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Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)
Managing Editor: Alexa Busser (alexa.busser@columbia.edu)

Incentivizing sustainable FDI: The Authorized Sustainable Investor[*]

by
Evan Gabor and Karl P. Sauvant[**]

If there ever should be a Multilateral Framework on Investment Facilitation for Development it would, presumably, contain a list of measures meant to facilitate *all* FDI inflows by *all* investors.

While, on balance, virtually all FDI can contribute to development, maximizing its development impact requires special efforts. To ensure that a Multilateral Framework directly and maximally contributes at the project level to host countries' development requires motivating foreign investors to undertake *sustainable* FDI, i.e., "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."[1]

The Authorized Operators provision of the Trade Facilitation Agreement (TFA)[2] offers an analogy, precedent and model for motivating best-practice use in trade. Under the TFA, members may provide additional facilitation benefits to operators who meet certain criteria, including a record of customs compliance, financial solvency or supply-chain security. The benefits include reduced documentation requirements, deferred taxes and a single customs declaration.[3]

Creating a category of "Authorized Sustainable Investors" (ASIs) would similarly entitle qualifying international investors to investment-facilitation benefits that go beyond those available to all investors. Constructing such an analog presents challenges, including: what could be qualifying criteria that can be reasonably monitored, and what could be additional benefits that would make it worthwhile for investors to seek ASI status?

The ASI approach could contain three main parts:

Basic criteria. Investors would have to meet certain basic criteria to qualify, no matter in which host countries they are established. Importantly, they would have to commit to observe certain internationally recognized guidelines, especially the ILO MNE Declaration, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Additional requirements could include making their CSR statements and progress reports widely available and having a record of compliance with local laws. The purpose of these basic requirements is to ensure that investors accept internationally recognized norms and show a history of responsible behavior in their operations.

Country-specific criteria. Furthermore, investors would commit to use reasonable best efforts to ensure their investments fulfill certain FDI sustainability characteristics established by host countries. Such a standard focuses on investors' efforts to fulfill commitments rather than requiring countries to monitor whether investors meet certain metrics for each characteristic. Though each country could develop its own list of sustainability characteristics, that list could be guided by a general indicative list of FDI sustainability characteristics.[4] The list could include commitments to, for example, create backward linkages, engage in community development, reduce the carbon footprint, follow proper resource-management practices, use non-discriminatory hiring practices, observe human rights, maintain supply-chain standards, and engage with stakeholders—all contributions to host country development that many governments seek and many investors say they make. Allowing countries to indicate the sustainability characteristics that qualify investors as "sustainable" ensures that the additional benefits target those investors whose investments likely support specific countries' development goals. Simultaneously, investors have the flexibility to choose those characteristics most appropriate to their projects.

Additional benefits. Once investors meet the basic and country-specific requirements, they would qualify for additional ASI benefits beyond those generally available to all investors. Countries could choose additional benefits (as done in the TFA). Benefits could include access to a dedicated sustainable investor focal point within countries' investment promotion agencies who works exclusively with ASIs throughout the life-cycle of their investments; priority assistance to ASIs (and perhaps at reduced fees and/or charges) in meeting establishment requirements; providing exclusive employee training programs; helping ASIs in creating local backward linkages through linkage programs that upgrade local suppliers; and offering targeted fiscal and/or financial incentives.[5] Positive publicity and "soft" recognition benefits could also be considered, for example, awards and easy access to high-ranking officials.

Host countries could be responsible for designating ASIs, perhaps together with the investors' home countries. The list of ASIs could be made public, accessible to competitors and NGOs. Such transparency would help mitigate the risk of unwarranted designations, help in monitoring and entice investors to use reasonable efforts for fear of naming-and-shaming if found derelict in their commitments.

As the WTO continues the Structured Discussion on Investment Facilitation for Development, the goal of increasing FDI through enhanced facilitation measures should be coupled with the goal of increasing sustainable FDI flows. An ASI category constitutes one mechanism through which such a goal could be achieved. It would especially help those host countries that urgently need more investment but have weak bargaining power (especially least developed countries) to pursue an approach that increases the likelihood of receiving sustainable FDI.

Finally—and independently of the outcome of the Structured Discussions—individual countries can of course create the category of Authorized Sustainable Investors on their own, to attract sustainable FDI.

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** Evan Gabor (evan.gabor@columbia.edu) is a J.D. Candidate at Columbia Law School; Karl P. Sauvant (karlsauvant@gmail.com) is Resident Senior Fellow, Columbia Center on Sustainable Investment, a joint center of Columbia Law School and the Earth Institute at Columbia University. The authors wish to thank Persa Economou, John Kline and Lou Wells for their helpful peer reviews.

[1] Karl P. Sauvant and Howard Mann, "Towards an indicative list of FDI sustainability characteristics" (Geneva: ICTD/WEF, 2017), p. 2.

[2] Agreement on Trade Facilitation, Art. 7, para. 7.

[3] Ibid., Art. 7 paras. 7.2, 7.3.

[4] Sauvant and Mann, op. cit., p. 8.

[5] For incentives targeting sustainable development, see, Christian Kollinsky and Nerys Coleman, "Incentives for Sustainable Development", Wavteq (May 2019).

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Alexa Busser, alexa.busser@columbia.edu.

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