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Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues
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The new WTO Investment Facilitation for Development Agreement

by
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On July 6, 2023, 112 WTO members concluded the text negotiations on an Investment Facilitation for Development Agreement (IFDA). Its purpose is to help countries—especially developing countries and the least developed among them—attract more and better FDI, that is, FDI that advances their sustainable development objectives. WTO's Director-General, Ngozi Okonjo-Iweala, tweeted: "A fantastic achievement by members".

As Theme Leader of the E15 Task Force on Investment Policy, I introduced the idea of such an agreement in the Task Force in March 2015. It was included in the Task Force's January 2016 report and presented in the WTO in February 2016. In April 2017, a group of developing countries began discussing it informally, leading to a Joint Ministerial Statement in December 2017 and over two years of preparatory work.

Formal negotiations began in September 2020, driven by developing countries and coordinated in the final stretch by Ambassadors Sofia Boza (Chile) and Jung Sung Park (Republic of Korea). That the negotiations took only three years illustrates the importance WTO members attach to this issue. (The WTO's Trade Facilitation Agreement negotiations took nine years.) The International Trade Centre, together with the German Institute of Development and Sustainability (IDOS) and other organizations, supported the negotiations through capacity-building activities and keeping the public informed about the negotiations.

The IFDA concentrates on technical measures that facilitate FDI flows;[1] it explicitly excludes (which facilitated the negotiations) market access, protection and investor-state dispute settlement, and does not seek to change FDI policies. It covers:

- *Scope and general principles*, including objectives; a firewall provision insulating the IFDA from international investment agreements; most-favored-nation treatment.

- *Transparency of investment measures*, including their publication; single information portal; advance opportunity to comment on proposed measures; entry and temporary stay of natural persons.

- *Streamlining and speeding up administrative procedures*, including ICT/E-government; appeals; periodic review.

- *Focal points, domestic regulatory coherence and cross-border cooperation, including* supplier databases; supplier-development programs.

- *Special and differential treatment for developing countries*, including self-designation regarding the pace of implementation of measures; extension of implementation dates; grace periods; technical assistance to implement the Agreement.

- *Sustainable investment*, focused on responsible business conduct; measures against corruption.

- *Institutional arrangements*, including a WTO Committee on Investment Facilitation to monitor implementation progress and share experiences; dispute settlement.

Many countries have already unilaterally implemented many of the measures specified in the Agreement (and more could be implemented). This gives these countries an advantage in the highly competitive world FDI market. An IDOS study estimated that the Agreement's full implementation could generate global welfare gains of between US$250 billion and US$1,120 billion, with most benefits accruing to low- and middle-income countries.

The IFDA helps national efforts to attract FDI flows by:

- Supporting, upon request, developing countries' needs assessments, to determine the technical assistance required to implement the Agreement.

- Providing developing countries, upon request, with technical assistance for its implementation.

- Introducing the concept of "sustainable investment" into the WTO rulebook and encouraging sustainable FDI flows.

- Providing a commitment device for national FDI-competent institutions seeking to advance domestic FDI reforms.

- Including best-endeavor commitments by home countries.

- Establishing global benchmarks for good-practice investment facilitation measures.

- Signaling to foreign investors a country's seriousness about attracting FDI.

- Boosting regional investment facilitation efforts in Africa, the Caribbean and ASEAN.

- Serving as a template for bilateral investment-facilitation agreements.

- Providing a global forum to promote best investment-facilitation practices.

Could more have been done? Yes. For example, negotiators could have agreed on mandatory language regarding responsible business conduct. Ultimately, however, negotiators must balance what is desirable with what is doable at the intergovernmental level—and negotiators have achieved a great deal.

Having finished the text negotiations, further actions are needed, including:[2]

- Establishing a trust fund for technical assistance, to finance needs assessments and the implementation of the Agreement.

- Finalizing the Investment Facilitation Self-Assessment Guide prepared jointly by seven international organizations under the guidance of the WTO Secretariat.

- Assisting developing countries in needs-assessments beyond Ecuador and members of the Organisation of Eastern Caribbean States.

- Helping developing countries initiate robust national implementation strategies, based on the findings of their needs assessments.

- Engaging with civil society, to alleviate apprehensions, including by making the Agreement's text public.

- Intensifying outreach to WTO members not participating in the Agreement, to bring them on board.

- Integrating the Agreement into the WTO rulebook as a stand-alone agreement applying to all economic sectors, open to all WTO members and extending its benefits to all WTO members.

The last two actions are particularly important because negotiating WTO members seek to make the IFDA a fully multilateral treaty—a substantial challenge ahead.[3]

It is impressive how fast the idea of an IFDA found traction and, especially, how fast the negotiations in the WTO progressed in this novel area. This is a good thing—not only for developing countries seeking higher and better FDI inflows to advance their development, but also because it shows that the multilateral trading system can deliver results.

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[1] The text is not publicly available; for a summary, see, Jose.

[2] The Agreement has to undergo legal scrubbing.

[3] Mamdouh discusses how this could be done.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Matthew Conte, at msc2236@columbia.edu.

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