



Columbia Center
on Sustainable Investment

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

Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

No. 292 November 30, 2020

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

Managing Editor: Riccardo Loschi (Riccardo.Loschi@columbia.edu)

The development dimension of an investment facilitation framework*

by

Khalil Hamdani^{**,}

There was apprehension in April 2017 when 14 developing and least-developed countries proposed a multilateral investment facilitation framework for development, to be negotiated in the WTO. Some feared that a WTO process would impose international disciplines, marginalize stakeholders' input and neglect the development dimension. Nevertheless, structured discussions commenced, and the participants now include nearly two-thirds of the WTO membership.

Investment and trade are two sides of the same coin but also different, and the respective policies, institutions and cross-border regimes have evolved in separate ways. From a development perspective, what matters is that the two contribute to building productive capacity. Investment enlarges trade capacity. The challenge is to delineate a framework for investment facilitation to complement trade facilitation, without impinging on other aspects of investment decision-making, while conforming to the overall features of the international trading system. Whatever the outcome, the development dimension should be central to the discussions.

The structured discussions follow in the footsteps of the consensually-adopted Trade Facilitation Agreement (TFA), which featured special and differential treatment for developing and least-developed countries, and technical assistance and support for capacity building. Potential new features (as reported by IISD¹) are corporate responsibility, home country actions in support of host country measures (mentioned by China) and a future WTO Investment Facilitation Committee for the framework's development and cooperation dimensions (proposed by Brazil). Although development policy is outside the structured discussions, the following provisions are "development friendly".

Special and differential treatment. The proposed host country measures relate to regulatory transparency (e.g., publication of information), streamlining of procedures (e.g., e-documentation) and dispute prevention (e.g., ombudspersons). There is no one-size-fits-all presumption or set timeframe, and policy space is respected. Countries decide ways to implement, suited to their situations (e.g., self-designating provisions that require capacity building or request additional time as in the TFA).

Technical assistance. Implementation is linked to technical assistance and support for capacity building. Weak implementation may obstruct rather than facilitate investment. Technical assistance expedites effective implementation. A future investment facilitation framework could encourage:

- Advisory assistance, ranging from streamlining investment procedures to appraisals of complex projects or assessments of environmental and development impacts. The facilitation perspective is to involve stakeholders in streamlining and assessments.
- Training, delivered with diagnostic toolkits, teaching manuals and workshops to share experiences. The facilitation perspective is to cull relevant lessons from investors' feedback, civil society benchmarks and peer-to-peer learning with counterparts in comparator countries.
- Institutional support, mainly strengthening investment promotion agencies. The facilitation perspective is to extend services to aftercare, the development of linkages and dispute prevention. This benefits local enterprises, while investment inflows are sustained over time through investor retention and sequential reinvestment.

Development priorities. Technical assistance should be embedded in larger capacity building and delivered by existing organizations. Although facilitation is one aspect of the investment process, technical assistance—available at countries' requests—should strengthen the overall investment framework in line with national objectives. UNCTAD, the World Bank and other agencies (already) provide advice and support on investment matters. There are also nongovernmental and private-sector actors. Coordination is desirable—but at the country level, with stakeholder participation.

Corporate responsibility. Investors are expected to advance the Sustainable Development Goals in their corporate practice and operate in respect of national regulations and international standards (e.g., the OECD and ILO guidelines). In the facilitation perspective, corporate responsibility extends beyond internal operations and encompasses wider impact on society and environment. Governments, investors and other stakeholders should cooperate in partnership to design sustainable business opportunities that reduce the environmental footprint and enhance social value creation.

Home country support. Regulatory transparency also applies to outward investment measures. Given a tendency of countries to protect their investors' interests (as evidenced in bilateral treaties or toward state enterprises), it is desirable to balance any bias with affirmative home country support of host country investment-facilitation efforts. Policy support typically includes insurance, guarantees and promotion services, which can also nurture development activity and corporate responsibility. Home countries should make available their support measures and provide access to relevant information on investors.

The WTO should play a catalytic role once the process advances beyond plurilateral discussion. In collaboration with other organizations, it should help countries participate in future negotiations and assess follow-up technical assistance needs (as it did for the TFA). Preparatory assistance could commence with the actual framework negotiations. Follow-up assistance to successful negotiations would benefit from an Investment Facilitation Facility (analogous to the TFA Facility), which would also be useful if integrated with WTO's trade-related technical assistance activities, thereby enlarging their scope to investment and reinforce productive capacity building. Additionally, a WTO

Committee on Investment Facilitation should be established for review and appraisal—with appropriate involvement of stakeholders.

Advancing development ultimately rests on national efforts. An investment facilitation framework can boost those efforts by engaging investment stakeholders and trading partners and making the multilateral trading system more central to sustainable development. All countries should participate in the structured discussions to ensure that development provisions are more than hortatory language.

*** The *Columbia FDI Perspectives* are a forum for public debate. The views expressed by the author(s) do not reflect the opinions of CCSI or Columbia University or our partners and supporters. *Columbia FDI Perspectives* (ISSN 2158-3579) is a peer-reviewed series.**

** Khalil Hamdani (khalilhamdani@jhu.edu) is Visiting Professor, Graduate Institute of Development Studies, Lahore School of Economics. This *Perspective* elaborates the author’s remarks in webinars organized by the International Trade Centre (ITC) and the German Development Institute during March-June 2020. The author would like to thank Valéria Mendes Costa Paranhos, Hamid Mamdouh, Howard Mann, and an anonymous peer reviewer for their helpful peer reviews.

¹ [Sofía Baliño, Martin Dietrich Brauch and Rashmi Jose, “Investment facilitation: History and the latest developments in the structured discussions,” Negotiating Brief \(Geneva: IISD, 2020\).](#)

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: “Khalil Hamdani, ‘The development dimension of an investment facilitation framework,’ Columbia FDI Perspectives, No. 292, November 30, 2020. Reprinted with permission from the Columbia Center on Sustainable Investment (www.ccsi.columbia.edu).” A copy should kindly be sent to the Columbia Center on Sustainable Investment at ccsi@law.columbia.edu.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Riccardo Loschi, riccardo.loschi@columbia.edu.

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at <http://www.ccsi.columbia.edu>.

Most recent *Columbia FDI Perspectives*

- No. 291, Rudolf Adlung, Pierre Sauvé and Sherry Stephenson, ‘Investment facilitation and the GATS: Do overlaps matter?’, November 16, 2020
- No. 290, Roberto Echandi, ‘The blind side of international investment law and policy: The need for investor-state conflict-management mechanisms fostering investment retention and expansion,’ November 2, 2020
- No. 289, Maria Adele Carrai, ‘Outward FDI under China’s Belt and Road Initiative: Between regulation and adaption,’ October 19, 2020
- No. 288, Ivan Anton Nimac, ‘COVID-19 and FDI: How should governments respond?’, October 5, 2020
- No. 287, Florence Dafe and Zoe Williams, ‘Explaining the rise of third-party funding in investment arbitration,’ September 21, 2020

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