



Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

No. 243 January 14, 2019

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Five key considerations for the WTO investment-facilitation discussions, going forward*

by

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After a year of deliberations, the WTO's structured discussions on a multilateral framework on investment facilitation for development took stock, on December 6, 2018, of what had been achieved so far.¹ In seven substantive meetings in 2018, delegates made significant headway in identifying the possible elements of an investment-facilitation framework (IFF) aimed at improving transparency and predictability of investment measures; streamlining and speeding up administrative procedures and requirements; and enhancing international cooperation, information sharing, the exchange of best practices, and relations with stakeholders, including dispute prevention.²

On average, 70 delegations attended the meetings, both sponsors and non-sponsors of the Ministerial Declaration. The result was a checklist of issues and a work program and meeting schedule for the first half of 2019, with the goal of developing the elements of a multilateral IFF for submission to the 2020 WTO Ministerial.

In further working on an IFF, delegates should reflect on five key issues to achieve a broadly acceptable outcome:

- *Scope.* The discussions should remain strictly focused on technical issues directly related to investment facilitation for development and continue to make it crystal clear that they will not eventually address market access, investment protection and investor-state dispute settlement. Instead of seeking an abstract definition of investment facilitation, the scope of an IFF could be defined pragmatically by identifying the specific investment-facilitation measures a framework should cover. Remaining focused on such technical issues as transparency and avoiding the most controversial issues surrounding the investment regime increases the chances of agreeing on a framework.
- *Development dimension.* The Ministerial Statement explicitly speaks about "investment facilitation for development." Hence, any framework should directly

address the development dimension and serve the Sustainable Development Goals. In particular, it should not only facilitate investment flows in general, but host countries should be allowed—if not supported—to give special facilitation support to “sustainable” investments, i.e., investments with certain “sustainability characteristics” that directly increase the likelihood that investments have desired impacts in host countries. Hence, the framework should contain provisions that support host countries in, e.g., establishing linkage programs that upgrade domestic firms to become potential suppliers to foreign affiliates (if the latter so choose). Linkages allow domestic firms benefit from the tangible and intangible assets of foreign affiliates, and foreign affiliates benefit from the capacities of domestic firms and shortened supply chains. Promoting best practices and exchanges of experiences are furthermore helpful. Ensuring that investment facilitation contributes directly to development is particularly important to bring more developing countries on board and, additionally, thwart the impression that “facilitation” primarily benefits investors.

- *Balance.* The discussions have focused so far entirely on what host countries can do to facilitate investment—and doubtlessly they are central actors. But home countries and MNEs play a role too. A number of (developed and developing) home countries support their outward investors in one way or the other. Making home country measures (e.g., financial support for outward investors’ feasibility studies) more transparent, for example, increases the effectiveness of an IFF. Similarly, many MNEs have corporate social responsibility policies; inviting them to make these better known would be of use to host countries. In distinction to most (host-country focused) investment agreements, an IFF with obligations for both host and home countries increases the chances of arriving at a consensus.
- *Ground-level practical input.* Investment facilitation throughout the life cycle of projects involves a myriad of practical issues familiar to investment promotion agencies (IPAs) and international investors. WTO delegates (most of whom are well-versed in trade matters but not always in investment matters) should find ways (apart from domestic stakeholder consultations) to benefit from the pragmatic experience of investment practitioners. For example, a non-governmental, neutral organization could organize a commentary group, consisting primarily of practitioners, to provide evidence-based input to ensure the relevance and effectiveness of a framework.
- *Capacity building.* Negotiating and implementing an IFF requires considerable resources, which most least-developed countries and many developing countries do not have. Strengthening specifically these countries’ IPAs (typically the lead investment agencies)—not only to implement a framework, but also to attract especially sustainable investment in a highly competitive world FDI market—is central for countries to benefit from any framework. (For comparison, US\$300 billion were mobilized between 2006 and 2016 for the WTO’s aid-for-trade initiative, reaching 146 countries.³) Providing technical assistance through an IFF

is particularly important for the least-developed countries, many of which are currently not participating actively in the structured discussions.

Arriving at an IFF is a considerable challenge at a time when multilateralism is under attack. However, since all countries seek to attract investment to advance economic growth and sustainable development, it ought to be possible to negotiate a framework, incrementally but with a critical mass. In doing so, care should be taken to take different concerns into account, while not overloading the negotiations. Accordingly, perhaps some issues may have to be left for a built-in agenda for future negotiations.

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¹ For background, see, [ICTSD, “Crafting a framework on investment facilitation” \(Geneva: ICTSD, 2018\), <https://www.ictsd.org/themes/services-and-digital-economy/research/crafting-a-framework-on-investment-facilitation>.](https://www.ictsd.org/themes/services-and-digital-economy/research/crafting-a-framework-on-investment-facilitation)

² [“Joint Ministerial Statement on Investment Facilitation for Development,” WT/MIN\(17\)/59.](#)

³ [OECD/WTO, *Aid for Trade at a Glance 2017* \(Paris: OECD, 2017\), p. 3.](#)

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