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WTO: Paths Forward

Towards a Shared Vision on Investment Facilitation

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Towards an Investment Facilitation Framework: Why? What? When?

by

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Session I: Scope

Our meeting today takes place one week before the first session (13 March 2018) of the WTO's structured discussions aimed at developing a multilateral framework on investment facilitation. In the light of that, I would like briefly to address three issues central to the negotiations of such a framework, namely: why, what and when.

Why?

I see three reasons why an investment facilitation framework ought to be negotiated:

1. To help meet the world's investment needs, and especially those of developing countries. These needs are enormous, and foreign direct investment (FDI) can play a role in meeting them. Hence the quest—driven by developing countries—to facilitate cross-border investment flows—not just to help firms improve their international competitiveness, but to help especially developing countries benefit as much as possible from increased investment flows, in the interest of advancing their economic growth and sustainable development. Underlying this goal is the recognition that, while investment is not everything, everything is nothing without investment. *Hence the twin principal objectives of an investment facilitation framework should be to increase investment flows and to increase the benefits of such flows for host countries.*

2. To give governments *guidance* as to what they can do to facilitate FDI flows and increase the benefits of these flows, including to strengthen the hand of governments seeking to advance their domestic reform agenda in this area.
3. To provide *multilateral assistance* to developing country governments, and especially their investment promotion agencies (the main national focal points dealing with investment at the national level), in carrying out the task of facilitating investment flows and increasing their benefits. In this respect, the financing facility foreseen in the Trade Facilitation Agreement could serve as a model, to support those developing countries—and especially the least developed among them--that are unable to access sufficient funds from other funding agencies.

Thus, I see three reasons for—and objectives of—a multilateral framework on investment facilitation: increasing investment flows while strengthening the benefits of these flows for host countries; giving guidance and support to governments seeking to advance the FDI facilitation and benefitting agenda; and providing multilateral assistance to these governments.

What?

To begin with, we know what an investment facilitation agreement should *not* deal with, namely issues related to market access for foreign investors, their protection and issues related to dispute settlement. It is also not about setting FDI policy—governments are free to set their policies. Similarly, it appears to me that an effort focused on technical aspects of investment facilitation does not depend on the extent to which other WTO agreements may—or may not—bear on investment matters or, for that matter, on what other issues are being discussed in the WTO. So much, I think, is clear.

There is however *less* clarity about what an agreement *should* deal with to help implement the FDI policies of countries.

The Report of the ICTSD/WEF-led E15 Task Force on Investment Policy¹ outlined a number of practical measures that could be included in an agreement, UNCTAD developed an action menu² and, of course, Brazil has submitted a draft facilitation agreement as a concrete illustration of what a multilateral framework could look like.³

¹ See, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2721465, ch. 3.2.

² See, <http://investmentpolicyhub.unctad.org/Publications/Details/148>.

³ See, 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.

It appears to me that, if the twin principal objectives of an agreement are to increase FDI flows *and* the benefits of these flows for host countries, “investment facilitation” should be defined broadly, to include practical measures to promote and facilitate the flow of FDI, as well as practical measures to increase the benefits of such flows for host countries. In any event, it is very difficult to define a boundary line between “promotion” and “facilitation” that does not create an entirely artificial distinction. In the end, it may be sufficient to ensure that principal practical measures (or sets of measures) are identified in any agreement as the scope of application, regardless of whether these measures are meant to “promote”, “facilitate” or “benefit”.

Increasing *benefits* for host countries implies that the issue is not just *more* investment, but *sustainable* investment, that is, 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. In other words: sustainable FDI for sustainable development.

As you may know, ICTSD and the WEF have sponsored work in this respect, namely to define “FDI sustainability characteristics”.⁴ Moreover, corporate social responsibility considerations come into play here, as the Brazilian text indicates. Beyond that, one could also consider what home countries could do to facilitate the flow of sustainable FDI, and many (especially developed) countries do a number of things to support their firms to invest abroad⁵--but perhaps that is a dimension of the discussion that can be addressed at a later stage.

At the same time, it needs to be recognized that any agreement, regardless of its contents, can provide only an *enabling* framework. In and by itself, an agreement will not lead to higher investment flows unless the economic determinants are favourable.

Furthermore, what is important in this context is that the discussions of the contents of an investment facilitation framework benefit from the experience of international investors and investment promotion agencies, as investors and IPAs are the principal actors in the FDI arena. Perhaps a Commentary Group consisting primarily of representatives of these two constituencies could be of help in bringing concrete, ground-level experience into the WTO discussions.

When?

Let us recall that the idea of an international agreement on investment facilitation was conceived only very recently, in 2015, in the framework of the E15 Task Force on Investment Policy. Since then, UNCTAD developed its Global Action Menu, the

⁴ See, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3055961 .

⁵ See, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814307 .

OECD addressed the issue,⁶ the G20 deliberated on investment facilitation,⁷ members of the WTO conducted an open-ended “Informal Dialogue on Investment Facilitation for Development”, ministers adopted a “Joint Ministerial Statement on Investment Facilitation for Development” in Buenos Aires in December 2017,⁸ and next week will see the first formal meeting to conduct structured discussions on investment facilitation.

We have come a long way, very fast. WTO members should press on, and negotiate a multilateral framework that facilitates sustainable investment flows for sustainable development. Success in this area would also demonstrate that multilateralism is alive and well in Geneva.

⁶ See, OECD, “Towards an international framework for investment facilitation”, DAF/INV/WD(2016)13/REV 1 of 3 February 2017.

⁷ See, http://www.g20chn.com/xwzxEnglish/sum_ann/201609/t20160906_3397.html, and the discussions during the German G20 presidency; see also https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896184.

⁸ See, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=240870,240871,240899,240900,240833,240841,240845,240847,240848,240853&CurrentCatalogueIdIndex=0&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.