IJDPP International Journal of Development and Public Policy

| e-ISSN: 2792-3991 | www.openaccessjournals.eu | Volume: 1 Issue: 7

Multinational Enterprises in Global Market Economy

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Abstract
In this article analyzed main notions of international business, multinational enterprises in global market economy. Furthermore, in this article showed bargaining position of States and multinational enterprises, regulation of multinational enterprises by domestic policies, regulation of multinational enterprises by international policy and other aspects of MNEs.

Keywords: MNEs, international business, global market economy, international policy, domestic policy, company, tax, multinational enterprises.

Introduction

International business is an absolute political phenomenon bringing common and conflicting interests of nation states and multinational enterprises (MNEs) together in global market economy [1].[1] On the one hand, cross-border commercial activities of MNEs can be seen as a source of capital inflows, tax revenues and technology transfer in host states, while in home countries, they are regarded as a tool that enhances competitiveness of the state in global market, thereby increasing their international political power. On the other hand, both home and host states are concerned about negative implications of MNEs' activities such as the loss of employment opportunities, reduction of domestic capital in the former and undermining competition of local markets and foreign interference with the national economy control in the latter [2][2].

As regards MNEs, their interests have centered on seeking a business friendly climate with few regulatory obstacles, which provides a free choice of managerial strategies [3][3]. Thus, the interaction between governments and MNEs in global economy is inevitable, as the former provide legal and political basis, within which the latter establish its businesses. According to Deboral Spar, the interaction between national policy and global business involves two directions: governments adopt policies that influence companies' ability to invest and trade across borders; and these commercial activities of companies impact on the political climate of the host countries where they run business [4][4]. Taking into account these political implications, nation states adopted policies to regulate operations of enterprises, which have ultimately contributed to shaping and constraining the behaviour of enterprises engaged in international business [4][5].

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[1] Seev Hirsch, 'Nation States and Multinationals: common interests, conflicting interests and public policies' (2016) 8 (1) Transnational Corporations Review,< https://doi.org/10.1080/19186444.2016.1162477 > accessed 22 October 2019

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[4] Deboral L. Spar , 'National Policies and Domestic Politics' in Alan M. Rugman (ed), *The Oxford Handbook of International Business* (OUP 2009)

[5] Ibid

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However, this traditional model of international relations has significantly changed with the emergence of MNEs as "new actors" in international political economy. In particular, since MNEs has a power to enhance global economic interdependence by manufacturing, trading and investing actions within global value chains, states are supposed to consider interests of MNEs while making policies and to reconcile conflicting interests and potential policies where necessary.

The plan of this essay as follows: firstly, it examines bargaining position of states and MNEs; secondly, it explores the role of MNEs' activities in the development of domestic and international policies; finally, it provides in-depth analysis of two principal policies which shape and restrict corporate behaviour of MNEs.

Bargaining position of States and MNEs

As interdependent actors, nation states and MNEs come into the negotiating table in order to achieve a mutual agreement by reconciling conflicting preferences and concerns. In particular, developing nation states intend to bargain with MNEs for technology, capital inflows and employment opportunities within their regulatory goals, while MNEs try to gain access to resources and market on favorable conditions. In terms of inward foreign direct investment (FDI) transaction, it is not so much about who gains from it but what matters is, to what extent does each party take an advantage and why [5] [6] ? The initial subject of the negotiation will be a consideration of the host government's regulations and policies. [3][7] The extent of this legal system's application depends on the bargaining power of the parties. Although it is quite problematic to measure the level of bargaining power that host country owns against the MNE, outcomes of the transaction can be analyzed so as to find out which party held a stronger or weaker position. [3]

It is worth to note that host state-MNE negotiations involve different types of circumstances in which the sources of bargaining power and position of the parties change accordingly. There are a number of bargaining models available in the literature to explain these circumstances but the two-tier bargaining model is selected for the purpose of this essay.

According to two-tier bargaining model proposed by Ravi Ramamurti, contemporary host country-MNE transaction entails two stage process: Tier 1 negotiation takes place between the industrialized home countries and the developing host countries, and creates the macro policies governing FDI by multinational institutions or bilateral agreements [6]; Tier 2 micro bargaining occurs between individual MNEs and the host states, and produces specific rules within macro framework created by Tier 1. [6]

Ravi Ramamurti notes that Tier 1 Bargaining is exploited by developed countries to undermine the power of host states in Tier-2 bargaining, thereby strengthening that of their MNEs[8]. Bilateral Investment Treaties (BITs) can be considered as a lifeblood of Tier 1 bargaining as they provide a broad scope of protections to foreign investments of MNEs against risks of political and economic regimes of host states. In particular, general standards of treatment (such as MFN, NST), expropriation and dispute settlement clauses (ICSID) are some vital provisions provided by BITs [6] that can be used as a tool of power in Tier 2 bargaining.

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[6] Caner Bakir and Judith Woods, 'Host State Bargaining with Multinationals' in *Andreas Nölke and Christian May (eds), Handbook of the International Political Economy of the Corporation* (Cheltenham, UK: Edward Elgar Publishing 2018)

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It is difficult to assess the dynamic position of the host states and MNEs in Tier 2 negotiation, as there are a wide range of variables effecting the position of the parties. But certain variables are selected to make the general overview of the power balance namely, stages of the investment (pre-entry, post-entry), sector of the investment and sources of bargaining power. Specifically, in the pre-entry stage of the investment, MNEs hold a strong position by offering their ownership resources such as technology, capital, manufacturing know-how and are likely to achieve higher levels of outcomes. [19-21] For example, as the outcome of the negotiations, MNEs of the United States in 1970s gained a greater ownership shares in their subsidiaries in Latin America based on their firm-specific resources and competitive advantages [8]. However, this position depends on the investment sector variable. MNEs retain a strong position when they invest in manufacturing or natural resources (in the presence of technological dependency) industries but become vulnerable if their operating sector is mature industry which can easily be reproduced by local companies. [3] Moreover, it is often assumed that in the post-entry stage, power balance changes to the advantage of the host government due to its permanent sovereignty that it can exercise for nationalization but if the industry in question is reliant on new technology, MNEs maintain their strong position as in the case of US copper companies in Chile [3].

Except from ownership and location specific resources, there are relative sources of power that stem from individual characteristics of states and MNEs and serve as determinants of strength of the parties compared to other states and MNEs [5]. Specifically, political stability, intellectual property protection, tax incentives can increase investment attractiveness of the host sates while product differentiation, overall size of the parent company, international experience along with other reputational resources of MNEs can contribute to their competitiveness for market access [5].

Outcomes of the bargaining result in decision of the MNE to invest or not to invest; and decision of the host government to grant market access or not to grant. In case the investment project is agreed between parties, it leads to specific (entry, operation and exit) conditions: entry mode of MNEs and their equity ownership in the subsidiary, quotas and tariffs on exports and imports, performance requirements in terms of technology transfer [6] and others based on the elements of the transaction and applicable domestic & international policy.

Regulation of MNEs by Domestic Policies

Regulatory system of nation states represents a twofold objective. First, it aims to enhance certain activities. For instance, in terms of foreign investment, governments establish incentive regimes in order to create attractive investment climate, which constitute enabling forms of policy.[10] This type of regulation enables the host state to benefit from the resources of MNEs. The second type of regulation is designed to restrict particular activities of MNEs and manage their behavior, which constitutes a restrictive policy [10]. Certain types of these policies are examined by Deboral. Spar: trade policy, capital controls, regulation and competition policy. However, these traditional polices are evolved from political goals of the nation states while there are a number of policies which are designed to regulate activities of MNEs and represent policy responses to avoid negative ramifications of their operations. Technology transfer, taxation and inward direct investment could be examples of these policies. Since foreign direct investment is the most common method of internationalization of MNEs, inward investment policy is selected as a regulation which greatly impacts on the corporate behavior of MNEs.

Inward investment policy includes two types of regulations namely, laws and legal techniques employed by host governments to regulate the entry and establishment of FDIs and measures taken to encourage inward direct investment. The scope of inward investment policy is very broad which

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can be divided into three areas [3]. In particular, limitations excluding a particular investment partially or totally; the entry permission after a review process with imposing or not imposing terms on the investor; the operations of the investor will be regulated by national laws of the host government [3]. At the entry stage of the investment, the host country's right to control the entry of foreign investors within its territories is supported by the doctrine of permanent sovereignty under international law unless otherwise the government in question has entered into international treaties by subjecting itself into obligatory provisions of international treaties [7]. The total prohibition of foreign investment is the most restrictive legal approach, which became outdated due to the need of host states for capital and technology access and followed by legal developments. However, host governments still impose restrictions in certain key industries justified for national and economic security of the states such as telecommunications and public utilities. Moreover, there are certain laws adopted by host countries so as to limit shareholding and ownership of MNEs in local companies. These laws are adopted by host states not only to limit the ownership of MNEs but also to keep control over the operations of MNEs. Indigenization and joint venture laws can be good examples of these laws.[3] For instance, According to Nigerian Promotion Acts adopted in 1972, 1977,1986, industry sectors are classified into three groups and allowed percentage of foreign and local ownership indicated. [3] Another example of such policies is the Foreign Exchange Regulation Act 1973, which introduced foreign ownership limitations and allowed only 40 percent of foreign ownership in the companies incorporated in India [11]. As a result of these limitations several MNEs including Coca-cola left India although it re-started under new conditions in 1992.[12] As regards joint venture laws, they allow the entry of FDIs by requiring the engagement of local firms in the management and the ownership of the investment. Joint venture laws differs from indigenization regulations in that local enterprises do not merely have ownership in the project, they also take part in the management.[3] The imposition of licensing procedures is also one of the principles of the joint venture laws applied in transfer technology. Furthermore, following these legal developments towards the liberalization of inward foreign investments, some countries enacted their investment laws by enabling foreign investors to open their fully owned firms. The former Soviet Union states introduced a new investment regime with the adoption of Russian socialist Republic law in 1991, based on which foreign companies could incorporate fully owned enterprises.[3]

Thus, inward investment policies developed from closeness to openness of market by legal principles such as total exclusion, exclusion in certain industries, indigenization, joint ventures and fully owned enterprises. But it is necessary to note that all types of these principles are still applied to certain extent in accordance with the legal systems of individual states.

The imposition of entry requirements have served as the constraints for MNEs' monitoring strategies and organizational structures that simultaneously, contributed to the emergence of different legal forms of MNEs.

There are also measures taken by host states in order to attract inward investments namely, open door policy, concession agreements with host sates, tax incentives (stabilization of taxes), absence of requirement performances, general treatment standards, which shaped location behavior of MNEs. In particular, MNEs decide where to locate their operations such as production, R&D, subsidiaries and affiliates, taking into consideration investment climate of the host states that is created by restrictive and emancipative policies.[1]

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Regulation of MNEs by International Policy

Ongoing economic globalization and international nature of MNEs gave a rise to the emergence of bilateral, regional and multilateral regulations. Bilateral regulation refers to the agreement and treaties concluded by two states having mutual interests [13]. Different types of trade and investment related issues are addressed by bilateral treaties including FTAs and BITs which are designed to provide protections to the nationals of the contracting parties in each other's territory.[14-15] Bilateral treaties can restrict the sovereignty of the signatory states by making them subject to the treaty provisions. FTAs and BITs enable MNEs to enjoy general treatment standards in the host country.[13]

In the regional regulation, neighbor countries with similar political and economic goals organize a free trade union in which all the trade barriers are removed and harmonized market environment created. MNEs can greatly benefit from such regional organizations by avoiding regulatory regime diversities and exercising their management strategies without certain adjustments.[13]

Multilateral regulation is considered the most effective method of regulation in relation to MNEs.[18-21] The scope of regulation would coexist with the international market, enabling continuous elimination of local regulatory hurdles to trade and investment. Several multilateral institutions are organized to regulate different areas of MNE's activities. There are a number of such organizations namely, World Trade Organization (WTO), Organization for Economic Co-operation and Development and International Labour Organization.[22]

Among other institutions, WTO plays a vital role in the liberalization of the global market with 164 member states and a great deal of agreements. The primary source of WTO law is the Marrakesh Agreement Establishing the World Trade Organization which is signed in 1994 and came into force in 1995. [22] The Agreement on Trade Related Intellectual Property Rights can be seen as a revolutionary source of international law aimed to protect intellectual property rights globally and cover all aspects of intellectual property. [22] MNEs tend to exploit the provisions of TRIPS in order to increase dissemination cost of their technology. [13]

Conclusion

To conclude, MNEs are not only the product of regulation and laws of the nation states but also a key impetus to the legal developments of national and international laws. Since the effects of MNEs' operations are manifold, laws and regulations are developed to control these implications. As analyzed above, the nature of national policies representing unilateral regulation is quite restrictive compared to those of international regulations which are aimed at global market liberalization and integration.

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