

# INVESTMENT FACILITATION FOR DEVELOPMENT IN THE WTO

Investment facilitation in the WTO must be seen against the backdrop of the complementary and reinforcing relationship between trade and investment, as well as their potential for promoting sustainable development. Over the last decades, many countries have adopted policies aimed at facilitating investment to attract, retain and expand foreign investment flows. In that context, in April 2017, a group of developing and least-developed country Members launched an Informal Dialogue on Investment Facilitation for Development in the WTO.

Discussions on investment facilitation have made steady progress in the WTO. At the 11<sup>th</sup> WTO Ministerial Conference (MC11) held in Buenos Aires in December 2017, 70 WTO Members co-sponsored a [Joint Ministerial Statement](#) calling for the start of Structured Discussions with the aim of developing a multilateral framework on investment facilitation.

After over two years of preparatory work and discussions, the participants formally launched negotiations on an 'Agreement on Investment Facilitation for Development' (IFD Agreement) in September 2020. Since then, participants have been developing the provisions of the future IFD Agreement. Participation in this joint initiative is open to all WTO Members. Given the inclusive and pro-multilateral nature of the initiative, the negotiating process is open and transparent, and emphasis is put on outreach efforts.

Currently 'co-coordinated' (chaired) by H.E. Ambassador Sofía Boza (Chile) and H.E. Ambassador Jung Sung Park (Republic of Korea), the IFD initiative counts over 110 participating WTO Members,<sup>1</sup> (over 2/3 of the WTO Membership), including more than 70 developing countries, among which 20 LDCs.

Reflecting the substantial progress achieved, the latest negotiating document (**the 'Draft IFD Agreement'**) was circulated to all Members on 16 December 2022. As indicated in the [Statement by the co-Coordinators](#), participants plan to use the 'Draft IFD Agreement' as a basis for the next steps of the negotiations towards concluding an Agreement on Investment Facilitation for Development.

## The potential benefits of an Investment Facilitation Agreement in the WTO

In the WTO context, the concept of investment facilitation means the setting up of a **more transparent, efficient and investment-friendly business climate** – by making it easier for investors to invest, conduct their day-to-day business and to expand their existing investments (whole-investment-lifecycle approach), as well as for host and home governments to work cooperatively and in mutually beneficial ways to facilitate not only more, but also more sustainable investment. The focus of the Joint Statement Initiative (JSI) on IFD is **not on changing Members' investment policies in substance**, but on making such investment policies more transparent and investment-related administrative procedures more streamlined and efficient – which, according to numerous surveys, is where investors and businesses most want to see investment reforms.

The focus on investment facilitation comes with the recognition that in today's integrated global economy, expanding investment flows, like trade flows, depends crucially on simplifying, speeding up and coordinating processes, not primarily on liberalizing policies. By aligning facilitation policies with global benchmarks, investment facilitation measures can help countries to attract, retain and expand investment, which is key for diversifying and expanding production capacities and exports, promoting economic growth, building-up critical infrastructure and creating more resilient economies – especially in the context of recovery from the COVID-19 crisis. Indeed, the pandemic has provoked the steepest fall in global trade and investment on

### Key Milestones of the IFD initiative

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|---|---|
| <b>April 2017</b>                           | The 'Friends of Investment Facilitation for Development' (FIFD) launch discussions on Investment Facilitation for Development.            |
| <b>December 2017<br/>MC11, Buenos Aires</b> | 70 WTO Members co-sponsor a <a href="#">Joint Ministerial Statement</a> calling for structured discussions on IFD.                        |
| <b>November 2019<br/>Shanghai</b>           | 98 WTO Members issue a <a href="#">second Joint Ministerial Statement</a> committing to work towards a 'concrete outcome' on IFD at MC12. |
| <b>September 2020</b>                       | The initiative formally launched negotiations on a future IFD Agreement.  |
| <b>December 2021<br/>Geneva</b>             | Participants sign a <a href="#">third Joint Statement</a>   |
| <b>December 2022</b>                        | Circulation of 'Draft IFD Agreement' (single negotiating text)  |

The [World Bank Group's 2018 Global Investment Competitiveness Survey](#) showed that 82% of surveyed investors considered transparency and predictability in the conduct of public agencies as an important or critically important investment climate factor for choosing an investment location.

<sup>1</sup> For more information on the IFD initiative, including the updated list of participating Members, please refer to the WTO IFD portal: [https://www.wto.org/english/tratop\\_e/invfac\\_public\\_e/invfac\\_e.htm](https://www.wto.org/english/tratop_e/invfac_public_e/invfac_e.htm).

record. It has acted as a supply, demand and policy shock for FDI, which is the largest and most constant external source of finance for many developing countries and least-developed countries (LDCs).

The WTO Agreements, in particular the GATS, already contain obligations that can facilitate investments. The WTO is also facilitating global trade through the Trade Facilitation Agreement (TFA). An IFD Agreement in the WTO could complement and reinforce Members' existing efforts to facilitate investment by:

- ❖ **Creating clear and consistent global benchmarks for investment facilitation**, thus ensuring that (minimum) common standards are applied across economies, reducing regulatory uncertainty, minimizing transaction costs, and making it easier for investors to invest.
- ❖ **Anchoring domestic investment facilitation reforms in shared international commitments**, thus decreasing policy uncertainty, strengthening Members' reform efforts, and sending a positive signal to investors.
- ❖ **Providing a global forum to promote best investment facilitation practices**, thus enhancing cross-border regulatory cooperation and improving information exchanges.
- ❖ **Linking multilateral investment facilitation reforms to Members' ability to implement them, allowing developing and least-developed country Members to receive the technical assistance and capacity building support they need to implement** and benefit from the future IFD Agreement.

A recent study analysing the economic impacts of a multilateral Agreement on IFD in the WTO, shows empirically relevant gains associated with removal of investment barriers (e.g., publication of information and procedures affecting investment; focal points providing guidance on related legislation, processes, and responsible agencies). **According to this study, the expected global welfare gains range between 0.56% and 1.74% depending on the depth of a potential Agreement** – Edward J. Balistreri and Zoryana Olekseyuk, 'Economic impacts of investment facilitation', Center for Agricultural and Rural Development, Iowa State University, February 2021 - available on [Deutsches Institut für Entwicklungspolitik \(IDOS\)/ German Development Institute Website](#).

Emphasizing the significant role of investment and trade for inclusive economic growth and poverty reduction, the Agreement will help attract not only more but **better, long-term investment, contributing to achieve the Sustainable Development Goals**.

Investment facilitation reforms are inherently non-discriminatory and benefit all investors – foreign as well as domestic ones.

**Overview of the future IFD Agreement**

In December 2022, the co-Coordinator circulated a 'Draft IFD Agreement, latest negotiating text that reflects the progress achieved so far and allows participants to further visualize the contours of the future Agreement. This document does not prejudge the views or positions of participants on any provisions of the future IFD Agreement. The adjacent table provides an overview of the proposed disciplines contained in the latest negotiating text.

The IFD Agreement focuses on foreign direct investment (FDI) and, in principle, would cover all sectors (services and non-services sectors). Since the outset, Members have made it clear that the discussions should **NOT** address market access, investment protection, nor investor-State dispute settlement (ISDS). These three matters are also explicitly excluded from the scope of the future WTO IFD Agreement. Government Procurement and certain subsidies are also excluded from the scope of this Agreement.

The future IFD Agreement would also include a so-called 'firewall provision', aimed at insulating the Agreement from International Investment Agreements (IIAs) to prevent spill over effects of the IFD Agreement on IIAs and vice versa.

The key pillars of the future IFD Agreement are the sections on the transparency of investment measures; speeding-up and streamlining investment-related administrative procedures; enhancing international

| Proposed Disciplines on IFD<br>'Draft IFD Agreement'  |
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| <b>Preamble</b>   |
| <b>Section I: Scope and General Principles</b>  |
| <ul style="list-style-type: none"> <li>- Objectives; scope of application; exclusion of market access, investment protection and ISDS; definitions</li> <li>- Firewall provision (aimed at insulating the Agreement from international investment agreements);</li> <li>- Most-favoured-nation (MFN)</li> </ul>   |
| <b>Section II: Transparency of Investment Measures</b>  |
| <ul style="list-style-type: none"> <li>- Publication of measures and relevant information (including online publication)</li> <li>- Publication of proposed/draft measures and opportunity to comment on proposed measures</li> <li>- Single information portals</li> <li>- WTO notification</li> </ul>           |
| <b>Section III: Streamlining and Speeding up Administrative Procedures</b>  |
| <ul style="list-style-type: none"> <li>- General principles for authorization procedures</li> <li>- Processing of applications, acceptance of authenticated copies; authorization fees; submission of applications online</li> <li>- Independence of competent authorities</li> <li>- Appeal or review</li> </ul> |
| <b>Section IV: Focal Points, Domestic Regulatory Coherence and Cross-border Cooperation</b>   |
| <ul style="list-style-type: none"> <li>- Focal points for assisting investors and persons seeking to invest</li> <li>- Promoting domestic regulatory coherence</li> <li>- Domestic supplier databases</li> <li>- Cross-border cooperation on investment facilitation</li> </ul>                                   |

cooperation, information sharing, and the exchange of best practices; as well as sustainable investment.

Indeed, participating WTO Members are also discussing provisions encouraging the uptake of responsible business conduct principles and standards by investors and enterprises, as well as the adoption of anti-corruption measures by Members. The aim is to help Members attract not only more, but also better, higher quality investment that contributes to sustainable development.

#### ***In a nutshell***

The purpose of the future IFD Agreement in the WTO is to improve the investment climate and to promote international cooperation in order to facilitate the flow of foreign direct investment between WTO Members, particularly to developing and least developed country Members, with the aim of fostering sustainable development.

Providing special and differential treatment, including technical assistance and support for capacity building, to developing and least-developed country Members is also a key component of the Agreement.

#### **Section IV BIS: Supplier-Development Programmes**

#### **Section V: Special and Differential Treatment for Developing and Least-developed country (LDC) Members**

- General principles on SD&T
- Notification and implementation based on categorization of provisions
- Technical assistance and support for capacity building

#### **Section VI: Sustainable Investment**

- Responsible business conduct (RBC)
- Measures against corruption

#### **Section VII: Institutional arrangements and final provisions**

- WTO IFD Committee
- Exceptions
- Dispute settlement

+ **Annex** containing proposals under discussion

## **An Agreement for development**

Since the outset, facilitating greater developing and least-developed Members' participation in global investment flows constitutes a core objective of the future IFD Agreement.

- ❖ The future Agreement includes a **dedicated Section on 'Special and Differential Treatment'** (S&DT), modelled on the one contained in the Trade Facilitation Agreement (TFA). It provides that the extent and timing of implementation of the provisions of the IFD Agreement shall be related to the implementation capacities of developing and LDC Members. Where a Member continues to lack the necessary capacity, implementation of the provisions concerned will not be required until implementation capacity has been acquired. Furthermore, LDCs will only be required to undertake commitments to the extent consistent with their individual development and financial needs or their administrative and institutional capabilities. The S&DT Section provides that developing and LDC Members will be allowed to designate the provisions of the future IFD Agreement under one of the three categories (A, B, C), and, by doing so, request additional time and/or the provision of technical assistance and capacity building (TACB) to implement the provisions. Likewise, as in the TFA, this Section would include other flexibilities such as an 'Early Warning Mechanism' and the possibility to shift between categories B and C.
- ❖ In the context of the future IFD Agreement, participants have highlighted the **importance of 'Needs Assessments'** to assist developing and least-developed WTO Members that so request self-assess their needs and priorities regarding each of the substantial provisions of the IFD Agreement, in view of the future implementation of the Agreement, including in terms of technical assistance and capacity building. The first step, which is already underway, is to develop an Investment Facilitation Self-Assessment Guide, drawing on the experience of the TFA Self-Assessment Guide. The preparation of this Guide, coordinated by the WTO Secretariat in cooperation with seven partner international organizations,<sup>2</sup> is expected to be finalized in early 2023.

Many developing, and least-developed countries are already implementing or developing national investment facilitation reforms with the aim of encouraging inward FDI. According to [UNCTAD](#), progress has focused on information provision, regulatory transparency, and streamlining of administrative procedures for investors through digital information portals and single windows. Since 2016, the number of countries with digital information portals increased from 130 to 169 (<https://ger.co/>).

<sup>2</sup> The International Trade Centre (ITC); the Organisation for Economic Co-operation and Development (OECD); the United Nations Conference on Trade and Development (UNCTAD); the United Nations Economic Commission for Africa (UNECA); the World Bank Group (WBG); the Inter-American Development Bank (IDB); and the World Economic Forum (WEF).