

Expert Workshop on Opportunities and Challenges of Establishing an International Framework on Investment Facilitation for Development in the WTO

Concrete measures for a Framework on Investment Facilitation for Development: Report

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Co-organized by the Bertelsmann Stiftung, the German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE), the International Trade Centre, and the World Economic Forum, 11 December 2019 at the WTO

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Overview

On 11 December 2019, the Bertelsmann Stiftung, the German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE), the International Trade Centre, and the World Economic Forum co-organized a full-day expert workshop at the World Trade Organization (WTO) on “Opportunities and challenges of establishing an international framework on investment facilitation for development in the WTO”. Among the approximately 100 participants were WTO delegates and representatives of Investment Promotion Agencies (IPAs), as well as academia, the private sector, non-governmental organizations (NGOs), and international organizations. The results of the workshop were reported to the WTO’s Structured Discussions on Investment Facilitation for Development that took place on 12 December 2019.

The main contribution of the workshop was to identify key, concrete and actionable measures that governments can take to facilitate investment flows, as well as maximize these flows’ sustainable development impact. The objective was to obtain ground-level input from practitioners that could be of useful to the Structured Discussions of WTO members. This report is meant to be a resource for delegates developing an Investment Facilitation Framework for Development in the WTO. In addition, draft texts are being developed for key measures to facilitate their possible inclusion as provisions in a Framework. The results will be published in due course.

Following keynote addresses by the Permanent Representatives of Chile and China to the WTO, the workshop was structured in four sessions: (1) identifying key, concrete and actionable investment facilitation measures, (2) maximizing the contribution of investment facilitation to sustainable development, (3) understanding the opportunities and challenges for developing countries to negotiate and implement an international framework, and (4) capturing the main takeaways from the day’s discussion. The program – including speakers in each session – can be found in Annex 1. Illustrative pictures of the day’s proceedings can be found in Annex 2.

Original, short background notes were prepared and circulated a week in advance. For session 1: [“Enhancing FDI performance: practical measures for FDI success”](#)¹ as well as [“What can Governments do to facilitate investment? A menu of the most important measures identified through surveys.”](#)² For session 2: [“Advancing sustainable development by facilitating sustainable FDI, promoting CSR, designating recognized sustainable investors, and giving home countries a role”](#)³. And for session 3: [“Challenges of negotiating and implementing an international investment facilitation framework”](#)⁴.

¹ Henry Loewendahl and Judith Walker, available at: <https://www.wavteq.com/publications/special-reports/#outerdiv-7200>.

² Ahmed Omic and Matthew Stephenson, available at: http://www3.weforum.org/docs/WEF_Investment_Facilitation_2019.pdf.

³ Karl P. Sauvant and Evan Gabor, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3496967.

⁴ Axel Berger and Ali Dadkhah, available at: https://www.die-gdi.de/fileadmin/user_upload/pdfs/Sonstige/Challenges_of_negotiating_and_implementing_an_international_investment_facilitation_framework_5.12.2019.pdf.

Each session began with a brief presentation of these background notes to kick-off the discussion. This was followed by comments from discussants representing IPAs, international investors, academia, NGOs, and international organizations. The floor was then opened to all participants who asked questions and provided insights in a lively and frank exchange.

The workshop confirmed that important areas of investment facilitation are: transparency and predictability of investment measures; streamlining and speeding up administrative procedures and requirements; enhancing international cooperation, information sharing and the exchange of best practices; and the development dimension.

As to the last of these areas—the development dimension—workshop participants emphasized that, as the objective of investment facilitation is “for development”, giving full and specific attention to this issue is particularly important to obtain broad support for an Investment Facilitation Framework, including from developing countries and from civil society.

Key measures identified were relayed to the WTO Structured Discussions in summary form on 12 December 2019.⁵

Rather than go into detail on measures that have already been identified in the Structured Discussions, the report focuses below—in no particular order—on measures that may not have yet been considered. (Many of these measures are further elaborated in the background notes prepared for this workshop.) For each measure, the report summarizes the key idea and then provides a brief explanation or rationale.

Facilitating access to business visas, perhaps in the form of green channels

Challenges related to speedily and easily acquiring visas for business travel can be an impediment to investment. This is particularly the case when there are variations in visa policy among neighboring economies, with those economies that have a more attractive visa and work permit policy – from the perspective of foreign investors – having an easier time in facilitating investment. Beyond business visas, access to work permits for high-skilled expatriates can also be a measure to facilitate investment.

Providing project evaluation assistance to evaluate large-scale investment project proposals

IPAs and other government officials in developing countries often do not have the multidisciplinary technical capacity to properly evaluate investment project proposals, especially when they involve large-scale investments with returns planned over the long term and significant impact on development. Participants in the workshop offered real-life examples where such lack of capacity had led to a freeze in the approval of a planned investment as

⁵ Karl P. Sauvant, “Report to the Structured Discussions on Investment Facilitation WTO”, 12 December 2019, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3505634#.

government officials were concerned that they might have misevaluated and made a mistake. As a result, project evaluation assistance could be of significant help in facilitating investment under a Framework's technical assistance provisions.⁶

Creating grievance mechanisms (including ombudspersons) to address investment-related challenges, avoid potential grievances from escalating into investment disputes and encourage reinvestment

Dedicated mechanisms to help address investment-related challenges help investors resolve issues without having to resort to legal channels, which add cost and often result in irrevocably strained relationships between investors and host country governments. Ombudspersons can be part of such mechanisms, quietly acting as neutral third-party mediators to help settle differences. In fact, the mechanism can be more than an ombudsperson as it can proactively track and identify recurrent types and sources of challenges to help address issues at the root. This type of grievance mechanism will not only facilitate new investment but also re-investment.

Adopting a “Silent Yes” mechanism for administrative approvals

One of the most favored measures to facilitate investment – both from firms and some policymakers – is the adoption of a “silent yes” for administrative approvals, whereby approval is automatically granted after a certain period of time has elapsed, absent active intervention by authorities. “Silent Yes” mechanisms have proven very effective in cutting red tape and speeding up administrative procedures and requirements in a number of economies, and therefore policymakers seeking to improve and reform systems have often embraced them. At the same time, other policymakers have sometimes expressed a concern that they might lose control of the approval process. Therefore, such a mechanism would need to be designed in a manner that officials can easily request more time if needed, thereby maintaining oversight and control. The key is that the default is set such that approval will take place absent proactive intervention, rather than the other way around, where the default requires proactive intervention for approval to take place.

Increasing the transparency of investment incentives, such as through an incentives inventory, and encouraging the use of smart incentives to target sustainable investment

The publication of investment incentives facilitates investment while simultaneously creating more predictability and less scope for rent seeking. Having this information is particularly important for small and medium-sized enterprises (SMEs) that may have relatively fewer resources for internationalization, as well as fewer resources to find information if it is not readily

⁶ While such assistance is available in principle, the organizations providing it—especially the African Legal Support Facility (<https://www.afslf.org/>), CONNEX Support Unit (<https://www.connex-unit.org/en/whoweare/>) and the International Senior Lawyers Project (<https://islp.org/>)—are under-resourced and therefore unable to provide all the support that is required.

available. An increasing number of economies are publishing investment incentives online through an incentives inventory.

In addition, incentives, if properly designed, can be effective for the promotion of the Sustainable Development Goals (SDGs). In designing an incentive system, three qualities are important: simplicity, efficiency and transparency. A more targeted use of incentives—as already done by a number of governments—may result in lower fiscal outlays or forgone revenue, as well as potentially higher quality FDI because the investment received matches the sustainable development strategy of host economies.

This trend at the domestic level could be supported by an international framework on investment facilitation for development.

Fostering backward and forward linkages, including through the creation of databases or lists of local suppliers and through support for supplier-development programs

Foreign investors report that, when deciding to enter or expand their investments, it can sometimes be difficult to find domestic firms to supply goods and services at the right cost, quality, and volume—and often the availability of local suppliers is an important FDI determinant. As a result, a measure to help foreign firms identify and contract with domestic firms – overcoming such information asymmetry – could play an important role in facilitating investment. IPAs or domestic business or professional associations could manage such lists because it is often with IPAs that foreign investors have contact and it is often with suppliers of professional services (lawyers, accountants, marketing professionals, etc.) that foreign investors seek to contract.

In addition, supplier-development programs can help increase the capacity of domestic suppliers to contract with foreign firms. A number of countries have successfully implemented such programs. This would be a key complementary effort by helping to increase the number of firms that are linkage-ready and hence could be included in a database or list and thus increase the potential development benefits from investment.

Increasing the transparency of various support measures available in home economies to outward investors and linking these measures to a positive development impact in host economies

Home-economy governments transparently outlining their measures to support outward FDI (OFDI) is increasingly important to facilitate investment, given that economies around the world are becoming simultaneously the destination and source of investment flows. This is particularly important to SMEs for which this kind of support can make a difference to internationalization.

In addition, home-economy governments are increasingly adopting guidelines for their firms to undertake OFDI sustainably, or making home-country measures (HCMs) conditional on the development impact in host economies. Examples include making HCMs conditional on environmental and social impact assessments. An international investment facilitation framework could further promote the adoption of such measures.

Encouraging international investors to prepare and observe CSR statements and to commit themselves to observe internationally agreed standards of responsible business conduct

Both firms and IPAs identify sustainability as increasingly important in their investment decision-making. As to firms, many have corporate social responsibility (CSR) statements, and a number have also pledged to observe internationally agreed standards of responsible business conduct that are meant to guide their investments, including by better managing investment projects in host economies.

In addition, the alignment of domestic laws and regulations with internationally accepted standards of responsible business conduct can facilitate investment for both economic and normative reasons: on the one hand, it can reduce uncertainty, risk and cost, while on the other hand, it can serve to make host economies more attractive to investors seeking to invest according to sustainable investment principles. As a result, governments can play a role in providing clear standards and principles to firms as to how to carry out investment by signing up to international standards.

The best known and most important among these standards—backed by a broad consensus of governments—are the UN Guiding Principles on Business and Human Rights⁷, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy⁸, and the OECD Guidelines for Multinational Enterprises.⁹ In addition, various private sector institutions have developed their own guidelines, such as the International Chamber of Commerce’s Guidelines for International Investment¹⁰ and guidelines formulated by various industry groups.

Accordingly, an investment facilitation framework could require governments to encourage investors undertaking FDI from their jurisdictions to adopt and observe CSR commitments and widely publicize these commitments. Such a requirement could extend to the provision of information on the extent to which these investors have pledged to observe international instruments dealing with responsible business conduct.

Examples of text to operationalize CSR principles in international investment agreements can be found in one of the background papers prepared specially for the workshop.¹¹

⁷ UN, Guiding Principles on Business and Human Rights, UN Doc. HR/PUB/11/04, (2011), available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁸ ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, at 3 (5th ed. 2017), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.

⁹ OECD, Guidelines for Multinational Enterprises (2008), available at: <http://www.oecd.org/investment/mne/1922428.pdf>.

¹⁰ International Chamber of Commerce, Guidelines for International Investment (2016), available at: <https://iccwbo.org/publication/icc-guidelines-international-investment-2016>.

¹¹ Sauvart and Gabor, *op cit.*, pp. 7-11.

Creating a special category of “Recognized Sustainable Investor”, to incentivize investors to invest sustainably

Creating a special category of “Recognized Sustainable Investor” (RSI) could help governments to influence investors’ decisions to invest in a manner that is in line with sustainable investment and to observe CSR guidelines and international standards of responsible business conduct, as discussed above.

An RSI category could consist of three main parts: First, it would establish basic criteria that all investors must meet to qualify as an RSI. Second, it would allow for country specific sustainability characteristics¹², established by each host country, that investors would commit themselves to use reasonable best efforts to ensure that their investments fulfill. Third, it would grant special benefits beyond those generally available to investors to those investors qualifying as RSIs.

An RSI could also be designed to encourage coordination between firms and (host and home) IPAs on sustainable investment, while providing additional facilitation services to firms with a proven record of sustainable behavior, building on the precedent of the “Authorized Operator” provision in the Trade Facilitation Agreement.

The example of a text to operationalize the RSI measure can be found in one of the background papers prepared specially for the workshop.¹³

Establishing mechanisms to facilitate coordination on investment policy and measures among government agencies, between national and subnational institutions, and between the government and the private sector (i.e., horizontal, vertical and public-private coordination)

Investors report that a lack of coordination among government agencies leads to mixed signals, lost time, or, at worse, conflicting decisions. Investors also report that challenges can arise because of different interpretations of investment policy and measures between national and subnational institutions. In addition, the number of subnational investment institutions is growing rapidly.

Having a mechanism for alignment of policies and measures among different domestic agencies would therefore increase investor confidence that domestic policies will be adopted and implemented rationally and effectively, facilitating firm investment decision-making. Having a mechanism for alignment between national and subnational institutions in the implementation of investment policy and measures would likewise facilitate firm investment decision-making.

¹² Karl P. Sauvant and Howard Mann, “Making FDI more sustainable: Towards an indicative list of FDI sustainability characteristics”, *Journal of World Investment & Trade*, vol. 20 (Dec. 2019), pp. 916-952, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3509771#.

¹³ Sauvant and Gabor, *op cit.*, pp. 14.16.

Similarly, a mechanism to facilitate public-private coordination can ensure that the implementation of policies and measures are designed to achieve their intended goals because they are developed in consultation with the users of those measures, namely firms. Importantly, such a mechanism may wish to involve foreign and domestic firms to ensure various perspectives and interests are addressed. Such a mechanism can provide assurances to firms that, when issues arise, there will be ways to raise and address them with policy-makers.

Creating dialogue opportunities within a Committee on Investment Facilitation for Development

A potential Committee on Investment Facilitation for Development could facilitate dialogue and cooperation among Members. For instance, dialogue—and exchanges of experience—could be fostered between host and home economies on their respective investment facilitation agendas and how to cooperate to facilitate sustainable FDI flows. Dialogues could also be fostered between the government members of the Committee and external stakeholders (especially IPAs and international investors). Building bridges between governments and stakeholders could already begin during the negotiations phase of a Framework on Investment Facilitation for Development, for example by extending invitations to IPAs and international investors to consult with delegates in the Structured Discussions about the usefulness of various investment facilitation measures.

Facilitating voluntary peer reviews of the implementation of a Framework on Investment Facilitation for Development

One way to increase the likelihood a Framework makes a tangible difference in facilitating investment and actually increases the development impact is through economies agreeing to undergo voluntary peer reviews of the implementation of their commitments. Peer review is already an accepted part of implementation and monitoring of WTO commitments through periodic Trade Policy Reviews.¹⁴ Peer review of the implementation of a Framework on Investment Facilitation for Development would be voluntary and could take place within a potential WTO Committee on Investment Facilitation for Development, which could be established as part of an agreement on a Framework.

The organizers look forward to continuing to provide input into the WTO's work on investment facilitation for development, through both inputs into the process and technical feedback as a Framework becomes further developed.

¹⁴ WTO, "Implementation and Monitoring", available at:
https://www.wto.org/english/tratop_e/monitor_e/monitor_e.htm.

ANNEX 1

Workshop programme

9:00 - 9:10 **Welcome address**

Marion Jansen, Chief Economist and Director, Division of Market Development, ITC

9:10-10:00 **Introduction to the workshop's objectives and keynote**

Chair: **Karl P. Sauvant**, Resident Senior Fellow, Columbia Center on Sustainable Investment (CCSI), Columbia University

Keynotes: The state of play of the Structured Discussion on Investment Facilitation for Development and the way forward

Ambassador Eduardo Gálvez, Permanent Representative, Mission of Chile to the WTO, and Chair of the Structured Discussions, and

Ambassador Zhang Xiangchen, Permanent Representative, Mission of the People's Republic of China to the WTO

Guiding questions:

- *Why investment facilitation for development?*
- *What has been the process and progress so far?*
- *What are possible next steps as we approach MC12, post Shanghai mini-Ministerial?*

Discussion

10:00-10:15 **Coffee break**

10:15-12:15 **Session I: Identifying key concrete investment facilitation measures**

Chair: **Matthew Stephenson**, Policy and Community Lead, International Trade and Investment, WEF

Guiding questions:

- *What are key concrete and practical facilitation measures to foster increased FDI flows to developing countries and to benefit from them as much as possible that are a priority for investment authorities/IPAs and why are they a priority?*
- *What are key concrete and practical facilitation measures that are a priority for international investors in developing countries and why are they a priority?*
- *How could an international investment facilitation framework help to encourage such measures?*

Presentation of discussion notes:

Bostjan Skalar, Executive Director and CEO, World Association of Investment Promotion Agencies (WAIPA)

Matthew Stephenson, WEF

Judith Walker, Marketing and Operations Director, Wavteq

Comments:

Hanna Tatarchenko Welgacz, Coordinator of the Innovation Investment Division at Apex-Brasil

Sarvathullah Mathari, Managing Director, Hurera Leather and Shoes Uganda Limited

Kavaljit Singh, Director, Madhyam, a public policy research institute, India

Ivan Nimac, Global Lead, Investment Policy and Promotion, World Bank Group

Discussion

12:15- 13:15

Lunch

13:15- 14:45

Session II: The contribution of an investment facilitation framework to fostering sustainable FDI for sustainable development

Chair: **Karl P. Sauvant**, CCSI

Guiding questions:

- *How to identify sustainable FDI?*
- *How to promote sustainable FDI, including through promoting Corporate Social Responsibility and creating a special category of “Recognized Sustainable Investor”?*
- *How to promote sustainable FDI through home country measures?*

Presentation of discussion note:

Karl P. Sauvant, CCSI

Comments:

Hassan Jallow, CEO, the Gambia Investment and Exports Promotion Agency

Andreas Dressler, Managing Director, Location Decisions

Chi Manjiao, Professor and Founding Director, Centre for International Economic Law and Policy, Law School, University of International Business and Economics

Khalil Hamdani, Board Member, CUTS International

Ghita Roelans, Head, Multinational Enterprise and Enterprise Engagement Unit, ILO

Discussion

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|---------------------|--|
| 14:45- 15:00 | Coffee break |
| 15:00- 16:30 | <p>Session III: Opportunities and challenges for developing countries negotiating and implementing an investment facilitation framework</p> <p>Chair: Axel Berger, Senior Researcher, DIE</p> <p><i>Guiding questions:</i></p> <ul style="list-style-type: none"> - <i>What are the concrete challenges in negotiating a framework and how can they be dealt with?</i> - <i>What are the concrete challenges in implementing a framework and how can they be dealt with?</i> - <i>What is the value added of an investment facilitation framework in the WTO?</i> <p>Presentation of discussion note:</p> <p>Axel Berger, DIE, and Ali Dadkhah, Dadkhah Consulting</p> <p>Comments:</p> <p>Sophal Suon, Director of Investment Promotion and Public Affairs, Cambodia</p> <p>Nathalie Bernasconi, Group Director, Economic Law & Policy, International Institute for Sustainable Development</p> <p>Mohammad Saeed, Senior Trade Facilitation Advisor, International Trade Center</p> <p>Discussion</p> |
| 16:30- 17:45 | <p>Session IV: Main take-aways</p> <p>Chair: Axel Berger, DIE</p> <p>R. Yofi Grant, CEO, Ghana Investment Promotion Centre, Office of the President</p> <p>Crispin Conroy, Director, ICC Representative, Geneva</p> <p>Manuel Chacón, Counsellor, Permanent Mission of Colombia to the WTO</p> <p>Felix Imhof, Deputy Head, International Investment and Multinational Enterprises, State Secretariat for Economic Affairs of Switzerland</p> |
| 17:45- 18:00 | <p>Closing remarks</p> <p>Andreas Esche, Director Megatrends Programme, Bertelsmann Stiftung</p> |

ANNEX 2

