The Need for a Multilateral Framework on Investment Facilitation

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Investment facilitation is a broad concept that forms part of the four pillars of investment, together with protection, liberalisation and promotion. Investment facilitation aims at the adoption of investment policy best practices in improving regulatory transparency and predictability, streamlining and speeding up administrative procedures, and enhancing international cooperation and capacity-building for developing and least-developed countries creating more favourable conditions for sustainable foreign direct investment (FDI) flows to meet their sustainable development needs. Investment facilitation also relates to the business environment and the promotion of investment linkages. Moreover, investment facilitation can be defined in relation to national policy and regulatory actions; national administrative procedures or as principles that inform investment policy and regulatory action. It has also been linked to certain private action like corporate social responsibility and involves the often-opposing perspectives of host countries versus investors.

In the recent past, there has been a growing initiative to discuss investment facilitation and to explore the desirability and feasibility of establishing a multilateral framework in this respect. In September 2016, the United Nations Conference on Trade and Development (UNCTAD) developed its Global Action Menu for Investment Facilitation, a detailed approach to investment facilitation informed by its Investment Policy Framework, as well as SDG Investment Action Plan, aimed at establishing policy solutions for tackling ground-level obstacles to investment. This followed various regional and international efforts to establish guidelines for investment facilitation at the G20, the Asia-Pacific Economic Cooperation (APEC)and the Organisation for Economic Co-operation and Development (OECD). At the World Trade Organization, the discussion evolved quickly with the establishment of the WTO Informal Dialogue on Investment Facilitation for Development and Friends of Investment Facilitation for Development group. At the WTO's 11th Ministerial Conference held in Buenos Aires in December 2017, 70 Members co-sponsored a "Joint Ministerial Statement on Investment Facilitation for Development" which calls for beginning "structured discussions with the aim of developing a multilateral framework on investment facilitation."

The call for an open, rules-based approach to investment facilitation at the multilateral level is informed by a tipping point in the international investment arena. As discussed below, this paradigm shift and various precedental challenges have made it imperative to seek international investment policy coherence.

1. ***Entrenched interest to facilitate international investment***

There are new trends in global trade and investment flows and policies, such as the growing link between trade, investment, and finance, which reaffirm countries' openness to FDI as a tool for the creation of jobs, promotion of innovation, transfer of knowledge and technologies, and economic growth. With the understanding that the relationship between trade and investment is rapidly evolving in today's globalized and digitalized world, it is becoming impossible to advance trade without advancing investment. WTO Director-General Roberto Azevêdo in a speech presented at a workshop organized by

Friends of Investment Facilitation for Development noted that GVCs have spread design, manufacturing and assembly across borders to the most cost-efficient or skills-rich locations so that "multinational companies view trade and investment as two sides of the same coin — they are interdependent elements of a single strategy." The set of policies underpinning trade and investment flows should, therefore, be conceived and implemented in a coherent and coordinated manner. For developing countries, FDI is a key source of external finance. According to UNCTAD, FDI has been the largest source of external finance for developing economies over the past decade, and the most resilient to economic and financial shocks. Between 1990 and 2015, their share of inward FDI flows grew from 17 per cent to close to 40 per cent. A multilateral agreement on investment facilitation would help to catalyse reforms aimed at facilitating the flow of sustainable investment. These measures would provide a more stable and secure enabling environment for investors to undertake investments abroad, and ultimately promoting trade and economic growth.

2. ***Growing convergence of investment facilitation practices***

The effort to establish a multilateral investment facilitation framework is in tandem with regional, bilateral and national trends to adopt investment facilitation rules. UNCTAD reports that there is an increase in the share of investment liberalization and promotion measures among all measures and that "about one third of policy measures were related to partial or full investment liberalization." For example, Benin, Azerbaijan and Cambodia launched an online business registration system for the issuance of business licenses and permits. Second, countries have signed a large number and variety of bilateral, regional, and international investment agreements (a total of 3322 in 2017) aimed at improving FDI flows. At the regional level, the African Continental Free Trade Area (AfCFTA) includes several provisions on investment facilitation for sustainable development. In addition, the Pan African Investment Code was developed in 2015 to promote, facilitate and protect investments that foster sustainable development within the continent. Arguably, the development of rules and guidelines at the regional level sets the agenda for multilateral convergence. On this basis, it will be easier to multilateralise these investment facilitation provisions, or at least use their subject-matter as a basis for negotiating WTO rules.[1]

3. ***The need for cooperation***

There is need for a concerted national and international effort to create and sustain the most conducive climate for investment, particularly in the face of global challenges such as cybersecurity threats, state development strategies and geopolitical risks. Discussions at the international level will highlight opportunities for investment and cooperation, and work to ensure that investments are environmentally, socially and economically sustainable. On 24 September 2018, the UN Secretary-General launched a Financing Strategy for the mobilization of finance for the 2030 Agenda. The Strategy notes the “while there are fragmented standards, there are still no globally agreed definitions of concepts such as impact and sustainable investing, despite growing private interest in them.” Facilitating investment for future needs, therefore, "is not a matter of promotion-as-usual, but a process of discovery and diffusion of new approaches and applications, a process that needs nurturing and support by the international community."[2] In addition, investment facilitation at the national level will require international support. While most countries have liberalised their laws governing the entry, treatment, and exit of FDI, these often fall short of good practices. Investment regimes frequently lack depth, missing the supplementary legislation, rules, procedures, and institutions to make laws fully operational. The establishment of an international legal framework would contribute to harmonizing good practices, assist with the implementation of reforms and further encourage improvements in administrative capacity at the domestic level.

4. ***Predictability and stability***

A multilateral framework on investment facilitation would incentivize investors as a common set of principles regarding the processing of applications for investment screening and licensing would significantly contribute to creating a stable, predictable and efficient framework for investors. The World Bank reports that “investors seek predictability of public agency conduct—and the ease of doing business—and efficiency in the implementation of laws and regulations as important determinants of their locational decisions.” In addition, it could help create a level-playing field for investors, particularly, small and medium enterprises, and national authorities in their role as regulators. It is important to mention, albeit belatedly, that the prospects of a multilateral investment facilitation agreement are slim in the wake of a global recession to protectionist measures and a protracted stalemate on negotiations at the WTO. In addition, WTO Members are wary of the organization's failing legislative function and a crisis at its dispute settlement arm. This general political climate could render an agreement on investment untenable. Nonetheless, the WTO remains a member-driven organization and the "structured discussions" on investment facilitation are ongoing. The Friends of Investment Facilitation for Development reiterate their commitment to this dialogue and exchange at the multilateral level. The benefits associated with a comprehensive, coherent and multilateral agreement on investment facilitation could perhaps move these discussions to a more substantive stage.

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[1] R Baldwin, 'Multi-lateralising Regionalism, Spaghetti Bowls as Building Blocs on the Path to Global Free Trade', 29 (2006) *World Economy* at 1451–518.

[2] See K Sauvant & K Hamdani, ‘An International Support Programme for Sustainable Investment Facilitation’, (2015) E15Initiative: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.