **Umbrella clause** - Most new investment treaties avoid 'umbrella clauses' altogether thus limiting the possibility of investors suing states for non-compliance of IFA obligations.
- **ISDS tribunal** - It is doubtful that an ISDS tribunal will accept the argument that mere non-compliance with IFA breaches an investor's legitimate expectations.

What is the status of India's bilateral investment treaties (BITs)?

- India's tryst with BITs started in 1994 when it signed its first with the *United Kingdom*.
- Bilateral Investment Treaties (BITs) are reciprocal agreements between two countries to promote and protect foreign private investments in each other's territories.
- **Indian Model BIT** - [BITs](#) were negotiated based on the Indian Model BIT of 1993.
- Till 2015 India had signed BITs with 83 countries.
- The model BIT was finalized and released in public domain in 2016.

Provisions of Model BIT 2016

- **Objectives** - To provide appropriate protection to foreign investors in India and Indian investors in the foreign country.
- To create a balance between the investor's rights and the Government obligations.
- **Arbitration** - The Model BIT stipulate that the aggrieved investor should use all local remedies as well as negotiations and consultations initiating arbitrations against the host State.
- **Enterprise** - Defines enterprise based on investment instead of asset based definition.
- **MFN treatment** - Excludes MFN treatment.
- **Full Protection and Security (FPS)** - FPS means obligations only relating to physical security of investors and to investments.
- **State government as stake holders** - Includes the actions of the State Governments.
- **Fair and equitable treatment (FET)** - It links Fair and Equitable Treatment to international laws to counter a broad interpretation and risk misuse.
- **Expropriation** - Expropriation means nationalization of assets of foreign companies.
- The Model BIT provides that the State cannot nationalise or expropriate an investment except for reasons of public purpose and on payment of adequate compensation.
- **Non-Discriminatory treatment** - The Model BIT includes a clause on non-discriminatory treatment for compensation of losses.
- **Corporate Social Responsibility** - It mandates foreign investors to voluntarily adopt internationally recognized standards of corporate social responsibility.

Quick facts

Most favored nation (MFN)

- A most-favored-nation (MFN) clause requires a country providing a trade concession to one trading partner to extend the same treatment to all.
- It is the first clause in the General Agreement on Tariffs and Trade (GATT).
- Though the term looks like a favour given to one country, it only ensures non-discriminatory trade.
- A member country is not allowed to discriminate between trade partners.
- If a special status is granted to one trade partner it must be extended to all members of the WTO.
- The loss of MFN status exposes a country to discriminatory import tariffs on its

products.

Investor-state dispute settlement (ISDS)

- Investor-state dispute settlement (ISDS) is a mechanism in a free trade agreement (FTA).
- It provides foreign investors with the right to access an international tribunal to resolve investment disputes.
- An ISDS tribunal cannot overturn domestic laws and regulations.
- The tribunal is limited to determining breaches of certain investment obligations.

References

1. [The Hindu | IFA Negotiations](#)
2. [WTO | IFA Agreements](#)
3. [PRS | BITs In India](#)
4. [PIB | Provisions Of Model BIT](#)

