

Report on the Fourth Virtual Capacity Building Workshop on Investment Facilitation for Development: Looking Back and Looking Forward

11 December 2020

The 4th Virtual Capacity Building Workshop on Investment Facilitation for Development: Looking Back and Looking Forward, took place on 11 December 2020 hosting about 200 participants. The workshop was organised 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 workshop was organized to provide input for the WTO negotiations on an investment facilitation framework for development (IFF4D) that are currently being conducted. Presenters provided an analysis of the current state of play of the negotiations and addressed key issues that should be considered in further work on an IFF4D to achieve an outcome that will be broadly acceptable to members. High-level representatives from all world regions spoke at the workshop, which was open to all WTO delegates and government representatives from capitals, as well as representatives from investment promotion agencies, the private sector, civil society, and academia. The workshop's programme is annexed to this report.

Summary of the main outcomes of the workshop

I. The significance of an IFF4D

Covid-19 and its implications on foreign direct investment (FDI) flows: According to the latest global investment trends monitor of the United Nations Conference on Trade and Development (UNCTAD), which was released at the end of October, global FDI flows fell by 49% in the first half of 2020 compared to the same period in 2019, due to the economic fallout from the COVID-19 pandemic. The decrease in FDI flows for the full year was projected to be 30% to 40%. As was highlighted by a number of speakers, the world, and particularly the developing world, needs investment to fuel its growth and development. Since a fundamental component of the recovery will be to boost FDI, the significance of the IFF4D is crucial. A successful outcome in the IFF4D discussions can contribute to revitalizing the global investment landscape through enhanced transparency and predictability, streamlined procedures and strengthened international cooperation. These measures are especially important due to the current limitations on cross border travel. Potential investors will benefit more from information that can be accessed easily and with procedures that can be carried out online.

Domestic reforms and efficient investment policies: The establishment of an IFF4D that incentivises “good” investment facilitation practices at the global level could guide domestic

reforms and inspire effective and efficient investment policies. A more efficient approach to investment facilitation in each country will encourage a more rational use of the resources available for attracting investment and enhance their contribution to sustainable development.

Trade and investment: Investment facilitation should not be understood solely in the narrow context of investment. It must also be seen against the backdrop of the promotion of world trade. Investment and trade are interrelated and mutually reinforcing, particularly in the framework of global value chains. Trade requires and promotes greater investment, and investment in turn also promotes greater trade among countries.

The WTO and the multilateral system: The initiative is moving forward at a crucial moment for the WTO and the multilateral trading system. It is the first time that negotiations of this magnitude have emerged from a proposal initiated by a group of developing countries. A large portion of the written proposals and contributions in the negotiations come from developing countries. The progress of the initiative so far proves that members can find in the WTO a platform for negotiating rules that will promote the expansion of trade and investment, and hence of development. Updating the WTO rule book will also ensure that it remains relevant and responsive for the economy of the 21st century in general, and for the post-pandemic environment in particular.

II. The state of play of the WTO negotiations on an IFF4D

The aim of the IFF4D is to foster closer international cooperation and to create a more transparent, efficient, and predictable environment that will underpin cross-border flows of investment for the sustainable development of economies and attainment of the 2030 Agenda for Sustainable Development. Currently, 106 WTO members are participating in the negotiations. In December 2019, WTO members participating in the IFF4D negotiations agreed that on March 2020 the group would start negotiations on an informal consolidated text. Due to the pandemic, the negotiations were delayed. However, during the 10 months of delay, 16 members (counting the EU as one member) submitted proposals and text contributions. At this point, the group has been able to hold, in total, 16 days of meetings covering the informal consolidated text and members proposals, as well as three additional days of intersessional conceptual discussions.

The current draft of the informal consolidated text reflects rich ideas to promote and facilitate investment, which include: providing greater transparency provisions to ensure predictability; providing measures to simplify and to expedite the admission of investment procedures in investment life-cycles; and promoting cooperation in facilitating and building a healthy environment for investment. A few of the proposals reviewed during the workshop include: (i) different management techniques for assessing low risk and high-risk investment projects while considering their impact on the environment, health, and safety and security, among other issues of concern; (ii) a "Silence is Consent" principle to speed up processing time of applications. Under this measure, if a local authority does not provide feedback within a certain period of time after the submission of an application, the permit would be deemed to be granted; (iii) a Business Obstacle Alert Mechanism (BOAM), which allows a person to register

any constraint he/she may be facing in doing business and basically provides a platform for dialogue between investors and policy makers.

A group of members have signalled that they are working on revised proposals and alternative proposals, including facilitation of the movement of investors and insulating the investment facilitation agreement from other international investment agreements, also referred to as the ‘firewall’. The provisions where more work is needed include the scope of the agreement, certain definitions, special and differential treatment, and sustainable investment provisions. Once resumed early in 2021, the negotiations will focus on these provisions and member proposals. Certain ideas on the specific instruments and institutional structures require more analysis, particularly to find the balance between the benefits for investors and the burden on governmental agencies.

It was mentioned by some members that the next phase should focus on consolidating and developing the existing text rather than proposing new proposals, as it is important to move forward to a text that everyone can endorse. In general, speakers indicated that there has been good progress and that the first phase of the negotiations that ended on 8 December 2020 is seen as a success. The last meeting in December included a good round of discussions about the preamble and the objectives of the agreement. Some of the concepts and objectives repeated in the last meeting included:

- Facilitating investment flows and creating a better economic environment for foreign investors;
- The final objective should be sustainable development;
- The needs of developing and least developed countries (LDCs) should be addressed, particularly in terms of technical assistance and capacity building;
- It is important to remember that the scope of the discussions do not include market access, investment protection or investor-state dispute settlement (ISDS);
- The process needs to continue to be open, transparent and inclusive.

III. The challenges of an IFF4D

The goal of reaching a concrete outcome by 12th WTO Ministerial Conference (MC12):

This is a goal repeated by all speakers. It is important to remember that the negotiations are taking place against a challenging political environment, and members should be prepared for an intense negotiation process. Members need to intensify their engagement in the coming year and work towards further streamlining of the text, continually seek common ground and show flexibility to reach concrete outcomes by MC12.

Scope of the IFF4D: Members need to have a clear understanding of what is covered and what is not covered by the agreement, and agree on the language for the ‘firewall’ to insulate the IFF4D from international investment agreements. The experience of members with ISDS cases understandably makes them cautious, and those concerns need to be alleviated.

Fragmentation: Governments in many parts of the world have already formulated investment facilitation provisions in domestic legislation, bilateral investment treaties and regional and mega-regional trade and investment agreements. The relationship between existing international investment agreements and the IFF4D is not clear. There may be a need to

formulate a principle of non-regression to make sure that investment facilitation provisions that are advanced will not be affected or diminished by the IFF4D.

Implementation: Implementation is a key issue. The Trade Facilitation Agreement (TFA) is a model to follow, but it is important to learn from the TFA experience and implementation to avoid its shortcomings. The Committee on Investment Facilitation will have an important task. Implementing facilitation measures requires financial and technical cooperation as well as capacity building. The IFF4D should include concrete investment facilitation measures, which will represent the agenda of the Committee and clarify the implementation challenges that member states will face. During the workshops' discussion, the possibility of public-private collaboration to support implementation was raised. Although traditionally the WTO does not involve stakeholders in its discussions, the speakers did indicate that it is important to hear the private sector's view, as investors are the ones that can identify what is working well and what not. On public-private collaboration, the TFA is supported by the Global Alliance for Trade Facilitation, which currently has over a dozen economy-level and regional projects. An evaluation of these projects has found significant gains in terms of time and costs saved. There is a proposal by the World Economic Forum to launch a new global alliance for investment facilitation, the EASI Alliance: Enabling Action for Sustainable Investment. This would bring together business, governments, and organizations with expertise to help with implementing the IFF4D. This proposal was supported during the workshop by various speakers who indicated that the WTO needs to respond to investors' requests and needs.

Increase the number of participants: Almost two-thirds of WTO members, precisely 106, are formally participating in the IFF4D negotiations. Initially, the IFF4D was a plurilateral initiative, but the process has a pro-multilateral approach. The participating members strive to build confidence among the membership in an open, transparent and inclusive manner. This approach has proven effective, as more members are joining. At the same time, it is important to do more outreach. In order to arrive at a multilateral agreement, it is important to continue to bring additional members on board and to take their needs into account. For example, the workshops of ITC and DIE are providing a neutral platform for WTO members to address concerns and ask questions. It is encouraging to see many developing members leading the discussions, including Nigeria, Brazil, Indonesia, Mauritius, and Chile. However, additional contributions from developing members are crucial. It was mentioned that, given some members' experiences with ISDS, they are very cautious approaching the IFF4D negotiations. Members also have a great interest to understand how this framework will affect their obligations under other international investment agreements.

IV. Looking forward

Addressing members' concerns: The IFF4D effectively takes into account the unique needs, opportunities and challenges of developing countries and especially LDCs. It excludes issues of market access, investment protection and ISDS. It was also mentioned that the framework should not only exclude ISDS but should also exclude state-to-state adjudication. There is an opportunity to make sure that the framework will be based on alternative means of dispute settlement, such as mediation and early prevention mechanisms.

Building a firewall between the IFF4D and IIAs: There is a common understanding on the need to build a firewall between the multilateral framework and other international investment agreements.

Facilitating sustainable investment and development: The development aspect of the IFF4D needs to be emphasized. Estimates suggest that the pool of capital that could be invested according to environmental, social and corporate governance (ESG) principles is growing rapidly. The framework aims to increase investment, but it should also help economies target and facilitate sustainable investment. The next phase of the negotiations needs to better integrate the sustainable development nexus. Both the preamble of the IFF4D and certain provisions in the agreement need to integrate sustainability objectives. There are several concrete investment facilitation proposals tackling sustainability and development aspects of the framework. One suggestion is for supplier databases to include sustainability dimensions on the firms listed, such as commitment to environmental management, training and gender equality. This would allow institutional investors to more easily invest in firms that follow ESG principles. Not only might it facilitate sustainable investment, but if ESG firms receive more investment, it can incentivize other (domestic) firms to shift operations to ESG to qualify for such investment as well, creating a virtuous cycle. Another measure could be faster approvals or targeted aftercare for investors that commit to contributing to development, for instance through creating a certain number of jobs. There is also the narrative of responsible business conduct that is gaining traction in the ongoing negotiations. An option was raised of establishing a WTO committee to assume a transparency function with respect to non-compliance by investors or a shaming mechanism for non-responsible investors at the WTO level (through reports, notifications, etc.). But it was indicated that a shaming mechanism may go too far and that the framework should be based on dialogue and mediation measures between governments and the private sector. It was stated that the development-friendly elements of the framework will be critical in ensuring cross border flows of investment that effectively enhance growth and development prospects of developing countries. As stated above, given the fact that many WTO member are not yet participating in this process, offering a clear developmental dimension to the framework is necessary for expanding participation. This issue is important to be properly addressed, considering that “development” itself has been embodied in the title of this framework.

The added value of a IFF4D: The negotiations should respond to the question of the added value that may be created by this process, compared to the other investment frameworks in various trade agreements. It was stated that the investment facilitation measures in the framework and negotiations at the WTO level add innovative tools to the “old” investment regime of protection. The IFF4D has an important role to play as it can facilitate cross border investment by providing transparency and predictability. The speakers indicated that they are confident that the IFF4D will generate unambiguous economic benefits in terms of MSME growth, poverty reduction, job creation, expansion of productive capacity, and trade.

WTO institutional issues: Members will need to address pertinent institutional issues such as concerning the integration of the (plurilateral) framework into the WTO agenda. Dealing with this challenge is paramount, in order to strengthen the multilateral trading system.

Technical assistance and capacity building: Similar to what was done during the TFA negotiations and during the TFA implementation period, technical assistance and capacity building have a key role in the IFF4D. Members should learn from best practices from one another and share experiences. Technical assistance should be provided for a gap analysis, the identification of capacity building needs, and designing and implementing institutional and regulatory reforms for investment facilitation. The process of exchanging information and expertise is critical in helping developing country administrations understand where their implementation gaps are, where their comparative advantages could be and what mechanisms need to be put in place to further develop their investment regime. It was stated that the workshops and webinars held throughout this year have contributed substantially to a better understanding of many crucial issues related to the design of the framework on investment facilitation for development.

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PROGRAMME

This 4th Virtual Capacity Building Workshop: Investment Facilitation for Development: Looking Back and Looking Forward is organised 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).

This virtual workshop will take place on 11 December 2020, from 15:00 to 16:30 Geneva time (Central European Time), 09:00 to 10:30 Eastern Standard Time, and 21:00 to 22:30 China Standard Time.

The workshop is meant to make an input into the WTO negotiations of an investment facilitation framework for development (IFF4D). It will provide an analysis of the state of play in the negotiations as regards to what has been achieved so far, while reflecting on key issues that should be considered in further working on an IFF4D, to achieve a broadly acceptable outcome by member states. It seeks to facilitate joint learning and capacity building among delegates, government officials, as well as technical experts.

The workshop is open to all WTO delegates and government representatives from capitals, as well as representatives from investment promotion agencies, the private sector and civil society.

We are aiming to make the workshop as participatory as possible. You will have the option of sending written questions/observations to the panellists during the meeting, by clicking on the “chat” button of the Zoom window and typing your question/comment.

PROGRAMME

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|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 15:00 – 15:10 | Opening
Pamela Coke-Hamilton , Executive Director, International Trade Centre
Yi Xiaozhun , Deputy Director-General, World Trade Organization |
| 15:10 – 15:20 | Keynote |

Otunba Adeniyi Adebayo, Minister of Industry, Trade and Investment of the Federal Republic of Nigeria

15:20 – 16:28

What has been achieved, obstacles and the way forward

Chair

Karl P. Sauvant, Resident Senior Fellow, Columbia University/Columbia Center on Sustainable Investment

Speakers

Mathias Francke, Ambassador-designate of Chile to the WTO, Coordinator of the Structured Discussions on Investment Facilitation for Development, “**An assessment**”

Zhang Xiangchen, Ambassador and Permanent Representative of China to the WTO and coordinator of the Friends of Investment Facilitation Group

Luiz Cesar Gasser, Ambassador and Director at the Department of Services and Industry Promotion at the Brazilian Ministry of Foreign Affairs

Hiddo Houben, Deputy Head of Delegation of the European Union to the WTO

Grata Endah Werdaningtyas, Ambassador, Permanent Mission of the Republic of Indonesia to the UN, WTO and other International Organizations in Geneva

Usha Chandnee Dwarka-Canabady, Ambassador and Permanent Representative of Mauritius to the WTO

Discussion starters

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

Michelle Ratton Sanchez Badin, Professor, Getulio Vargas Foundation, Brazil

Matthew Stephenson, Policy and Community Lead, International Trade and Investment, World Economic Forum

16:28 – 16:30

Concluding remarks

Anna-Katharina Hornidge, Director, German Development Institute / Deutsches Institut für Entwicklungspolitik

Background material

The reports on the earlier capacity building workshops, the Expert Network and Commentary Group meetings and the general public webinars are available here:

<https://www.intracen.org/itc/Investment-Facilitation-for-Development/>.

Karl P. Sauvant, Matthew Stephenson, Khalil Hamdani, and Yardenne Kagan, “*An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?*” (Geneva and

Bonn: International Trade Centre and German Development Institute / Deutsches Institut für Entwicklungspolitik, Nov. 2020), [available here](#).

“What have we learned in the framework of a project on Investment Facilitation for Development: A summary”, [available here](#).

Bios

Otunba Adeniyi Adebayo

Following his inauguration by President Muhammadu Buhari, GCFR, on 21 August 2019, Otunba Richard Adeniyi Adebayo, CON, became Nigeria’s 40th Minister of Industry, Trade and Investment to oversee the government’s goal of economic diversification to non-oil revenue earnings. As the number one investment driver of Nigeria, Mr. Adebayo is leading the promotion of the government’s policies regarding ease of doing business, job creation, poverty eradication, industrialization, the standardization of bilateral trade agreements, stimulating the growth of domestic micro, small and medium-size enterprises, and a renewed roadmap to increase Nigeria’s FDI.

Pamela Coke-Hamilton

Pamela Coke-Hamilton has served as Executive Director of the International Trade Centre since 1 October 2020. She joined ITC from the United Nations Conference on Trade and Development, where she was Director of the Division on International Trade and Commodities. She served with the Jamaican Government, the Caribbean Forum in trade negotiations, and multilateral institutions, including the Organization of American States and InterAmerican Development Bank. She previously served as Executive Director of the Caribbean Export Development Agency, strengthening the private sector and MSMEs through investment promotion. She holds a Juris Doctor in Law from the Georgetown University School of Law in Washington, DC.

Usha Chandnee Dwarka-Canabady

Usha Chandnee Dwarka-Canabady is currently the Permanent Representative of the Republic of Mauritius to the United Nations Office and other International Organizations in Geneva. Prior to this appointment, Ambassador Dwarka-Canabady was, since November 2015, Secretary for Foreign Affairs of Mauritius, after having been acting Secretary for Foreign Affairs between April 2013 and October 2015. She was also Head of the Multilateral Economic Directorate (January 2007 to March 2013) and Head of the Multilateral Political Department (May 2006 to January 2007) of the Ministry of Foreign Affairs, International Trade and Regional Integration in Port-Louis, Mauritius.

Mathias Francke

Mathias Francke is Coordinator of the Structured Discussions on Investment Facilitation for Development and the 2019 APEC SOM Chair. Previously, he was Director General for Multilateral Economic Affairs, Director for Bilateral Economic Affairs, Chief of Cabinet, and senior advisor at the Chilean Vice Minister of Trade. As a Foreign Service officer since 1989, he was posted in the Chilean UK embassy (2014 to 2018), Chile’s Permanent Mission to the WTO (2000 to 2005, and as Deputy Head of Mission from 2006 to 2010) and the Trade Office of the

Chilean Embassy to the USA (1992 to 1996). He is a lawyer from the Catholic University of Chile and has a graduate degree from the School of Foreign Service at Georgetown University.

Luiz Cesar Gasser

Luiz Cesar Gasser is a career diplomat. He is currently director at the Department of Services and Industry Promotion at the Brazilian Ministry of Foreign Affairs. He graduated in law and has been working on services and investment issues for the past three decades. He was posted in Beijing, Geneva (Mission to the WTO), Asunción, Brussels (Mission to the EU), and Dublin.

Anna-Katharina Hornidge

Anna-Katharina Hornidge is Director of the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE) and Professor for Global Sustainable Development at the University of Bonn. Before joining DIE in March 2020, she was Professor of Social Sciences in the Marine Tropics at the University of Bremen and Head of Department “Social Sciences” and the research group “Development and Knowledge Sociology” at the Leibniz Center for Tropical Marine Research (ZMT) in Bremen. From 2006 to 2015, she worked as Senior Researcher for the Centre for Development Research (ZEF), University of Bonn, where she held the position of Professor and Director in the Department of Social and Cultural Change from 2014 to 2015.

Hiddo Houben

Hiddo Houben has been Deputy Permanent Representative of the Mission of the European Union to the WTO since September 2020. He was previously head of the division responsible for trade and investment relations with the US and Canada in the Directorate General for Trade of the European Commission. During that period, he was the EU’s deputy chief negotiator for the Transatlantic Trade and Investment Partnership talks with the US. Prior to that, he was based in Washington DC as the Head of the economic section of the EU embassy. Mr. Houben joined the European Commission in 1989 and participated in the global trade negotiations of the Uruguay Round which created the WTO in 1995.

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 and 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.

Michelle Ratton Sanchez Badin

Michelle Ratton Sanchez Badin is assistant professor at FGV São Paulo School of Law (Brazil) and its Law and Development postgraduate programme. She is the coordinator of the FGV/SP Center of Global Law and Development; co-coordinator of the WTO Chair in Brazil; director of the Red Latinoamericana de Derecho Económico Internacional and the Brazilian chapter of the International Law Association; and founding member of the SIEL. Her most recent book (with F.

C. Morosini) is *Reconceptualizing International Investment Law from the Global South* (Cambridge University Press, 2017).

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). He stepped down as the Center's Executive Director in 2012, to focus his work, as a CCSI Resident Senior Fellow, on teaching, research and writing.

Matthew Stephenson

Matthew Stephenson is Policy and Community Lead for International Trade and Investment at the World Economic Forum, where he manages the Global Investment Policy and Practice initiative. Previously, he worked at the IFC, where he led the workstream on outward FDI. He has also worked at the OECD on Africa and investment and served as a diplomat for the U.S. Department of State, leading the economic team on Afghanistan and managing economic programmes in the Middle East. He is a member of the T20 Task Force on Trade and Investment. He has a PhD from the Graduate Institute in Geneva, a master's from the Harvard Kennedy School and a bachelor's from Oxford University.

Grata Endah Werdaningtyas

Grata Endah Werdaningtyas is the Deputy Permanent Representative of the Republic of Indonesia in Geneva and is Charge d'Affaires of the Permanent Mission of Indonesia. Prior to this assignment, she served as the Director for International Security and Disarmament at the Ministry of Foreign Affairs. As the Deputy Permanent Representative, she supports the Permanent Representative in overseeing all policy matters related to Indonesia's cooperation with various multilateral organizations in Geneva.

Zhang Xiangchen

Zhang Xiangchen serves as Ambassador and Permanent Representative of the People's Republic of China to the WTO. Prior to his current position, he was Deputy China International Trade Representative (Vice-Minister's level) of the Ministry of Commerce of China (MOFCOM), from 2015 to 2017, Assistant Minister of MOFCOM from 2013 to 2015, Director-General of the Policy Research Department of MOFCOM from 2011 to 2013, Minister and Deputy Permanent Representative of the Permanent Mission of China to the WTO from 2008 to 2011, and Director-General of the Department of WTO Affairs of MOFCOM from 2005 to 2008.

Yi Xiaozhun

Yi Xiaozhun has been a Deputy Director-General at the WTO since October 2013. He has extensive experience in world trade and economics, both as a senior government official and subsequently as China's ambassador to the WTO. He represented China as a key negotiator in China's WTO accession process, making an important contribution to the negotiations. Prior to

becoming China's ambassador to the WTO in 2011, Mr. Yi was Assistant Minister and subsequently China's Vice Minister of Commerce in charge of multilateral and regional trade negotiations and cooperation. Besides his contribution to China's WTO accession, he played a leading role in negotiating numerous free trade agreements.