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What's next for the investment facilitation agenda?[*]

by
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Investment facilitation has been gaining in popularity in recent years' policy debates, surely inspired by the successful adoption of the WTO's Trade Facilitation Agreement. "Investment facilitation" refers to actions, mainly by host countries, to make legal and administrative rules and procedures more transparent, predictable and efficient. Home countries can support investment facilitation by, e.g., assisting host countries to implement the necessary reforms. Considering that international investment policy-making faced severe criticism in recent years, proponents stress that investment facilitation is *not* about market access, investment protection or investor-state dispute settlement.[1] As all countries want to attract foreign investment, some argue that investment facilitation should be a "no-brainer."[2]

The idea of an investment-facilitation agreement was born in the discussions of the E15 initiative in 2015.[3] During the Chinese presidency, the G20 ventured into new areas by advancing a comprehensive work agenda on investment.[4] Although the adoption of the nine "Guiding Principles for Global Investment Policymaking" received more attention at the time, the G20 also encouraged international organizations such as UNCTAD, the World Bank, the OECD, and the WTO to work on investment facilitation to inform future G20 discussions.

The discussions were continued during the German G20 presidency, aiming to agree on a non-binding investment-facilitation package that included the fostering of open and transparent business climates and actions to promote inclusive economic growth. However, negotiations collapsed at the last minute, due to the opposition of India, South Africa and, unexpectedly, the US. The final G20 Hamburg Summit declaration included only a vague reference: "We will seek to identify strategies to facilitate and retain foreign direct investment."[5] Investment facilitation is not part of the agenda of the 2018 Argentinian G20 presidency.

The WTO has a troubled history with attempts to negotiate investment rules. Rules on trade-related investment measures and services trade (covering also commercial presence) were agreed upon in the Uruguay Round. Attempts, however, to advance an investment agenda through a dedicated WTO working group ended during the 2003 ministerial conference in Cancun in a spat between emerging and advanced economies.

It is interesting, therefore, that recent attempts to initiate WTO rule-making on investment facilitation are mainly driven by emerging economies, including China and Brazil. In the run up to the 11th WTO Ministerial Conference in Buenos Aires (December 2017), a number of emerging economies tabled proposals to inform the other members of an informal process on investment facilitation that they wanted to launch. Investment facilitation was not part of the official negotiation agenda in Buenos Aires. This did not prevent a group of 41 countries and the European Union from adopting, on the margins of the Conference, a Joint Ministerial Statement on Investment Facilitation for Development that called for the start of "structured discussions with the aim of developing a multilateral framework on investment facilitation."[6] Subsequently, Brazil circulated an illustrative text to facilitate discussion on the issue,[7] and 86 delegations met for a first structured dialogue on investment facilitation on March 13, 2018 in Geneva. Recent media reports indicate that India is rethinking its opposition to multilateral talks on investment facilitation.[8]

There are three scenarios how the international investment-facilitation discussion can move forward:

- Countries can unilaterally reform their domestic regulatory environments for foreign investment. These national actions, however, could be encouraged and guided by a set of binding international rules that may be necessary to catalyze deep-rooted national reforms.
- Countries interested in developing international investment-facilitation rules can pursue a plurilateral agreement. Given the momentum that has been building up, this approach seems to be the most promising—at least for now. Ideally, such a plurilateral approach would be housed within the WTO and its rules would apply on a most-favored-nation basis.
- Investment-facilitation rules can be negotiated multilaterally, among all WTO members. A multilateral framework is preferable to reconcile interests. It would provide better possibilities to discuss the responsibilities of home countries of foreign investors, and, similar to the Trade Facilitation Agreement, it would allow linking the implementation of rules with provisions on capacity building.

International investment-facilitation discussions have been dynamic since the idea was proposed by a group of experts in 2015. This shows, contrary to popular belief, that WTO members can act swiftly if a topic is ripe for action. However, the unexpected difficulties encountered in getting the trade facilitation agreement done should serve as a reminder that, even when it comes to no-brainers, anything can happen in multilateral negotiations.

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1 WTO, "Joint ministerial statement on investment facilitation for development," WT/MIN(17)/59, https://worldtradescanner.com/Investment%20Facilitation%20for%20Development.pdf.

2 Karl P. Sauvant, "Opening remarks: sixth roundtable facilitating investment for sustainable development," October 30, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3066336, p. 2.

3 Karl P. Sauvant and Khalil Hamdani, "An international support programme for sustainable investment facilitation," July 2015, http://e15initiative.org/wp-content/uploads/2015/09/E15-Investment-Hamdani-and-Sauvant-Final.pdf /.

4 Karl P. Sauvant, "China moves the G20 on international investment," *Columbia FDI Perspectives*, No. 190, January 2, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896184.

[5] "G20 leaders' declaration," July 7-8, 2017, https://g20.org/profiles/g20/modules/custom/g20_beverly/img/timeline/Germany/G20-leaders-declaration.pdf.
[6] WTO, op. cit.
[7] WTO, "Structured discussion on investment facilitation: communication from Brazil," January 31, 2018, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=241891&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=False&HasSpanishRecord=False.
[8] Livemint, "WTO: India may drop opposition to investment facilitation treaty," February 21, 2018, http://www.livemint.com/Politics/rlXUVoVh7lRUypYqfHZlxJ/WTO-India-may-drop-opposition-to-investment-facilitation-tr.html.

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