



Columbia Center
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

No. 151 July 6, 2015

Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)

Managing Editor: Alexander Weaver (amw2209@columbia.edu)

We need an international support programme for sustainable investment facilitation

by

Karl P. Sauvant*

Transitioning to a carbon-free world economy and meeting the Sustainable Development Goals by 2030 requires, annually, trillions of dollars. Massive private investment, including foreign direct investment (FDI), has to be mobilized for this purpose. However, developing countries, especially the least developed countries, simply lack the capacity to compete successfully in the highly competitive FDI world market to obtain the required funds. They need assistance – not only to obtain *more* FDI but *sustainable* FDI.

What is needed, therefore, is an international support program for sustainable investment facilitation. It would focus on practical ways of encouraging sustainable FDI flows to developing countries: commercially viable investment that makes a maximum contribution to the economic, social and environmental development of host countries and takes place in the context of fair governance mechanisms, as defined by host countries and reflected for instance in their incentive programs.

There is of course the challenge to define FDI's sustainability characteristics. An international organization or a non-governmental organization (NGO) could establish a working group to prepare, in a multi-stakeholder process, an indicative list of FDI sustainability characteristics. Individual governments seeking to attract sustainable FDI (including, e.g., CO₂-neutral foreign affiliates) could draw on it for guidance purposes. A "sustainable FDI" definition is also needed for investor-state disputes, as arbitral tribunals consider – as they should – an investment's development impact when adjudicating claims and, therefore, need evaluation criteria. The same applies as more international investment agreements make reference to "sustainable development" or "sustainable investments".¹ Such a working group could also identify mechanisms to encourage specifically sustainable investment flows.

A FDI support program would complement the World Trade Organization (WTO)-led Aid-for-Trade Initiative and the WTO Trade Facilitation Agreement. In a world of global value chains, these two instruments address one side of the equation, trade, while a FDI

support program would address the other side of the equation, investment. Analogue to the WTO efforts, a FDI support program would be entirely technical in nature, focussing on practical actions to encourage sustainable investment flows to developing countries. For example:

- *Host countries* could make comprehensive information available on their regulatory environment directly bearing on *incoming* FDI.
- *Home countries* could make comprehensive information available on their support for *outgoing* FDI, e.g., information services and financial and fiscal incentives.
- *Multinational enterprises* could make comprehensive information available on their corporate social responsibility programs and instruments they observe regarding FDI.

Investment promotion agencies (IPAs) could be the FDI support-program's focal points, coordinating with the national committees on trade facilitation once established under the Trade Facilitation Agreement. Within a country's long-term development strategy, IPAs could undertake various activities to attract sustainable FDI. They could:

- Improve the regulatory framework for investment.
- Establish time-limited and simplified procedures for obtaining permits, licenses etc.
- Identify and eliminate unintended barriers to sustainable FDI flows.
- Engage in policy advocacy (part of which could relate to promoting the coherence of the investment and trade regulatory frameworks).
- Render after-investment services.
- Facilitate private-public partnerships.
- Identify opportunities for inserting the country in global value chains and targeting these.
- Develop risk-minimizing mechanisms to attract infrastructure investment.
- Help prevent conflicts between investors and host countries and, if conflicts arise, resolve them before they reach the international level.
- Promote backward and forward linkages between foreign investors and domestic firms.
- And – very important – find ways and means to increase the sustainable development impact of FDI in host countries.

Finally, as for the WTO trade instruments, donor countries could support IPA capacity building in developing countries, to help implement the FDI support program.

One option to create such a program is to extend the Aid-for-Trade Initiative to cover investment. The initial emphasis could be on investment in services, given the WTO's General Agreement on Trade in Services (and that services account for nearly two-thirds of the world's FDI stock). Alternatively, this Initiative could be complemented with a separate Aid-for-Investment Initiative.

Another option is to expand the Trade Facilitation Agreement to cover sustainable investment. A subsidiary body of the Committee on Trade Facilitation could provide the platform to consult on the operation of what would be a sustainable investment module within the Trade Facilitation Agreement.

A third option is for all governments to launch a Sustainable Investment Facilitation Understanding. The WTO could work on such an Understanding as part of a post-Doha agenda, but it could begin in another international organization with experience in FDI matters, especially UNCTAD, or the OECD or World Bank. Or leading outward FDI countries could launch a plurilateral initiative, mandated by the G20. (The top ten outward FDI economies, which include four emerging markets, accounted for four-fifths of world FDI outflows in 2014.)

Every of these options require careful study and consultations, which could be organized by any of the organizations just mentioned or a credible NGO.

This proposal's key premise is the importance – and urgency – of creating favorable conditions for sustainable FDI flows to meet future investment needs. Governments must muster the political will to put an international support program for sustainable investment facilitation in place.

* Karl P. Sauvant (karlsauvant@gmail.com) is Resident Senior Fellow at the Columbia Center on Sustainable Investment, a joint center of Columbia Law School and the Earth Institute at Columbia University. The author is grateful to Rudolf Adlung, Abdel-Hamid Mamdouh and Gerry Mattios for their helpful peer reviews. This *Perspective* draws on Karl P. Sauvant and Khalil Hamdani, “An international support programme for sustainable investment facilitation”, a Think Piece, forthcoming, prepared for the E15 Task Force on Investment Policy (at www.e15initiative.org/). **The views expressed by the author of this *Perspective* do not necessarily reflect the opinions of Columbia University or its partners and supporters.** *Columbia FDI Perspectives* (ISSN 2158-3579) is a peer-reviewed series.

¹ See, the 2015 Norway model bilateral investment agreement, at <https://www.regjeringen.no/contentassets/e47326b61f424d4c9c3d470896492623/draft-model-agreement-english.pdf>.

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: “Karl P. Sauvant, ‘We need an international support programme for sustainable investment facilitation,’ Columbia FDI Perspectives, No. 151, July 6, 2015. Reprinted with permission from the Columbia Center on Sustainable Investment (www.ccsi.columbia.edu).” A copy should kindly be sent to the Columbia Center on Sustainable Investment at ccsi@law.columbia.edu.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Alex Weaver, amw2209@columbia.edu.

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational

programs, and the development of resources and tools. For more information, visit us at <http://www.ccsi.columbia.edu>.

Most recent *Columbia FDI Perspectives*

- No. 150, Thomas Jost, “FDI in Russia in Difficult Times,” June 22, 2015.
- No. 149, John P. Gaffney, “When is investor-state dispute settlement appropriate to resolve investment disputes? An idea for a rule-of-law ratings mechanism,” June 8, 2015.
- No. 148, In Hyeock Lee, Shige Makino and Eunsuk Hong, “Outward FDI does not necessarily cost domestic employment of MNEs at home: Evidence from Japanese MNEs,” May 25, 2015.
- No. 147, Joachim Karl, “An appellate body for international investment disputes: How appealing is it?,” May 11, 2015.
- No. 146, Anna Joubin-Bret, “Why we need a global appellate mechanism for international investment law,” April 27, 2015.

All previous *FDI Perspectives* are available at <http://ccsi.columbia.edu/publications/columbia-fdi-perspectives/>.