The Potential Value-added of a Multilateral Framework on Investment Facilitation for Development

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Introduction

All countries seek to attract foreign direct investment (FDI) to advance their economic growth and development. This is so not only because FDI involves much sought-after capital (and the finance gap to reach the Sustainable Development Goals is substantial), but also because FDI can bring a package of tangible and intangible assets, such as technology, skills and access to markets, that are central to development.

In this context, 70 WTO members endorsed a "Joint Ministerial Statement on Investment Facilitation for Development" during their Buenos Aires Ministerial Conference in December 2017 to initiate "structured discussions with the aim of developing a multilateral framework on investment facilitation".[2] The full mandate reads as follows (para. 4):

> "We call for beginning structured discussions with the aim of developing a multilateral framework on investment facilitation. These discussions shall seek to identify and develop the elements of a framework for facilitating foreign direct investments that would: improve the transparency and predictability of investment measures; streamline and speed up administrative procedures and requirements; and enhance international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention. These discussions shall also seek to clarify the framework's relationship and interaction with existing WTO provisions, with current investment commitments among Members, and with the investment facilitation work of other international organizations. These discussions shall not address market access, investment protection, and Investor-State Dispute Settlement."

Ministers further agreed (paras. 6 and 7):

> "6. We also agree that facilitating greater developing and least-developed Members' participation in global investment flows should constitute a core objective of the framework. Working in cooperation with relevant intergovernmental organizations,

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[2] The Joint Ministerial Statement on Investment Facilitation for Development, p. 1, 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.

developing and least developed Members' requirements in implementing the multilateral framework shall be assessed, so that technical assistance and capacity building support can be made available to address these identified needs.

7. We further agree that the right of Members to regulate in order to meet their policy objectives shall be an integral part of the framework. The framework shall also be designed to be flexible, adaptable, and responsive to the evolving investment facilitation priorities of Members."

The principal purpose of a multilateral investment facilitation framework, as reflected in the Joint Ministerial Statement, is to further increase FDI flows and enhance international cooperation and relations among relevant stakeholders in the investment area. The reason for pursuing this objective is precisely that WTO members know that FDI can make, on balance, an important contribution to development, as reflected in their national policies and efforts to attract FDI.

Since the proposal of an international support program for sustainable investment facilitation was made in 2015 in the context of the E15 Task Force on Investment Policy,[3] it has gained considerable traction.[4] In particular, the WTO Structured Discussions that began in early 2018 and are led by developing countries, are very dynamic, and seem to be making good progress. They have focused so far primarily on the principal topics identified in the Joint Ministerial Statement,[5] and focused on a number of issues, as follows:

- *Improving the transparency and predictability of investment measures*.[6] The issues being discussed here include: the publication and availability of measures and information; notification to the WTO; enquiry points; specific exceptions applicable to transparency requirements; and other transparency-related issues.
- *Streamlining and speeding up administrative procedures and requirements*.[7] The issues being discussed here include: administrative procedures and documentation

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[3] See, Karl P. Sauvant, "The Evolving International Investment Law and Policy Regime: Ways Forward. E15 Task Force on Investment Policy" (Geneva: ICTSD and WEF, E15 Initiative, 2016), ch. 3.2, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2721465
The proposal outlined the main elements of an agreement and avenues that could be pursued to achieve it, including through a stand-alone agreement.

[4] For an account of the development of the investment facilitation discussions, see, ICTSD, "Crafting a Framework on Investment Facilitation" (Geneva: ICTSD, 2018), available at: https://www.ictsd.org/themes/services-and-digital-economy/research/crafting-a-framework-on-investment-facilitation. Aspects of the WTO effort are discussed in various *Columbia FDI Perspectives*, available at http://ccsi.columbia.edu/publications/columbia-fdi-perspectives/.

[5] See, op. cit. See in this context also UNCTAD's "Global Action Menu for Investment Facilitation". The Menu contains action lines for governments to implement investment-facilitation measures "aimed at making it easier for investors to establish and expand their investments, as well as to conduct their day-to-day business in host countries," p. 4, available at https://investmentpolicyhubold.unctad.org/.

[6] See, WTO, "Structured Discussions on Investment Facilitation for Development: Schedule of Meetings, January-July 2019", available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=INF%2fIFD%2fW%2f3&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerestrictionDateFrom=&DerestrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE_S_S001&ActiveTabIndex=0&languageUIChanged=true#, p. 2.

[7] Ibid., p. 3.

requirements; time limits for administrative procedures; treatment of incomplete applications; fees and charges; review of administrative procedures and requirements; use of information and communication technology (e-government); one-stop shop/single window types of mechanisms; focal point/contact point/ombudsperson types of mechanisms (including relations with relevant stakeholders and dispute prevention); and other issues related to streamlining and speeding up administrative procedures and requirements.

- *Enhancing international cooperation, information sharing and the exchange of best practices.*[8] The issues being discussed here include: international cooperation among members, including through their competent authorities; and international cooperation among members at the multilateral level on investment facilitation-related matters, including through a WTO Committee.
- *The development dimension.*[9] The issues being discussed here include: challenges faced by developing countries and especially least developed countries; sharing of best practices and information on facilitating FDI to identify global benchmarks; special and differential treatment; and technical assistance and capacity building.
- *Other cross-cutting issues.*[10] The issues being discussed here include: domestic institutional arrangements to enhance communication and coordination among relevant authorities at different levels of government; scope of the multilateral framework; non-discrimination; best-endeavors language; challenges faced by micro, small and medium-sized enterprises; relationship between the framework and current investment commitments of members; and the role of the investment facilitation framework in combating corruption, promoting corporate social responsibility and promoting women empowerment.

As of April 2019, "[t]ere was broad agreement among the participating Members that administrative procedures and requirements (APRs), together with transparency and predictability of measures, constituted the core of any investment facilitation framework".[11]

However, since the bulk of any investment facilitation effort is undertaken at the national level, one must ask why seeking to create a multilateral framework—a difficult and time-consuming effort—is important and should be endeavored, especially at a time when multilateralism is not exactly *en vogue*.

This note discusses the potential value-added of an investment facilitation framework.[12] But, first, it examines the role of investment facilitation itself in increasing investment flows, by looking at the principal FDI determinants.

[8] Ibid., pp. 3-4.
[9] Ibid., p. 4.
[10] Ibid., p. 4.
[11] "WTO Structured Discussions on Investment Facilitation for Development, Meeting Held on 11 April 2019, Elements Aimed at Streamlining and Speeding up Administrative Procedures and Requirements, Summary of Discussions by the Coordinator", INF/IFD/R/2, p. 1, available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?MetaCollection=WTO&SymbolList=%22INF%2fIFD%2fR%2f2%22+OR+%22INF%2fIFD%2fR%2f2%2f*%22&Serial=&IssuingDateFrom=&IssuingDateTo=&CATTITLE=&ConcernedCountryList=&OtherCountryList=&SubjectList=&TypeList=&FullTextHash=371857150&ProductList=&BodyList=&OrganizationList=&ArticleList=&Contents=&CollectionList=&RestrictionTypeName=&PostingDateFrom=&PostingDateTo=&DerestrictionDateFrom=&DerestrictionDateTo=&ReferenceList=&Language=ENGLISH&SearchPage=FE_S_S001&ActiveTabIndex=0&languageUIChanged=true#.

1. Investment Facilitation in the Context of the Principal FDI Determinants

We know that the principal investment determinants need to be favorable for firms to undertake FDI.[13]

Most important among these determinants are the *economic determinants*, including the size of a host country's market and its growth rate; the quality of a host country's infrastructure, including its technological infrastructure; the quality of a host country's human resources and supplier networks; the price of labor (for export-oriented investment, at least), and the availability of natural resources. While the economic determinants are not everything, everything is nothing if the economic determinants are not right.

The second set of determinants relates to the *regulatory framework* of host countries—it needs to be enabling. Obviously, the more favorable the regulatory framework, the more attractive a location becomes for investors, provided that the economic determinants are right. At the same time, though, any attempt to facilitate investment must be balanced against the development interests of host countries. For example, regulations protecting the environment may slow down the entry process if firms have to undertake in-depth environmental impact studies. Investors may consider such requirements as unfavorable, but they should not be eliminated simply to improve the investment climate. On the other hand, for many more routine investment projects, client charters indicating timeframes within which required approvals should be issued may be useful.

Finally, there is a set of determinants that relates to the *promotion of FDI*, that is, enticing foreign investors to invest in a given country. This is the central mandate of investment promotion agencies: their task is to attract foreign investors, to help them in their entry and operations in host countries and to provide various after-investment services to retain investments, while at the same time giving policy advice to their governments and keeping the development interests of their economies in mind. Pursuing both sets of objectives is not always an easy task: since the performance of investment promotion agencies is typically evaluated on the basis of their success in attracting FDI, they may have little interest in protective regulations that may discourage foreign investors.

Importantly, while improving the economic determinants takes time, the regulatory framework and investment promotion can be improved relatively quickly. And this is central to investment facilitation. Moreover, investment facilitation becomes all the more important as the regulatory framework and investment promotion efforts become increasingly similar across countries. More specifically, virtually all countries have welcoming FDI laws and regulations in place to attract investors, and the majority of changes in FDI-related laws continue to make the investment environment more favorable by, for example, simplifying administrative procedures, granting investment incentives and establishing special economic zones.[14] Moreover, the great majority of governments have concluded bilateral investment

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[12] For a more comprehensive discussion of the issues relating to an investment facilitation framework, see Axel Berger et al., "Towards G20 Guiding Principles on Investment Facilitation for Sustainable Development", March 13, 2019, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3352630.

[13] See, UNCTAD, *World Investment Report: Transnational Corporations, Employment and the Workplace* (Geneva: UNCTAD, 1994), ch. VII.

[14] See UNCTAD, *World Investment Report 2018: Investment and New Industrial Policies* (Geneva: UNCTAD, 2018), pp. 80-84. However, some one-sixth of such changes in 2017 went in the opposite direction, involving,

treaties (or other treaties) that, although their substance is changing, are principally geared toward protecting investors and their investments.[15] Finally, virtually all countries have established investment promotion agencies to attract investors; this is reflected in the fact that, as of April 2019, the World Association of Investment Promotion Agencies (WAIPA) had 145 members.[16]

In this situation—and given that the world FDI market is highly competitive—an additional and determined effort at investment facilitation can make the difference in being successful when seeking to attract foreign investors. This is where a multilateral framework on investment facilitation for development becomes relevant, provided it adds value to what is already been done nationally.

2. Promoting Sustainable FDI

To begin with, it needs to be kept in mind that, what WTO members mandated in Buenos Aires was not just to discuss **"investment facilitation"**, but they also gave a purpose for which investment facilitation should be undertaken, namely "**for development**"—presumably, sustainable development.

The Structured Discussions have so far focused largely (as mentioned earlier) on the "facilitation" part of the mandate. But one should not lose sight of the mandate's "development" part, especially because the discussions are driven by developing countries and because developing countries, in particular, need more investment to advance their development.[17] This implies that an investment facilitation framework should contain specific provisions aimed at facilitating "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".[18] In other words, it should be a framework that facilitates, on a priority basis, "sustainable FDI", that is, FDI that has certain "FDI sustainability characteristics". Making individual FDI projects contribute as much as possible to sustainable developments is a crucial—perhaps even the single most important—challenge that an investment facilitation framework needs to address, as, in the end, it is the individual investment project that has a direct impact on a host country's development.

How to identify FDI sustainability characteristics? Answering this question is complicated by the fact that individual countries have different priorities in terms of promoting sustainable development, as indicated in their differing Sustainable Development Goals implementation plans.

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for example, the introduction or strengthening of screening mechanisms to accommodate national security concerns, the protection of the competitiveness of local firms and limitations on foreign ownership of natural resources and land. Ibid.

[15] And considerably more governments conclude new international investment agreements that provide various protections for foreign investors than there are governments that abrogate such agreements.

[16] Communication by Bostjan Skalar, Executive Director, CEO, WAIPA, on file with the author.

[17] See, for example, UNCTAD's *World Investment Reports* (Geneva: UNCTAD, various years).

[18] See, Karl P. Sauvant, "We Need an International Support Programme for Sustainable Investment Facilitation," *Columbia FDI Perspectives*, no. 151 (6 July 2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896212, based on Karl P. Sauvant and Khalil Hamdani, "An International Support Programme for Sustainable Investment Facilitation," ICTSD, July 2015, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3143372.

One approach, the approach that the OECD Secretariat has taken in its "FDI qualities project",[19] is to look to the literature, firm and other databases and to experts. That is of course a reasonable approach, resulting (so far) in five clusters of "FDI qualities indicators": productivity-innovation (including labor productivity, labor productivity growth, product innovation, process innovation, patenting, R&D expenditures and use of foreign technology); skills Including skill intensity, technical skill shortage/surplus); job quality (including employment expansion, employment levels, wage inequality, wage levels, temporary employment, worker safety (injuries), strikes); gender (including gender employment gap, gender wage gap, female top managers (female empowerment)); and carbon footprint (including carbon emissions, energy efficiency, renewable energy vs fossil fuels).[20]

Another—perhaps complementary—approach to identify FDI sustainability characteristics (or FDI quality indicators) is to analyze, on the one hand, what governments say they expect FDI to contribute to the sustainable development of their economies and, on the other hand, to analyze what investors say they contribute to the sustainable development of their host countries.[21] The underlying assumption of this approach is that—regardless of what academic experts say—the principal actors in the FDI relationship know best what is good for them (in the case of governments) and what they can contribute (in the case of investors).

Pursuing this later approach, Sauvant and Mann[22] analyzed what eight stakeholder groups have indicated in a range of instruments adopted by them to determine what governments expect that investors contribute to the development of their economies, and what investors say they contribute to the development of host countries. The eight stakeholder groups are: negotiators of international investment agreements; host country governments and investment promotion agencies; home country governments; intergovernmental organizations; global business associations; private institutional investors, often controlling substantial pools of funds; industry associations; and international investors.[23]

The instruments adopted by these stakeholder groups include international investment agreements, non-binding intergovernmental instruments, criteria used by host countries that seek to attract FDI, criteria used by home countries that support their firms to invest abroad and make such support dependent on a company seeking such support meeting certain conditions (such as the impact of FDI projects on the environment in host countries), standards of intergovernmental organizations, global business codes of international business organizations, standards of private institutional investors, industry codes, and corporate social

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[19] OECD, "FDI Qualities Toolkit: Investment for Inclusive and Sustainable Growth. Progress Report III" (Paris: OECD, March 2019). See also the earlier report "FDI Qualities Toolkit: Investment for Sustainable Growth: Progress Report II" (Paris: OECD, October 2018) and "FDI Qualities: Third Policy Network Meeting", available at https://de.slideshare.net/OECD-DAF/fdi-qualities-third-policy-network-meeting-march-2019.

[20] See, OECD, "FDI Qualities Toolkit", op. cit., p. 13.

[21] The point could be made that the various instruments of governments and investors do not necessarily reflect the reality on the ground. But one should take stakeholders by their word and, if need be, verify.

[22] Karl P. Sauvant and Howard Mann, "Towards an Indicative List of FDI Sustainability Characteristics" (Geneva: ICTSD and WEF, October 2017), available here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055961.

[23] Ibid., p. 2. In addition, civil society organizations were considered. However, the instruments prepared by them where not included in the subsequent analysis because there are only two broadly based instruments by such organizations, and non-business organizations are generally strongly supportive of the Sustainable Development Goals and, if anything, urge that foreign investors make a maximum contribution to the advancement of these Goals.

responsibility statements of multinational enterprises.[24] This approach yields an indicative list of "FDI sustainability characteristics", as enumerated in table 1.

Table 1. The dimensions of sustainable FDI and their sustainability characteristics

	Characteristic[a]
Economic dimension	▪ *Employment* ▪ *Local linkages* ▪ Technology transfer ▪ Infrastructure ▪ *Community development* ▪ *Equitable distribution of wealth* ▪ Tax accountability ▪ Promote research & development (R&D)
Environmental dimension	▪ *Resource management* ▪ *Pollution controls* ▪ **Low carbon / greenhouse gases (GHG) footprint** ▪ *Waste reduction* ▪ *Biodiversity protection* ▪ Climate change ▪ *Water* ▪ *Renewable energy*
Social dimension	▪ **Labour rights** ▪ *Skills enhancement* ▪ *Public health* ▪ **Workplace safety** ▪ **Non-discrimination** ▪ *Fair wages* ▪ *Benefits* ▪ **Human rights** ▪ *Indigenous rights* ▪ *Gender* ▪ **Resettlement** ▪ *Cultural heritage protection / diversity*
Governance dimension	▪ **Transparency** ▪ Local management ▪ **Supply chain standards** ▪ Consumer protection ▪ **Stakeholder engagement** ▪ *Anti-corruption* ▪ **Legal compliance** ▪ *Risk management systems* ▪ Environmental management systems ▪ *Environmental impact assessment / social impact assessment* ▪ Human rights due diligence ▪ Corporate governance

Source: Sauvant and Mann, op. cit., p. V.

[a] Bolded characteristics are "common FDI sustainability characteristics" and italicized characteristics are "emerging common FDI sustainability characteristics", as defined in the text below.

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[24] Ibid., pp. 4-5. The research focused on 150, mostly recent, instruments. For a listing of the instruments analyzed and a more detailed description of the methodology used, see Sauvant and Mann, op. cit., Annexes II and III. Naturally, this research could be extended to cover more instruments, and this may lead to a modified indicative list of FDI sustainability characteristics.

This research shows that there is in fact a substantial overlap between the qualities that governments seek in FDI and the qualities investors say they bring to host countries to advance sustainable development. More specifically, one can identify a list of "common FDI sustainability characteristics", namely characteristics that are mentioned by a number of stakeholder groups in a number of their instruments (table 1): low carbon footprint, labor rights, workplace safety, non-discrimination, human rights, resettlement, transparency, supply chain standards, stakeholder engagement, and legal compliance. These "common FDI characteristics" are defined as characteristics that have 50 per cent or more coverage in at least four out of the eight categories of stakeholders groups. For example, at least half of the instruments related to home countries, intergovernmental organizations, private institutional investors, and international investors mention the characteristic "low carbon footprint". It should be noted that, in fact, each characteristic can represent a cluster of characteristics. Thus, for example, the FDI sustainability characteristic "labor rights" includes freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; and the effective abolition of child labor.

As can be seen from table 1, moreover, other characteristics are becoming more frequent, including employment, local linkages, resource management, skills enhancement, fair wages, gender, and environmental/social assessments. These are characteristics that could be describe as "emerging common FDI sustainability characteristics" (in the sense of being increasingly widely accepted). They are characteristics that are present in at least one-third of the instruments examined in at least three of the eight categories of stakeholder instruments. For example, 33 per cent or more of the voluntary intergovernmental instruments, home country instruments and company codes identify "local linkages" as a desirable FDI characteristic.

Together, the common and emerging common sustainability characteristics can be seen to constitute an "indicative list of FDI sustainability characteristics". One could even go so far as to speak about an emerging consensus between governments and investors as to key FDI sustainability characteristics.[25]

It is noteworthy that, between the "common" and "emerging common" FDI sustainability characteristics, the sustainability characteristics also include the ones identified by the OECD Secretariat. However, the Sauvant and Mann research also shows that there are considerably more "quality indicators" (or "FDI sustainability characteristics") than the five indicators identified by the OECD Secretariat that are of importance to stakeholders. That finding is important when seeking to create a "toolkit" to attract investment that contributes as much as possible to sustainable development (as the OECD Secretariat seeks to do), as it reflects the reality that different governments do look for different qualities in FDI when seeking to advance their sustainable development.

Precisely because individual countries have different priorities in terms of promoting sustainable development and, hence, attract sustainable FDI, it is difficult to establish a closed—one-size-fits-all—list of FDI sustainability characteristics. Rather, it is necessary to take an approach that allows countries the flexibility to focus on what they consider particularly desirable FDI characteristics, in light of their own priorities. Hence, an indicative list of FDI sustainability characteristics provides broad guidance to governments—and, for

[25] Sauvant and Mann, op. cit., p. 13.

that matter, investors—that are interested in seeking to increase the contribution of FDI to sustainable development.

To build in an explicit development angle into an investment facilitation framework by way of encouraging sustainable FDI and have national governments implement it, is, no doubt, a difficult task. Two challenges, in particular, need to be addressed. The first one is that the performance of investment promotion agencies is typically assessed on the basis of the amount of FDI that is being attracted, and not on the basis of the quality of the investment that has been attracted. Changing this approach is in the hands of individual governments and requires directives from high political levels.

Bringing about such change would be helped if an investment facilitation framework itself contained provisions that directly encouraged the facilitation of sustainable FDI—the second challenge. One way of doing that could be for the framework to permit governments to grant certain additional benefits to those international investors that maximize the contribution of their commercially viable investments to the economic, social and environmental development of host countries and that take place in the context of fair governance mechanisms. These additional benefits would have to go beyond the facilitation measures available to all investors for all investments. By way of examples, such benefits could include for investment promotion agencies to assign individual case officers to qualifying international investors who would assist them in all matters related to the establishment and operation of their projects; assist international investors, on a priority basis (and perhaps at reduced fees and/or charges), in obtaining licenses and meeting other requirements; establish "green channels" for investors' employees visiting the host country; provide training for specialized staff required by investors' affiliates; help international investors in establishing local backward and forward linkages through, for example, linkage programs that upgrade local suppliers; grant international investors privileged access to markets that are otherwise closed to foreign investors; and offer targeted fiscal and/or financial incentives.[26]

The crucial challenge is to find ways and means to increase the sustainable development impact of individual investment projects, as it is at this level that the direct interaction between international investors and host countries takes place and hence development is impacted. As will be discussed below, this is not only a task for host country governments, but is also something that home countries and international investors themselves can do. Developing countries have a special interest—and responsibility—to pursue this matter.

3. Establishing an Inventory and Benchmark of Good Practices

The envisaged investment facilitation framework is not meant to deal with investment policies—these are meant to remain under the sole authority of national governments. (It has also been agreed that the Structured Discussions—and hence an eventual framework—would not deal with the controversial issues of market access, investment protection and investor-state dispute settlement.[27]) Rather, such a framework is meant to focus on technical issues

[26] A number of governments offer some of these benefits; see, Christian Kollinsky and Nerys Coleman, "Incentives for Sustainable Development", WAVTEQ Publications, 2019. Since receiving any of these additional benefits would be advantageous to firms, there is a potential for obtaining them in an undeserved manner. To mitigate this risk, consideration could be given to make the list of beneficiaries transparent and accessible, including to competitors and NGOs.
[27] See, WTO, Joint Ministerial Statement, op. cit.

related to the implementation of national policies (whatever these are),[28] by establishing an inventory and a benchmark of good practices that would be clear, consistent and transparent, reducing in this manner administrative uncertainty and transaction costs and making it easier for firms to invest in host countries. Such an inventory would, in effect, define the scope of any framework.

Presumably, such an inventory and benchmark would be formulated in light of the experience of investment promotion agencies, international investors, investment service providers, and others—all stakeholders that should bring their ground-level experience into the discussion process that is ongoing in the WTO. (And, of course, it should take into account, and learn from, what has already been done on investment facilitation in bilateral, regional and multilateral contexts.) Even though the WTO's Structured Discussions take place among government representatives, it should be possible to find ways and means to marshal the ground-level experience and expertise of those directly involved in the investment process, to benefit the intergovernmental discussions. For example, one could create a stakeholder Commentary Group that makes an input into the Structured Discussions.

4. Helping Domestic Reforms

National investment authorities can use an inventory and benchmark contained in an investment facilitation framework to undertake domestic reforms to facilitate sustainable FDI inflows.[29]

More specifically—and importantly—if a multilateral investment facilitation framework existed, a government seeking to undertake reforms can turn to international standards to justify certain actions that may face domestic opposition, that is, it can point out that it needs to take these actions because it is party to an international agreement to do so. This is done so from time to time, for example, in the context of the European Union in relation to agreements reached at the European Union level on any subject that need to be implemented by its member states; and it done so in the multilateral context in relation to agreements reached at the WTO and their implementation by the members of this Organization. In this manner, an investment facilitation framework can become a driver for improvements at the national level. More generally, by anchoring their domestic reforms in shared international commitments, countries can strengthen their reform efforts and make them more credible—thereby sending a positive signal to investors.

5. Requiring Transparency for Home Country Measures and Investors' Corporate Social Responsibility Commitments

Host countries, and especially the least developed countries, are often in a weak position to require international investors to contribute as much as possible to the sustainable development of their economies. But home countries are typically in a position to do so. In particular, developed countries—and an increasing number of developing countries—provide a range of support measures to their outward investors. Such home country measures include

[28] The boundary line between changing policies and implementing policies is of course a fine one, and care needs to be taken that it is being respected.
[29] The World Bank's "Doing Business" index contains a list of indicators that a number of countries consider when seeking to improve their investment climate, available at http://www.doingbusiness.org/en/rankings.

information services, financial and fiscal incentives and political risk insurance (for more details, see table 2).[30]

Table 2. Illustrative inventory of home country measures

Information and other support services

1. Information support
2. Investment missions
3. Match-making services
    a. Organization of contacts with government officials and entrepreneurs in host countries
    b. Maintaining business matchmaking databases
4. Educational services: Seminars, webinars and conferences on OFDI-related topics

Financial measures

1. Grants
    a. For feasibility studies, market research and other pre-investment activities
    b. For costs of setting up overseas offices
    c. For training and human capital development
2. Loans
    a. Concessional loans
    b. Non-concessional loans
    c. Structured financing options
    d. Currency options
    e. Syndication, public-private/public-public risk-sharing arrangements
    f. Development financing
3. Financial guarantees
4. Equity participation

Fiscal measures

1. Tax exemptions
    a. Exemption from corporate income tax on certain incomes
        i. Tax exemption of foreign spin-offs' income
        ii. Tax exemption of start-up expenses of foreign operations
    b. Tax deductions for qualifying expenditures
2. Corporate tax rate relief: Corporate tax rate relief for enterprises in particular sectors of economy
3. Tax deferral for qualifying income earned overseas
4. Tax credits for certain credits of expenditures
5. Allowances for qualifying activities

Investment insurance

Source: Based on Karl P. Sauvant, Persephone Economou, Ksenia Gal, Shawn Lim, and Witold P. Wilinski, "Trends in FDI, Home Country Measures and Competitive Neutrality," in

[30] There are also a number of other actions that governments can take to help their outward investors, including, for instance, by concluding bilateral investment treaties and double taxation treaties, linking official development assistance to investment projects and lobbying host country governments in relation to projects of interest to their outward investors.

Andrea K. Bjorklund, ed., *Yearbook on International Investment Law & Policy 2012-2013* (New York: Oxford University Press, 2014), pp. 13-15, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814307.

It stands to reason that it would facilitate investment flows if these measures were made transparent, in the same manner as host countries are expected to make their measures related to incoming investment transparent, as this would provide valuable information to outward investors. (But, as in traditional international investment agreements, home countries may be reluctant to assume any treaty obligations.) This is particularly important for small and medium-sized enterprises, as these can benefit most from such transparency; in fact, a number of home countries have targeted support measures in place to help their small and medium-sized enterprises establish themselves in international markets through FDI. For example, the Japan Bank for International Cooperation (JBIC) has a special "Support and Scheme for Mid-tier Enterprises and SMEs" that seeks "to respond to diversifying needs of overseas businesses of mid-tier enterprises and small and medium-sized enterprises (SMEs). JBIC's support is provided through co-financing with regional financial institutions, among others, and in local currencies, as well as through facilities (credit lines) set up at private financial institutions and leasing companies. In addition to such financial support, JBIC provides information on the overseas investment climate."[31]

Moreover, a few countries tie such support to requirements for outward investors to meet high environmental and social standards in their host countries.[32] For example, the Japan Bank for International Cooperation has launched a "GREEN" program that supports projects with a focus on environmental conservation, such as those meant to make a considerable reduction in greenhouse gas. For that purpose, borrowers are evaluated in light of the "Japan Bank for International Cooperation Guidelines for Confirmation of Environmental and Social Considerations". These Guidelines "set out the procedures, criteria and requirements that JBIC-financed projects must meet in confirming environmental and social considerations. When JBIC judges that the project proponents have not made appropriate environmental and social considerations, it will encourage them to take remedial measures. If appropriate environmental and social considerations have not been taken, JBIC may decide not to extend funding."[33] Or, to give another example, the Overseas Private Investment Corporation of the United States, states: "OPIC projects adhere to high environmental and social standards and respect human rights, including worker's rights. By mandating high standards, OPIC aims to raise the industry and regional standards in countries where it funds projects. OPIC's history of successfully engaging the U.S. private sector in overseas investment has positively influence the environmental impact of its projects, by encouraging U.S. companies to incorporate internationally-recognized environmental sustainability measures into those

[31] See: https://www.jbic.go.jp/wp-content/uploads/today_en/2017/03/54738/jtd_201703_en.pdf#page=6.
[32] See, Sauvant, Economou, Gal, Lim, and Wilinski, op. cit. It is, however, not always clear to what extent such conditionality is fully observed in reality—but it represents a beginning.
[33] See, JBIC Profile: Role and Function, available at https://www.jbic.go.jp/ja/about/role-function/images/jbic-brochure-english.pdf, p. 17.

projects."[34] To qualify for home country support, firms may need to provide environmental and social impact assessments.[35]

Beyond that, an investment-facilitation framework could obligate home country governments to require international investors headquartered in their jurisdictions to make information on their corporate social responsibility commitments widely available (or the framework could include such a requirement addressed directly to international investors). Such a requirement could extend to the provision of information on any instruments that international investors have pledged to observe in the area of international investment. Particularly relevant here are the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,[36] the United Nations Principles on Business and Human Rights[37] and the OECD Guidelines for Multinational Enterprises,[38] as these instruments contain widely accepted provisions that encourage sustainable investment relating to, for example, environmental management, technology transfer, and local capacity building. Providing such information would provide host countries with information about the sustainable FDI aspirations of these investors.[39] Showcasing such information should, in any event, be—at least in principle[40]—in the interest of the investors involved, especially those sensitive to the need of having a social license to operate.

An investment facilitation framework that requires home countries to make their support measures for outward investors transparent and that requires international investors to make information about their corporate social commitments available could help facilitate increased flows of sustainable FDI. It would also introduce some balance in the commitments contained in a framework and furthermore signal that home country governments are

[34] See, Overseas Private Investment Corporation, 2016 Strategic Sustainability Performance Plan, June 30, 2016, "Policy Statement", p. 3, available at https://www.opic.gov/sites/default/files/files/OPIC_Sustainability_Plan_2016.pdf.

[35] See, e. g., OPIC, "Environmental and Social Projects Documents", available at https://www.opic.gov/doing-business-us/OPIC-policies/environment/documents.

[36] The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is available at https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm.

[37] The United Nations Principles on Business and Human Rights are available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

[38] The OECD Guidelines for Multinational Enterprises are available at http://mneguidelines.oecd.org/guidelines/. International investment agreements are beginning to encourage governments to promote some of these instruments. For example, the bilateral investment treaty between The Netherlands and the United Arab Emirates provides, in Art. 3 (3), that "Each Contracting Party shall promote as far as possible and in accordance with their domestic laws the application of the OECD Guidelines for Multinational Enterprises to the extent that is not contrary to their domestic laws." See, https://investmentpolicyhubold.unctad.org/Download/TreatyFile/4774. Or see the Preamble of the Canada-European Union Comprehensive Economic and Trade Agreements (CETA) which provides: "ENCOURAGING enterprises operating within their territory or subject to their jurisdiction to respect internationally recognised guidelines and principles of corporate social responsibility, including the OECD Guidelines for Multinational Enterprises, and to pursue best practices of responsible business conduct;" see https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/PRE.aspx?lang=eng. Even if some of these agreements do not involve developing countries, they show that the approach to encourage certain guidelines in international investment agreements is beginning to gain traction.

[39] See also Ana Novik and Alexandre de Crombrugghe, "Towards an International Framework for Investment Facilitation" (Paris: OECD, 2018), p. 8., available at https://www.oecd.org/investment/Towards-an-international-framework-for-investment-facilitation.pdf.

[40] However, since this may increase the potential for enterprise liability or increased political pressure for alleged non-compliance, not all investors may be supportive of such transparency.

prepared to take on commitments in investment agreements—which, politically, would be important.

6. Providing Technical Assistance

Finally, an investment facilitation framework can be negotiated and implemented only if developing countries obtain technical assistance and capacity-building support, and if they can implement any agreement in a phased manner, in accordance with their ability to do so.

Such assistance is necessary during the negotiations process of a multilateral framework, to make sure that all countries can participate effectively and have their experience and interests fully considered. And such technical assistance and capacity building is especially necessary for the implementation of any framework. This is relevant especially in relation to strengthening the capacity of investment promotion agencies (and other institutions dealing with FDI) to facilitate sustainable FDI and benefit from it as much as possible, as well as the exchange of experiences among investment promotion agencies. Such technical assistance can be provided in the context of bilateral relations between individual countries, or by international organizations. But it is important that any framework has its own, independent, technical assistance provisions, perhaps linked to the WTO's Aid-for-Trade Initiative[41] (which could then become an Aid-for-Investment-and-Trade Initiative). Least developed countries, in particular, will require technical assistance beyond what various multilateral organizations already provide.

Conclusions

To conclude—and re-iterate—investment facilitation needs to be seen in the context of the principal FDI determinants and, in particular, the all-important economic determinants. Beyond that, when negotiating a multilateral framework on investment facilitation for development, it is crucial to (1) give full attention to the development dimension of investment facilitation, by promoting sustainable FDI for sustainable development; (2) establish an inventory and benchmark of good practices regarding investment facilitation, with ground-level input by practitioners; (3) keep in mind that the framework can help domestic reforms; (4) require transparency for home country measures and investors' corporate social responsibility commitments; and (5) ensure that the framework provides for technical assistance to developing countries (and especially the least developed among them) for negotiating and implementing such a framework. Developing countries in particular need to seek to advance these issues.

The development part of the mandate for a multilateral framework is important in and by itself, precisely to help achieve the Sustainable Development Goals. But it is also important for another reason: if the development aspect is not given special attention and is adequately addressed, it can be expected that, sooner or later, civil society will actively oppose the WTO Structured Discussions and any eventual negotiations. After all, the WTO effort needs to be seen in the broader framework of the criticism of the international investment law and policy

[41] It is noteworthy that US$300 billion were mobilized between 2006 and 2016 for the WTO's Aid-for-Trade Initiative, reaching 146 countries; see OECD/WTO, *Aid for Trade at a Glance 2017* (Paris: OECD, 2017), p. 3, available at:
https://www.oecd-ilibrary.org/development/aid-for-trade-at-a-glance-2017_aid_glance-2017-en.

regime, including because of the special privileges it affords to international investors (e.g., through the investor-state dispute-settlement mechanism). A multilateral investment agreement, even if dealing with technical matters only, that might be seen to favor international investors without explicitly stipulating that investments need to make a maximum contribution to the economic, social and environmental development of host countries and take place in the context of fair governance mechanisms would just add to this criticism—and hence invite opposition by civil society that, ultimately, could well sway some important governments to abandon the effort.

If substantial progress toward an explicit development dimension can be made (or, at a minimum, some of these issues can become part of a firm built-in agenda for future negotiations), a multilateral framework on investment facilitation for development would create a value-adding instrument in the FDI tool-box that is currently available in the international investment area.