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Task Force on Trade, Investment and Globalization

Towards G20 Guiding Principles on Investment Facilitation for Sustainable Development*

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Abstract

There is growing support behind an international framework to facilitate investment for sustainable development. This Policy Brief suggests that the G20 consider adopting Guiding Principles on Investment Facilitation for Sustainable Development, to help ensure that these efforts result in an effective, coherent, and development-oriented outcome. To this end, this Brief proposes guiding principles to: (1) orient investment facilitation, (2) facilitate sustainable FDI, (3) integrate facilitation throughout the investment lifecycle, (4) engage in multistakeholder consultations, (5) ensure shared responsibilities, (6) encourage cooperative activities, (7) adopt a whole-of-government approach, (8) focus on national efforts within a multilateral framework, and (9) support capacity building coupled with flexibility.

Challenge

The world faces the challenge of raising an additional US\$2.5 trillion annually to reach the Sustainable Development Goals.¹ At the same time, there are currently over US\$100 trillion in assets under management, expected to rise to over US\$145 trillion by 2025.² There is therefore not a dearth of capital, but rather a dearth of

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¹ UNCTAD, “Developing countries face \$2.5 trillion annual investment gap in key sustainable development sectors, UNCTAD report estimates”, 24 June 2014 Press Release. Available at: <https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=194>

² Arezki, Rabah, Patrick Bolton, Sanjay Peters, Frederic Samama, and Joseph Stiglitz. “From global savings glut to financing infrastructure: the advent of investment platforms”, IMF WP16/18, 2016, p. 5. Available at: <https://www.imf.org/external/pubs/ft/wp/2016/wp1618.pdf>. Accessed 8 January 2019. Also see PwC, “Global Assets under Management set to rise to \$145.4 trillion by 2025”, 30 October

capital flowing to profitable projects that contribute to sustainable development. At the same time, global FDI flows have actually declined by more than one third over the past three years, falling from US\$1.9 trillion in 2015 to US\$1.2 trillion in 2018, a low point last seen in 2009 after the global financial crisis.³ This decline is all the more deplorable, as FDI—like trade—is a win-win proposition, especially considering that such investment not only involves capital flows but can also involve other resources central to development, such as technology transfer, the upgrading of human resources, access to markets, and growing exports. Moreover, considering that the bulk of FDI is in the services sector and hence is tightly intertwined with trade in services, the performance of FDI flows has direct implications for the role of services trade in achieving G20 objectives.⁴

This leads to two closely intertwined goals:

- (1) How to increase the *flow* of foreign direct investment; and
- (2) How to increase the *benefits* from foreign direct investment.

Investment facilitation provides an innovative approach to help achieve both goals.

Investment facilitation is broadly conceived as an international framework of non-controversial, technical measures that can increase the *quantity* and *quality* of investment. Since virtually all economies both receive and export investment capital,⁵ investment facilitation has the potential to benefit all economies. Yet, given that developing and least-developed countries often lack the capacity to attract foreign direct investment (FDI) – and that FDI is often their largest source of finance⁶ – investment facilitation is particularly important for these countries. As investment facilitation mainly targets foreign direct investment, this brief focuses on FDI. It is worth noting, however, that improvements in domestic regulatory systems through facilitation efforts are likely to also generate significant benefits for domestic investors.

Why should the G20 take up this issue?

2017. Available at: <https://press.pwc.com/News-releases/global-assets-under-management-set-to-rise-to--145.4-trillion-by-2025/s/e236a113-5115-4421-9c75-77191733f15f>. Accessed 8 January 2019.

³ UNCTAD, “World Investment Report Annex Tables”, FDI inflows by region and economy, 1990-2017. Available at: <https://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Annex-Tables.aspx>. Accessed 25 January 2019. Also see UNCTAD, “Investment Trends Monitor”, Issue 31, January 2019. Available at: https://unctad.org/en/PublicationsLibrary/diaeiainf2019d1_en.pdf. Accessed 25 January 2019.

⁴ Prima Braga, Carlos, Jane Drake-Brockman, Bernard Hoekman, J. Bradford Jensen, Patrick Low, Hamid Mamdouh, Pierre Sauvé, Johannes Schwarzer, and Sherry Stephenson, “[Services Trade for Sustainable, Balanced, and Inclusive Growth](#)”, T20, 2019.

⁵ Perea, Jose Ramon and Matthew Stephenson, “Outward FDI from Developing Countries”, *Global Investment Competitiveness Report 2017/2018*, World Bank Group, 2018, pp. 101-134. Available at: <http://pubdocs.worldbank.org/en/550551508856695853/GICR-04.pdf>. Accessed 4 January 2019.

⁶ UNCTAD, “World Investment Report 2018: Investment and New Industrial Policies – Key Messages and Overview”, Available at https://unctad.org/en/PublicationsLibrary/wir2018_overview_en.pdf. Accessed 4 January 2019.

- Discussions on investment facilitation have been very dynamic – from the national to the multilateral levels – generating a need for high-level guidance to achieve effective, coherent, and development-oriented outcomes.⁷
- The need for such guidance was already recognized and called-for by the T20 in 2018.⁸
- G20 economies represent 88 percent of global outward FDI stock and thus have both an interest in supporting an international framework to facilitate investment and the legitimacy to do so.⁹
- The G20 adopted Guiding Principles for Global Investment Policymaking in 2016 and launched the Compact with Africa in 2017, both of which emphasize the importance of investment facilitation as a key dimension of investment policy.¹⁰
- The Trade Facilitation Agreement came into force in 2017, but given that trade and investment are increasingly interlinked, trade facilitation will be much more effective if undertaken together with investment facilitation—and vice versa.¹¹ In fact, some FDI—like investment in telecommunications, ports, airports, roads, and railways—can be thought of as trade facilitation.

The G20 Guiding Principles for Global Investment Policymaking have served as an important signal for international investment policy reform. The G20 can draw from this experience and adopt non-binding Guiding Principles on Investment Facilitation for Sustainable Development, thus providing orientation, contour, and impetus to discussions in this emerging area.

Proposal

⁷ In December 2017, 69 economies called for discussions at the WTO to develop a multilateral framework on investment facilitation for development. See “Joint Ministerial Statement on Investment Facilitation for Development”, 13 December 2017, WTO document WT/MIN(17)/59. Available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=240870&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True. Accessed 4 January 2019.

⁸ Berger, Axel, Karl P. Sauvart, Silvia Karina Fiezzoni, Rodrigo Polanco, Matthew Stephenson, Akihiko Tamura, and Pavel Trunin, “Moving the G20’s investment agenda forward”, T20, 2018. Available at: <https://t20argentina.org/publicacion/moving-the-g20s-investment-agenda-forward/>. Accessed 14 January 2019.

⁹ UNCTAD, “FDI outward stock, by region and economy, 2017”. Available at: <https://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Annex-Tables.aspx>. Accessed 13 January 2019.

¹⁰ See Principle VII, “G20 Guiding Principles for Global Investment Policymaking”, Available at: <https://investmentpolicyhub.unctad.org/Upload/Documents/Annex%20III%20G20%20Guiding%20Principles%20for%20Global%20Investment%20Policymaking.pdf>. Accessed 30 December 2018. Principle VII states: “Policies for investment promotion should, to maximize economic benefit, be effective and efficient, aimed at attracting and retaining investment, and *matched by facilitation efforts* that promote transparency and are conducive for investors to establish, conduct and expand their businesses” (emphasis added). Also see “About the Compact with Africa”. Available at: <https://www.compactwithafrica.org/content/compactwithafrica/home.html>.

¹¹ WTO, UNCTAD, OECD and World Bank, “Inter-Relationship between Trade and Investment: Strengthening Policy Coherence”, Discussion Paper for the G20, 2016. Available at: <http://sherpag20indonesia.ekon.go.id/index.php?r=site/resourceDownload&filename=Inter-relationship%20between%20Trade%20and%20Investment-Strengthening%20Policy%20Coherence.pdf>. Accessed 4 January 2019.

The G20 should adopt non-binding Guiding Principles on Investment Facilitation for Sustainable Development

With the objective of (i) leveraging investment for inclusive economic growth and sustainable development, (ii) ensuring that investment policy and measures are transparent, efficient, and effective while preserving policy space and regulatory sovereignty, and (iii) supporting efforts at the national level to attract and leverage investment for sustainable development while creating an international framework that provides benchmarks, good practices, and orients international assistance, the G20 may wish to consider the following non-binding principles to provide guidance to efforts in support of investment facilitation.

1. Orient investment facilitation

Investment facilitation should be concerned with practical aspects and technical measures to support the flow of investment. In so doing, investment facilitation should focus on areas where there is generalized interest and support – from firms and governments – such as improving transparency and predictability of investment measures, streamlining procedures, and enhancing coordination and cooperation between actors. Facilitation efforts should not include the controversial and polarizing areas of market access, investment protection, and investor-state dispute settlement. In particular, investment facilitation should not be conceived in such a way that it restricts the policy space of national governments and should leave considerable flexibility with implementation. Where relevant, investment facilitation efforts can draw from the earlier experience of trade facilitation efforts, both in terms of process and substance, that led to the successful adoption of the Trade Facilitation Agreement. Investment facilitation efforts can also draw from the analytical work undertaken by international organizations.¹²

Guiding Principle 1: Investment facilitation should focus on practical aspects and technical measures to support the flow of investment – and not deal with market access, investment protection, and investor-state dispute settlement – thereby maintaining the policy space of national governments. To this end, investment facilitation should draw from both the lessons of the Trade Facilitation Agreement and the experience of international organizations.

2. Facilitate sustainable FDI

When governments facilitate investment, they do not seek foreign investment for its own sake, but for its development benefits. As a result, economies aim not only to increase the *quantity* of FDI but also its *quality*, as measured by its contribution to sustainable development. In other words: *sustainable FDI for sustainable*

¹² UNCTAD, “Global Action Menu for Investment Facilitation”, May 2017. Available at: https://investmentpolicyhub.unctad.org/Upload/Documents/Investment-Facilitation_Review%20Note%203%20feb.pdf. Accessed 14 January 2019. Also see Novik, Ana and Alexandre de Crombrughe, “Towards an International Framework for Investment Facilitation”, OECD Investment Insights, April 2018. Available at: <https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf>. Accessed 14 January 2019.

*development.*¹³ Any international framework on investment facilitation should therefore promote not only FDI in general, but especially sustainable FDI, i.e., FDI that is at once commercially viable and makes a maximum contribution to economic, social, and environmental development.¹⁴ Facilitation efforts should also support FDI that takes place on the basis of proper governance mechanisms (such as environmental impact studies, stakeholder consultations, and risk-management mechanisms). In this context, the promotion of linkages between foreign affiliates and domestic firms is particularly important. To facilitate sustainable FDI, governments, firms, and other key actors can use an indicative list of FDI ‘sustainability characteristics’.¹⁵

Guiding Principle 2: Investment facilitation should be focused on ‘sustainable FDI for sustainable development’, by especially facilitating FDI that is both commercially viable and makes a maximum contribution to the sustainable development of host and home economies.

3. Integrate facilitation throughout the investment lifecycle

A focus on sustainable FDI can shape facilitation efforts across an FDI lifecycle comprised of five stages: (1) development of an FDI vision or strategy, (2) FDI attraction, (3) FDI entry and establishment, (4) retention of FDI, including dispute prevention, and (5) and fostering linkages between foreign and domestic firms to increase the benefits of FDI.¹⁶ Crucially, investment facilitation can play a role – and should be integrated – in each stage of this lifecycle. Until now, discussions about investment facilitation have principally focused on stage (3), the host economy’s policies and procedures regarding the entry and establishment of foreign investment, and have paid less attention to the importance of facilitation at the post-establishment stage and beyond. Of particular importance is the role of facilitation to prevent investment disputes, not only because these disputes can be costly in and of themselves, but also because they can discourage both reinvestment and new investment.¹⁷ Economies can put in place mechanisms to identify and address

¹³ Sauvart, Karl P., “International Investment Facilitation: By Whom and for What?”. Presentation to the ICTSD/IDB Roundtable on “Trade Facilitation 2.0 in Regional Trade Agreements: Enabling Trade in the Digital Age”, Geneva, 1 June 2018. Available at SSRN: <https://ssrn.com/abstract=3198412>

¹⁴ Sauvart, Karl P. “We need an international support programme for sustainable investment facilitation,” *Columbia FDI Perspectives*, no. 151, 6 July 2015, p. 1. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896212

¹⁵ A review of 150 instruments led to the identification of ten common FDI sustainability characteristics and twenty emerging common FDI sustainability characteristics shared across stakeholders. See Sauvart, Karl P. and Howard Mann. “Towards an Indicative List of FDI Sustainability Characteristics”. E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2017. Available at: <https://ssrn.com/abstract=3055961>.

¹⁶ WBG, “Support Program for Investment Reform and Innovative Transformation: Tools and Diagnostics for Expanding Cross-Border Investment and Maximizing its Impact for the Local Economy”. Available at: <http://pubdocs.worldbank.org/en/594381510251482638/SPIRIT-Toolkit.pdf>. Accessed 6 January 2019.

¹⁷ Allee, Todd and Clint Peinhardt. “Contingent Credibility: The Impact of Investment Treaty Violations on Foreign Direct Investment”, *International Organization*. Cambridge University Press, 65(3), 2011, pp. 401–432. Available at: <https://doi.org/10.1017/S0020818311000099>.

investment irritants and complaints before they become formal disputes, and in so doing avoid the concomitant economic, reputational, and political costs.¹⁸

Guiding Principle 3: Investment facilitation should integrate facilitation efforts across each stage of the investment lifecycle.

4. Engage in multistakeholder consultations

The input and guidance of stakeholders is essential to understand facilitation needs across the lifecycle, and for facilitation efforts to achieve real impact. The reason is that stakeholders – including investors and representatives of investment promotion agencies, but also other stakeholders from academia and civil society – can help identify the operational, ground-level constraints to investment that facilitation efforts can address. This should help ensure that measures included in any international framework will be designed in a manner that addresses the actual challenges to increasing both the quantity and quality of FDI, through what has been called a “collective process of discovery”¹⁹. As a result, while investors, business associations, and investment promotion agencies will likely be the most important constituents of this consultative process, other stakeholders should also be included to ensure input from all relevant parties.

Guiding Principle 4: Investment facilitation should benefit from a multi-stakeholder process of consultations and cooperation in formulating and implementing measures, especially input from investors, business associations, and representatives of investment promotion agencies.

5. Ensure shared responsibilities

At the same time as stakeholders help shape facilitation efforts, they also have a shared responsibility for its implementation. At present, international investment agreements provide for host country governments to play the leading role in managing FDI – including its attraction, retention, and impact on the domestic economy – with little active role of home country governments or firms. However, both home country governments and firms are increasingly adopting measures to shape outward FDI decisions and behaviors.²⁰ On the one hand, home country

¹⁸ UNCTAD, “Best Practices In Investment For Development Case Studies In FDI - How to Prevent and Manage Investor-State Disputes Lessons from Peru”, UNCTAD Investment Advisory Series B, 2011. Available at: https://unctad.org/en/Docs/webdiaepcb2011d9_en.pdf. Also see Echandi, Roberto. “Complementing investor–state dispute resolution: A conceptual framework for investor–state conflict management”. In Roberto Echandi and Pierre Sauvé (Editors), *Prospects in International Investment Law and Policy: World Trade Forum*, 2013, pp. 270-305. Cambridge: Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9781139565479.023>.

¹⁹ Sauvants, Karl P. and Khalil Hamdani. “An International Support Programme for Sustainable Investment Facilitation”, p. 2. E15 Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015. <https://ssrn.com/abstract=3143372>

²⁰ Examples of home-country measures include, *inter alia*, information on investment opportunities in specific sectors or markets, grants for feasibility studies, support for business missions and matchmaking services, loans or equity investment, financial guarantees, political-risk insurance, and tax exemptions on foreign operations. See Sauvants, Karl P. and Persephone Economou, Ksenia Gal, Shawn Lim and Witold Wilinski. “Trends in FDI, Home Country Measures and Competitive Neutrality”, *Yearbook on International Investment Law & Policy 2012-2013*, New York: Oxford University Press, 2014, pp. 3-107. Available at SSRN: <https://ssrn.com/abstract=2814307>. Accessed 14 January 2019.

governments have adopted national guidelines for how their firms carry out outward FDI,²¹ and embraced multilateral efforts such as the OECD's Guidelines for Multinational Enterprises.²² On the other hand, firms have adopted their own codes of corporate social responsibility, and also embraced multilateral efforts such as the Principles of Responsible Investment.²³ Home country governments and firms are therefore poised to play an increasingly active role in facilitating sustainable FDI. A balanced approach with shared responsibilities among these and other stakeholders is more likely to lead to sustainable development outcomes by boosting trust, increasing collaboration, and ensuring that investments have broad buy-in and support.

Guiding Principle 5: Investment facilitation should strive for shared responsibilities among stakeholders, especially host country governments, home country governments, and investors.

6. Encourage cooperative activities

One of the clearest ways to foster shared responsibility and drive successful facilitation is through cooperative activities, especially between host and home economies. This is the case for at least three reasons. First, cooperative activities lead to a better understanding of the respective facilitation needs and priorities in each economy, allowing targeted measures to directly and efficiently address these needs and priorities. Second, cooperative activities create partnership and mutual learning, building a foundation of trust for all other investment facilitation measures that may be considered. Third, cooperative activities help obviate the impression that one economy may be benefiting more from investment facilitation than the other, as cooperative activities should be guided by mutual interest and designed for mutual benefit. A cooperative approach is therefore likely to be most effective in providing information, identifying bottlenecks, streamlining regulations, coordinating measures, facilitating two-way investment, and overall generating win-win investment outcomes between economies. Cooperative activities are already starting to take place, for instance through outward investment agencies and investment promotion agencies (from different economies) organizing joint business missions and promotion activities to support win-win, two-way investment.

Guiding Principle 6: Investment facilitation should encourage cooperative activities between home and host economies, especially their respective agencies promoting inward and outward investment. Cooperative activities can also, where useful, be undertaken with other stakeholders and be regional in nature.

²¹ Sauvart, Karl P. and Howard Mann. "Towards an Indicative List of FDI Sustainability Characteristics". E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2017. Available at SSRN: <https://ssrn.com/abstract=3055961>. Accessed 4 January 2019. For one example, see the guidelines issued by the Department of Trade and Industry (DTI) in South Africa: "Guidelines for Good Business Practice by South African Companies Operating in the Rest of Africa". Available at: <http://files.constantcontact.com/8360ff0d101/19a99fde-32e7-41dc-a4ae-f0c1dfba2c75.pdf?ver=1472465496000>. Accessed 5 January 2019.

²² See "OECD Guidelines for Multinational Enterprises". Available at: <http://mneguidelines.oecd.org/mneguidelines/>. Accessed 5 January 2019.

²³ As of January 2019 there were over 2,200 signatories of the Principles of Responsible Investment. See "PRI Signatories", available at <https://www.unpri.org/signatories>. Accessed 5 January 2019.

7. Adopt a whole-of-government approach

Cooperative activities with foreign governments can only be effective if there is coordination and alignment within the national government. Yet, there are challenges to coordinating across governmental agencies and across government levels. Often challenges arise for foreign investors from the regulatory actions of single domestic agencies that are not aware of the country's investment policy or international commitments. At other times, the actions of municipal and provincial regulatory authorities may not be aligned with investment policy set at the national level. A whole-of-government approach can help overcome these unintended 'horizontal' and 'vertical' regulatory impediments to investment,²⁴ which undermine a country's ability to leverage investment for development. A whole-of-government approach ensures that agencies cooperate across portfolios to achieve consistency and coordination regarding investment policy. This approach brings together different government stakeholders to better align efforts, increase effectiveness, cut costs, boost competitiveness, and generate synergies.

Guiding Principle 7: Investment facilitation should be based on a whole-of-government approach, ensuring participation by, and cooperation among, all levels of government and all institutions dealing with investment.

8. Focus on national efforts within a multilateral framework

The need for a whole-of-government approach just described is underpinned by the fact that investment facilitation first and foremost takes place at the national level through the work of government institutions. These institutions formulate and implement investment regulations, a primary locus of facilitation efforts. At the same time, bilateral and multilateral approaches can support and build on national activities in what could be called a 'tiered' system. A multilateral approach, in particular, is more likely to produce an inclusive framework that reflects the interests and needs of economies at all stages of development, and thus is more legitimate, stable, and impactful. In addition, there are two reasons why it is in the interests of economies to extend an investment facilitation framework on a most-favored-nation (MFN) basis even to those economies that may not participate. First, an MFN basis will increase the likelihood of participating economies receiving inward investment, since it will facilitate inward investment from all economies, irrespective of their participation (non-participating economies, in contrast, will not benefit from an increase in inward investment flows generated by facilitation efforts). Second, given the growing integration of trade and investment, participating economies are more likely to gain from trade with partner economies if they facilitate investment from them as well, irrespective of the trading partners' participation in the investment facilitation framework. This same logic may have helped determine that the Trade Facilitation Agreement be applied on an MFN basis, creating even more of an incentive to apply investment facilitation on an MFN basis if the gains from trade and investment are to be fully realized.

²⁴ Ghouri, Ahmad. "What Next for International Investment Law and Policy? A Review of the UNCTAD Global Action Menu for Investment Facilitation", *Manchester Journal of International Economic Law*, 15(2), 2018, p. 203. Available at: <https://www.electronicpublications.org/stuff.php?id=710>.

Guiding Principle 8: Investment facilitation should first and foremost focus on national efforts, but also be multilateral in nature, designed by and for all economies through an inclusive process, and with the ensuing results applied on a most-favoured-nation basis.

9. Support capacity building coupled with flexibility

The preceding eight principles will be ineffective without sufficient capacity building and flexibility. The reason is that economies are not at the same level in terms of identifying, negotiating, adopting, and implementing facilitation measures. For an investment facilitation framework to succeed, there must thus be support for capacity building throughout the process, crowding-in the participation of economies at different levels of development. Key to success will be a combination of flexibility and support, as gleaned from the successful Trade Facilitation Agreement. Developing countries and LDCs could (1) decide how long they require to implement commitments, (2) make commitments contingent on technical assistance, and (3) benefit from time windows to change commitments or grace periods. The Trade Facilitation Agreement, furthermore, provides for the establishment of (4) an Expert Group, as needed, to advise on implementation or management of commitments, as well as (5) a facility to provide technical assistance when not provided by donors and international organizations. This recipe of capacity building and flexibility has worked well for trade facilitation and can be replicated for investment facilitation, while adapting it as needed. This would allow all economies both to participate in discussions and have the needed flexibility to join a framework.

Guiding Principle 9: Investment facilitation should include capacity building – throughout the process of developing and implementing facilitation measures – to ensure that economies at different levels of development can participate on an equal footing and that all can benefit from these efforts. Investment facilitation should also allow for flexibility in the implementation of commitments for countries across different levels of development to join.

Way forward

The G20 may wish to add investment facilitation to the agenda of the Trade and Investment Working Group (TIWG) and suggest that the Ministerial Meeting on Trade and Digital Economy on 8 June 2019 make a commitment to working on this issue. This would allow the TIWG to examine how investment facilitation can increase the level and benefits of investment flows, building on the Guidelines on Global Investment Policymaking and the Compact with Africa. The TIWG may also wish to request international organizations – especially UNCTAD, World Bank Group, WTO, and the OECD – to provide technical support to investment facilitation efforts. The TIWG could also consider the draft Guiding Principles on Investment Facilitation for Sustainable Development included in this Policy Brief. If adopted, the G20 could then request international organizations to assist with their implementation.

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