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Development perspectives of the Investment Facilitation for Development Agreement

by

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Following the conclusion of the negotiations of the Investment Facilitation for Development Agreement (IFDA) in November 2023, its text was presented for consideration at the 13th Ministerial Conference of the World Trade Organization (WTO) in Abu Dhabi end-February 2024. India, however, formally objected to its inclusion in the agenda, arguing that consensus is lacking to integrate it into the WTO's legal architecture as a plurilateral agreement. As of today, the IFDA is supported by 125 out of 166 WTO members, of which 62 are developing countries and 27 are least developed countries (LDCs). This strong support from developing countries and LDCs confirms that the IFDA is expected to offer significant economic benefits, especially for these groups of countries. While 41 members have not joined the IFDA, some, including the United States, apply a 'constructive consensus' approach, thus not standing in the way of the conclusion of the IFDA.

The IFDA focuses on regulatory reforms to help attract and retain foreign investors. The key rationale of the Agreement is to streamline and speed up administrative procedures, thus reducing transaction costs faced by foreign (and domestic) investors. Members will mainly benefit from the IFDA through reforms they themselves undertake "at home".

The reform gap between the current practice and the commitments undertaken in the framework of the IFDA is especially large in developing countries and LDCs. If countries use the IFDA to bridge this reform gap, they are poised to benefit substantially: a modelling of its economic impacts projects important global welfare gains, especially for developing countries and LDCs. Even non-signatories would benefit from the IFDA since its provisions are applied on a most-favored-nation basis: policy reforms resulting from the implementation of the IFDA are horizontal (i.e., non-discriminatory) in nature and do not require concessions from non-signatories. India, for example, as a non-signatory, would benefit from spillover effects that could reach up to 0.79% in welfare gains.

Importantly, the IFDA can be considered a development friendly plurilateral as it contains a comprehensive special-and-differential treatment section. Based on the WTO's Trade Facilitation Agreement model, the IFDA allows developing countries and LDCs to self-designate whether certain provisions should be implemented after a transition period and/or technical assistance and capacity building is provided. Furthermore, the Agreement includes a mix of binding, conditionally binding and best-endeavor provisions, allowing for even more flexibility in its implementation. Needs assessments will assist members in self-designating the implementation of their commitments and in identifying their requirements for technical assistance and capacity development support.

The IFDA also includes flexibilities concerning the enforcement of its commitments. Should developing countries and LDCs experience difficulties in implementing their commitments, the IFDA foresees Early Warning and Expert Group Mechanisms designed to support members to overcome implementation hurdles. Furthermore, developing countries and LDCs are granted grace periods of two and up to eight years, respectively, before dispute-settlement proceedings can be launched.

The IFDA can support domestic investment reforms, enhance transparency in—and offer the potential of—attracting FDI, foster domestic coordination and international cooperation, fight corruption, encourage responsible business conduct, and facilitate the integration of developing countries and LDCs into the multilateral trading system.

However, the benefits will not accrue automatically. Effective and substantial technical and financial support are essential to ensure the beneficial implementation of the IFDA in countries that are most in need of sustainable and productive FDI. This includes supporting domestic and legislative reforms and enhancing the administrative capacity to host FDI. Developing countries and LDCs would benefit equally from receiving support to foster policy learning and sharing best practices to design strategies conducive to attracting and retaining FDI in sectors and industries that offer the best sustainable development perspectives and linking them to global value chains. In addition to attracting inward FDI, WTO members should also consider outward FDI strategies.

Given the significant benefits the IFDA is likely to offer, it is essential that WTO members reach consensus to incorporate the IFDA into the WTO's rule book. For this, it is crucial that IFDA participants engage in open and fact-based policy dialogues with critics within and outside of government, emphasizing the potential of the Agreement to support the development process. Discussions should take place in Geneva and in other suitable fora, such as the G20. Equally, members should establish a funding mechanism, similar to that for the Trade Facilitation Agreement, in support of the implementation of the IFDA by developing countries and LDCs (Art. 39.10 IFDA). Lastly, the intensification of the needs assessment process is a logical next step to support investment facilitation reforms, uphold and enhance momentum around the IFDA and benefit from its development perspectives.

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