

Webinar Report: What can we learn from regional initiatives on investment facilitation

5 October 2020, 15:00-16:00 Central European Time (CET)

The fifth webinar in series on investment facilitation for development, titled “**What can we learn from regional initiatives on investment facilitation**” was held on 5 October 2020, in the framework of the Investment Facilitation for Development project jointly implemented by the International Trade Centre (ITC) and the German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE). The webinar hosted about 180 participants. The webinar was moderated by Mr. Axel Berger (Senior Researcher, DIE).

The webinar programme is annexed to this report.

The webinar addressed the relationship between regional initiatives and the WTO negotiations on investment facilitation for development. The discussion emphasised the importance of bringing regional experience on investment facilitation into the WTO discussions as it can provide relevant practical lessons.

Main discussions outcomes:

I. Lessons from the Asia-Pacific Economic Cooperation (APEC) Investment Facilitation (IF) Action Plan

APEC does not develop binding commitments on investment facilitation. The Investment Facilitation Action Plan includes various principles that were adopted to help the region be more competitive and attractive for foreign investors. The main principles of the Action Plan include transparency, predictability, consistency, ongoing interaction with the business community, and sharing of experiences among the members.

- **Business engagement:** APEC has a private-sector arm, the APEC Business Advisory Council (ABAC). The main mandate of ABAC is to advise governments and APEC officials on business-sector priorities and concerns, including on investment. The ABAC meets four times per year, and its representatives also attend senior officials' meetings, the annual ministerial meeting and the sectoral ministerial meetings.
- **Review and implementation:** There is a very structured mechanism for tracking the implementation of the Action Plan by the members. APEC has in place a policy support unit within the secretariat that assists the members in tracking all the initiatives that have been put in place to ensure that the Action Plan is being implemented. The latest review report was published in December 2019. Such review reports share best practices and track specific IF measures implemented by members. The review process also compares best practices from IPAs in different economies. Such best practices have included supporting the resolution of disputes online and putting in place a smart visa programme to attract specific experts in certain sectors. Another important dimension of the review process is tracking investments after investors receive incentives.

II. Lessons from African regional initiatives

The first African regional initiative on IF can be traced to 2006 when the Southern African Development Community (SADC) adopted its protocol on investment. Besides SADC, the East African Community (EAC), the Economic Community of West African States (ECOWAS) and the Common market of Eastern and Southern Africa (COMESA) have active initiatives on IF provisions. Three elements are dominant in all the initiatives:

- **Focus on sustainable development:** There is a strong consensus that investment facilitation has to target quality investment. As part of the regional initiatives, sustainable development factors are integrated both as an objective and as specific measures. For example, the Draft Pan-African Investment Code stated in its Objectives section that “*The objective of this Code is to promote, facilitate and protect investments that foster the sustainable development of each Member State.*” In addition, many investment agreements in the region list development goals that investments should help to achieve. Investment agreements also indicate that investment facilitation measures should be correlated to development goals. This correlation includes focusing on providing incentives to investors that contribute to development.

During the webinar it was mentioned that the objective of the future AfCFTA Investment Protocol is to focus on investment facilitation that goes hand in hand with the development dimension. The basic issues from the African perspective include information sharing, capacity building and technical assistance. These three elements could foster a consensual continental investment facilitation framework. It was also noted during the webinar that sustainable development needs to be emphasised better in the WTO Investment Facilitation Framework for Development (IFF4D), and that such reference should be made in the preamble of the Framework.

- **Investor obligations/Focus on responsible investors:** The initiatives have a balanced approach to investment facilitation, which encourages investment subject to accountability criteria. From this perspective, investment facilitation and investors' obligations go hand in hand.
- **Bottom-up approach:** Most regional initiatives have a bottom-up approach, which means that the formulation and implementation of regulations such as transparency and simplification of project approvals should be determined at the national level. The regional initiatives dictate the spirit of investment facilitation, but the actual rules are developed at the national level by IPAs.

Dispute prevention and mitigation: There is a strong perception in the African region that investment facilitation should not follow traditional types of ISDS or WTO dispute settlement approaches. Governments should try to establish a more collaborative process between governments and investors. There has been a discussion about a dispute settlement prevention mechanism based on establishing an ombudsperson. This approach is also relevant in the context of the AfCFTA Investment Protocol, where there is a big emphasis on drafting a provision that establishes dispute prevention and mitigation procedures. It was noted that, in the context of the WTO's IFF4D, it will be positive from the African perspective to see an emphasis on dispute prevention and mitigation rather than ISDS or the traditional WTO dispute settlement approach.

Home country measures: Home countries should facilitate and encourage responsible investment. In this regard, investment facilitation frameworks should not ignore the role that home countries can play. Investment facilitation should not focus only on host states. It was mentioned during the webinar that sustainable development entails inherently the responsibility

and involvement of home states. This includes ensuring that their investors operate in a manner that is sustainable and aligned with host states' development goals.

Good practice sharing: A platform for regional corporation and information sharing between IPAs was discussed in SADC. However, the creation of such a network cannot be imposed on governments. In this regard, technical assistance can help by providing information on how national structures can facilitate each other and create such a platform.

III. Lessons from the Protocol of Intra-Mercosur Investment Cooperation and Facilitation

The Mercosur Protocol on Investment Cooperation and Facilitation is in force only for Uruguay and Brazil. Argentina ratified the Protocol, but has not started the implementation of the Protocol. The Protocol shifts the focus from traditional investment protection or promotion to specific investment facilitation measures, which include transparency, consistency, "Focal Points" or 'Ombudsperson', as well as procedures for dispute prevention.

The Protocol includes institutional governance, exercised by the Focal Points and the Joint Commission, which work parallel in relation to the implementation of investment facilitation measures. Under the Mercosur Protocol, the Joint Commission needs to consult not only with the private sector but also with civil society. The Focal Points support investors in the navigation of the countries' systems and regulations. Focal Points with the involvement of the Joint Commission are responsible for risk mitigation and dispute prevention. They need to pay attention to problems that investors encounter and try to solve them.

The Argentinian Ministry of Foreign Affairs intends to launch a platform that will include all the information necessary for any investor to enter into Argentina. An investor from any home state will be able to use the platform to work directly with provincial IPAs, in a manner that will be coordinated with the Ministry of Foreign Affairs.

IV. Lessons from regional experience of the Pacific Alliance:

The investment facilitation initiative of the Pacific Alliance includes three main action points: receiving investor inputs on how to improve and facilitate investment in the region; systematise and create an agenda to improve the investment climate; and monitor implementation progress using objective criteria. IPAs and the World Bank play an important role in supporting the mechanism to monitor progress. In addition, private sector involvement has been a key part of the process, as private sector players know their own practical needs as well as the obstacles they face.

Challenges: The initiative is non-binding, with high dependency of political will. One problem has been that countries perceive each other as competitors and consequently are not oriented towards good practices information sharing.

Annex 1: Webinar Invitation



Deutsches Institut für
Entwicklungspolitik



German Development
Institute

Invitation webinar: What can we learn from regional initiatives on investment facilitation, 5 October 2020, 15:00-16:00 Central European Time (CET)

Dear Colleague,

On behalf of the International Trade Centre (ITC) and the German Development Institute/ Deutsches Institut für Entwicklungspolitik (DIE), we cordially invite you to a webinar on:

What can we learn from regional initiatives on investment facilitation?

5 October 2020, 15:00-16:00 Central European Time (CET)

This is the fifth of a webinar series on investment facilitation for development, held in the framework of a joint ITC/DIE project on Investment Facilitation for Development.

To register for the event and receive the meeting link details please [click here](#).

The webinar will be conducted in an interactive manner and allow for questions by participants.

The emergence of regional initiatives such as the MERCOSUR Protocol, APEC Investment Facilitation Action Plan and the Pan-African Investment Code, which all refer to investment facilitation measures, reflect the strong international consensus on the benefits of investment and the need to enhance the transparency, predictability and efficiency of investment-related frameworks. At the same time, more than one hundred members of the World Trade Organization (WTO) are negotiating an international framework on investment facilitation for development. Against this background, this webinar will discuss the following questions:

- What is the relationship between regional (non-binding) initiatives and the WTO negotiations?
- Could regional initiatives be a building block for WTO negotiations?
- What can we learn from the implementation of regional initiatives?

The webinar will have the following agenda and speakers:

Introduction: Rajesh Aggarwal, Chief Trade Facilitation and Policy for Business, ITC

Moderator: Axel Berger, Senior Researcher, DIE

The panel:

Rebecca Fatima Sta Maria, Executive Director, APEC Secretariat

Makane Moïse Mbengue, Professor and Director of the Department of Public International Law and International Organization at the Faculty of Law of the University of Geneva

Gustavo Méndez, Director for Investment and Trade Disciplines, Ministry of Foreign Affairs, International Trade and Worship, Argentina

Julián Zuluaga, Professor of International Economic Law at Externado University of Colombia

Concluding remarks: Karl P. Sauvant, Resident Senior Fellow, Columbia University, CCSI

If you would like to send written questions or comments during the meeting, please feel free to type them in the chat window by clicking on the “chat” button on the middle-bottom pane of the Zoom window.

To join the meeting, kindly click on the link that will be sent to you shortly before **15:00 pm CET on 5 October** and follow the instructions. If you are not able to connect online, you could connect using the dial-up options provided in the email that you will receive after completing the registration.

We look forward to welcoming you to the webinar!

With kind regards,

Rajesh Aggarwal, Chief Trade Facilitation and Policy for Business, ITC

Axel Berger, Senior Researcher, DIE

Karl P. Sauvant, Resident Senior Fellow, Columbia University, CCSI

Background material

[Asia-Pacific Economic Cooperation \(APEC\) Investment Facilitation Action Plan \(2008\)](#)

[Draft Pan-African Investment Code \(2016\)](#)

[Intra-MERCOSUR Cooperation and Facilitation Investment Protocol \(2017\)](#)

[The Pacific Agreement on Closer Economic Relations \(PACER Plus\) \(2017\)](#)

Bios:

Rajesh Aggarwal

Rajesh Aggarwal is Chief of the Trade Facilitation & Policy for Business Section of the International Trade Centre (ITC), Geneva. He is leading a programme of assisting the private sector in developing countries to be the change agent for trade policy reform and engage in business advocacy with their governments in design and implementation of trade policies and negotiating positions that reflect the business interests. Before joining the ITC, he worked for the Indian Government and participated in WTO Doha Round of trade negotiations. He has

published papers in the area of trade negotiations including a paper titled “Dynamics of Agriculture Negotiations in WTO” in the Journal of World Trade.

Axel Berger

Axel Berger is a Senior Researcher at the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE). He works on the design, effects and diffusion patterns of international trade and investment agreements, with a focus on emerging markets and developing countries. Other areas of current research include the effects of an international investment facilitation framework, the impact of free trade agreements on upgrading within global value chains and the role of the G20 in global governance. He teaches international political economy at the University of Bonn and regularly advises developing countries, development agencies and international organisations on trade and investment matters.

Rebecca Fatima

Rebecca Fatima Sta Maria is the executive director of the Asia-Pacific Economic Cooperation, or APEC, Secretariat based in Singapore where she advises and provides support for the forum’s 21 diverse member economies. Ms. Sta Maria was a top-level civil servant and trade negotiator in Malaysia, and played an integral role in Malaysia’s participation in multilateral trade and cooperation. As Secretary-General of the Ministry of International Trade and Industry she often represented Malaysia in minister-level APEC meetings. She also oversaw the formulation of Malaysia’s positions in agreements such as the Trans-Pacific Partnership. As representative to the Association of Southeast Asian Nations, Ms. Sta Maria chaired the body that drafted ASEAN’s economic community blueprints for 2015 and 2025.

Makane Moïse Mbengue

Makane Moïse Mbengue is Professor and Director of the Department of Public International Law and International Organization at the Faculty of Law of the University of Geneva. He is also an Affiliated Professor at Sciences Po Paris (School of Law). Mr. Mbengue is the President of the African Society of International Law. He was the Lead Expert for the negotiations and drafting of the Pan-African Investment Code (PAIC) in the context of the African Union. He is involved in several investment negotiations across Africa. Mr. Mbengue acts as counsel in disputes before international courts and tribunals (in particular the International Court of Justice) and as arbitrator and expert in investment arbitration proceedings. He is the author of several publications in the field of international law.

Gustavo Méndez

Gustavo Méndez is Director of Digital Economy, Services and Investment in the Ministry of Foreign Affairs, International Trade and Worship (Argentina). Mr. Méndez worked as Delegate at the Permanent Mission of Argentina to the International Organizations in Geneva. He has acted as the legal adviser and has been responsible for the preparation of Argentine submissions on WTO Panel proceedings and also was Disputes Settlement Division’s Deputy Director (Ministry of Foreign Affairs and International Trade).

Karl P. Sauvant

Karl P. Sauvant introduced the idea of an International Support Program for Sustainable Investment Facilitation in the E15 Task Force on Investment Policy in 2015. From there, the proposal was taken forward in the WTO. He has written extensively on this subject (see

<https://ssrn.com/author=2461782>), participated in various events relating to it and currently assists the ITC and DIE on a project on Investment Facilitation for Development. He retired in 2005 as Director of UNCTAD's Investment Division and established, in 2006, what is now the Columbia Center on Sustainable Investment (CCSI), stepping down as its Executive Director in 2012, to focus his work, as a CCSI Resident Senior Fellow, on teaching, research and writing.

Julián Zuluaga

Julián Zuluaga is a professor at Externado University in the Law and Economics Department, in international economic law and trade negotiations. He has been the director of the international office of the Ministry of ICT and the lead trade negotiator in services in the Ministry of trade. In this role he has represented Colombian's government in several regional and multilateral forums. He has also been a consultant in the Trade and Investment division of the Inter-American Development Bank (IDB), where he has coordinated and implemented initiatives to promote services exports and investment attraction in the Andean region.