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# FROM TRADE TO INVESTMENT FACILITATION: PARALLELS AND DIFFERENCES

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## About the paper

This report is part of a series of background papers written in the context of a project by the International Trade Centre (ITC) and the German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE) on “Investment Facilitation for Development.” The project supports the negotiations on a multilateral framework on investment facilitation for development by building negotiation capacity in developing (including least developed) countries, channelling ground-level and analytical expertise to negotiators and promoting public discussions of issues related to investment facilitation for development.

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## Contents

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>7</b>
<b>II.</b>	<b>THE TRADE FACILITATION NEGOTIATIONS .....</b>	<b>8</b>
<b>III.</b>	<b>FEATURES OF THE TFA THAT ARE SALIENT TO AN INVESTMENT FACILITATION INITIATIVE .....</b>	<b>13</b>
<b>IV.</b>	<b>LESSONS FROM THE NEGOTIATION PROCESS AND IMPLEMENTATION EXPERIENCE TO DATE.....</b>	<b>16</b>
<b>V.</b>	<b>CONCLUDING REMARKS.....</b>	<b>23</b>

## Acronyms

AEOs	Authorized economic operators
CSR	Corporate Social Responsibility
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICC	International Chamber of Commerce
IFF4D	Investment Facilitation Framework for Development
IAs	International Investment Agreements
IPAs	Investment Promotion Agencies
ISDS	Investor-State Dispute Settlement
ITC	International Trade Centre
JSI	Joint Statement Initiative
LDCs	Least Developed Countries
OECD	Organisation for Economic Co-operation and Development
ODI	Official Development Assistance
OPA	Open Plurilateral Agreement
M&E	Monitoring and Evaluation
NTFC	National Trade Facilitation Committee
SDGs	Sustainable Development Goals
TFA	Trade Facilitation Agreement
UN	United Nations
VSS	Voluntary Sustainability Standards
UNCTAD	United Nations Conference on Trade and Development
WAIPA	World Association of Investment Promotion Agencies
WCO	World Customs Organization
WEF	World Economic Forum
WTO	World Trade Organization

## Abstract

This paper reflects on lessons from the experience in negotiating and implementing the 2013 World Trade Organization (WTO) Agreement on Trade Facilitation (TFA), and for the ramifications with respect to the ongoing negotiations by a large group of WTO members launched at the end of 2017 to agree on a multilateral framework for investment facilitation. Given the commonalities in the basic goal of cooperation, elements of what was done in the TFA can be applied in the investment facilitation framework for development (IFF4D) talks and the potential shape of a deal. In addition to highlighting parallels, the paper notes several differences between the two areas that have implications for both the design of negotiations and potential provisions of an IFF4D.\*

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## I. INTRODUCTION

One of the main achievements of the World Trade Organization (WTO) members since the creation of the organization in 1995 has been the negotiation of an agreement to facilitate trade. The Trade Facilitation Agreement (TFA) entered into force in 2017. That same year, WTO members launched discussions to explore whether a similar agreement could be negotiated to facilitate investment. This paper reflects on lessons from the experience in negotiating and implementing the TFA for a possible multilateral framework for investment facilitation. Given the commonalities in the basic goal of cooperation – to facilitate specific types of economic activity by reducing “red tape” costs for economic actors that do not benefit society (reduce national welfare/do not support realization of sustainable development goals) – elements of what was done in the TFA can be applied in the investment facilitation framework for development (IFF4D) talks and inform the potential shape of a deal. In addition to highlighting parallels, the paper identifies several differences between facilitating trade and facilitating investment and discusses possible implications for both the negotiation process and the design of an IFF4D.

Investment facilitation is being discussed by a subset of WTO members as one of four ‘Joint Statement Initiatives’ (JSI) launched by groups of WTO members at the December 2017 WTO Ministerial Conference in Buenos Aires. The WTO JSI on investment facilitation brought together 70 members in Buenos Aires. Over time participation grew and to date the group encompasses 106 WTO members. The mandate given to the group by Ministers of participating countries is to identify and develop the elements of a framework for facilitating foreign direct investment (FDI) by improving the transparency and predictability of investment measures and reducing ‘red tape’ costs associated with administrative procedures and requirements. A key goal is to facilitate greater FDI flows to developing countries and least developed countries (LDCs). The mandate calls for any IF framework to encompass international cooperation, information sharing, exchange of best practices, engagement with relevant stakeholders, and a focus on mechanisms to prevent disputes.

According to the mandate, several issues are excluded from the IFF4D discussions: market access, investment protection, and Investor-State Dispute Settlement (ISDS). The latter two dimensions of investment policy are covered in over 3,200 extant international investment agreements (IIAs),<sup>1</sup> while the market access element is addressed in some preferential trade agreements as well as in the General Agreement on Trade in Services (GATS), insofar as WTO members have made commitments on mode 3 (commercial presence of foreign services suppliers).<sup>2</sup> The investment facilitation discussions and prospective negotiations will not touch on these matters. The focus on facilitation as opposed to liberalization is very similar to – and builds on – the Doha Development Agenda initiative on trade facilitation. Transactions costs associated with complying with administrative requirements, policy uncertainty and non-transparent regulatory frameworks negatively affect investment flows in ways

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<sup>1</sup> UNCTAD 2020. *World Investment Report*. UNCTAD website. Last accessed on 6 of January 2021 from <https://unctad.org/webflyer/world-investment-report-2020>

<sup>2</sup> For a discussion on the links between investment facilitation for services and the GATS see Ehandi, R. and Sauvé, P. (2019). Investment Facilitation and Mode 3 Trade in Services: Are Current Discussions Addressing the Key Issues?. *World Bank Policy Research Paper*, 9229.

analogous to the effects of border clearance inefficiencies on trade flows. The types of measures that figure in trade facilitation programs, such as certification of “authorized economic operators”, “green channels”, “risk assessment-based enforcement”, or “single windows” are all applicable to an investment context in ways similar to what is done to facilitate trade. For example, the idea of a “recognized sustainable investor” builds on the concept of an authorized economic operator in the context of customs clearance.<sup>3</sup>

In this paper I do not discuss the substance of the IFF4D discussions or the draft text, as the latter is incomplete and certain to change substantially as the negotiations proceed.<sup>4</sup> Instead, the focus is on parallels with trade facilitation and the TFA negotiations and some of the lessons suggested by the trade facilitation experience. This paper has four sections, as follows. Section 1 characterises several features of the TFA negotiations that appear salient to the IFF4D talks. Section 2 briefly summarises key elements of the design of the TFA. Section 3 highlights some implications of the TFA negotiation and implementation experience to date for the investment facilitation discussions. Section 4 concludes with a brief recap of main findings.

## II. THE TRADE FACILITATION NEGOTIATIONS

The WTO discussions on trade facilitation commenced in the late 1990s. Trade facilitation was one of four ‘new’ issues put forward for possible negotiation at the 1996 WTO ministerial conference in Singapore. It ended up being the only one on which negotiations were launched as part of the Doha Development Agenda.<sup>5</sup> After ten years of negotiations, an agreement emerged. Signed in 2013, it entered into force in 2017, once a critical mass of WTO members had ratified it. The whole process took more than two decades.

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<sup>3</sup> Authorized economic operators (AEOs) are customs-trader partnerships in which a trader is recognized as satisfying standards pertaining to compliance with Customs regulations, supply chain security and accounting and financial standards. AEO status provides certain benefits, including simplification of customs clearance procedures and/or security and safety inspections. The concept of an AEO and associated agreed international standards was developed in the World Customs Organization. For a discussion on the potential of using this type of partnership framework in order to define and certify firms as recognized sustainable investors see Sauvant, K. and Gabor, E. (2019). Advancing Sustainable Development by Facilitating Sustainable FDI, Promoting CSR, Designating Recognized Sustainable Investors, and Giving Home Countries a Role. Last accessed on 6 of January 2021 from: <https://ssrn.com/abstract=3496967>

<sup>4</sup> For overviews of the background to the investment facilitation discussions see Berger, A. Gsell, S., and Olekseyuk, Z. (2019). Investment facilitation for development: a new route to global investment governance. *DIE Briefing Paper*, 5/2019. Last accessed on 6 of January 2021 from: [https://www.die-gdi.de/uploads/media/BP\\_5\\_2019.pdf](https://www.die-gdi.de/uploads/media/BP_5_2019.pdf). (Berger, (2019)). See also Baliño, S., Brauch, M., and Jose, R. (2020). Investment Facilitation: History and the latest developments in the structured discussions. Geneva: IISD and CUTS International. Last accessed on 6 of January 2021 from: <https://www.iisd.org/system/files/publications/investment-facilitation.pdf>; and Sauvant, K. and Stephenson, M. (2020). Concrete measures for a Framework on Investment Facilitation for Development: Report. Last accessed on 6 of January 2021 from: <http://ccsi.columbia.edu/files/2020/03/KPS-Stephenson-Inv-fac-11-Dec.-19-workshop-final-report-31-Jan-20-rev-1.pdf>. For an analysis of the state of play of the investment facilitation discussions as of September 2020 see Bernasconi-Osterwalder, N., Campos, S. and van der Ven, C. (2020). The Proposed Multilateral Framework on Investment Facilitation: An analysis of its relationship to international trade and investment agreements. IISD and CUTS International.

<sup>5</sup> No agreement was possible to launch talks on investment policy, competition policy and transparency in government procurement. The launch of plurilateral discussions on investment facilitation in 2017 brought some elements of the investment policy agenda back to the WTO. A major difference is that current talks are limited to investment facilitation only and do not extend to market access, investment incentives or investor-State dispute settlement elements that were at the core of resistance by many developing countries to talks on investment in the early 2000s. See e.g., Hoekman, B. and Saggi, K. (2000). Assessing the Case for Extending WTO Disciplines on Investment Related Policies. *Journal of Economic Integration*, 15(4): 588-610; Wolfe, R. (2004). Crossing the river by feeling the stones: where the WTO is going after Seattle, Doha and Cancun. *Review of International Political Economy*, 11:3, 574-596; and Sauv e, P. (2006). Multilateral rules on investment: is forward movement possible?. *Journal of International Economic Law*, 9(2), 325–355.



Why did it take so long? In part because of an inability to agree on other subjects that figured on the agenda of the Doha Round, notably trade in services, agricultural trade policies and non-agricultural market access – all central to the WTO. A basic feature of multi-issue trade ‘rounds’ is cross-issue linkage, implying that trade facilitation was seen to be part of an overall package deal. Only once it had become clear to most WTO members that such a package deal was unlikely to emerge did they focus on ‘harvesting’ the TFA as a stand-alone agreement. One important reason this was possible is that trade facilitation does not lend itself well to an issue linkage strategy because trade facilitation is mostly in the interest of the countries that pursue it. As a result, other countries are not willing to ‘pay’ much in the way of concessions on specific trade policy areas to incentivize trading partners to take measures to facilitate trade.<sup>6</sup> The exception to this presumption arises for land-locked countries, where trade facilitation in part will depend on what neighbouring countries do, both with respect to the operation of transport corridors and access to maritime port facilities.

Investment facilitation is like trade facilitation in this regard. Given that investment facilitation measures (like trade facilitation measures) give rise to limited cross-border spillovers (terms-of-trade externalities), this should facilitate a stand-alone agreement. Indeed, such an agreement does not need to include all WTO members because free-riding concerns do not arise. It does not matter what non-members of an agreement do or do not do. As investment facilitation also does not give rise to the type of trade facilitation externalities that are a factor for landlocked countries, an IFF4D should be easier to define than was the case for the TFA.

A characteristic of international cooperation on investment facilitation – as was the case for trade facilitation – is that it largely centres on defining what constitutes good policy, identifying the reasons that may inhibit such policy from being adopted by a country and establishing a platform or framework through which countries can be assisted by others in implementing what they have agreed constitutes good policy. Establishing what makes for good policy and getting all participating countries to buy in to a common vision of the ultimate objective of an agreement proved to require a significant amount of time. This was a major reason why the TFA took so long to materialise. Many governments had not focused on trade facilitation as a distinct area of activity that deserved priority attention from an economic development perspective. Not only was time required to get a common understanding of what constituted a set of good practices for countries at differing levels of development, it was also not clear to many countries what the resource implications would be of the effort needed to implement them. The mix of identifying and agreeing on what constitutes good practice and what it would take to operationalise them on the ground on a country-by-country basis helps to explain why the negotiating process took so long.

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<sup>6</sup> Hoekman, B. (2016). The Bali Trade Facilitation Agreement and rulemaking in the WTO: milestone, mistake or mirage? In J Bhagwati, Krishna, P. and Panagariya, A. (eds.), *The World Trade System: Trends and Challenges*. Cambridge, MA: MIT Press; Belastegui, A. (2017). National Trade Facilitation Committees: Beyond compliance with the WTO Trade Facilitation Agreement? Geneva: UNCTAD. Last accessed on 6 of January 2021 from: [https://unctad.org/system/files/official-document/dtltlb2017d3\\_en.pdf](https://unctad.org/system/files/official-document/dtltlb2017d3_en.pdf). (Hoekman, B. (2016)).

In the case of trade facilitation and the TFA negotiations, an ‘epistemic community’<sup>7</sup> of non-WTO actors played a major role in supporting the process of identifying good trade facilitation practices and principles. It spanned national customs agencies – often working with and through the World Customs Organisation (WCO) – development agencies, other international organisations (including the International Chamber of Commerce (ICC), International Trade Centre (ITC), Organisation for Economic Co-operation and Development (OECD), United Nations Conference for Trade and Development (UNCTAD), World Economic Forum (WEF), and World Bank), as well as the private sector, notably several international express carriers and logistics services providers. The active involvement of these groups and organisations helped negotiators to understand what trade facilitation entails and why it matters to them.<sup>8</sup> The community also helped negotiators craft an agreement that explicitly recognises the prevailing heterogeneity in initial conditions and the differential capacity to implement trade facilitation improvements. One result of this is that the design of the TFA differs substantially from the other multilateral agreements included in the WTO.

A major contribution made by these actors was to provide information and analysis. This helped to establish a common understanding of what trade facilitation comprised and why it matters. Analysis showing that facilitating trade was distinct from removing explicit market access barriers (tariffs, taxes, etc.) and could greatly reduce trade costs without affecting the degree of desired protection accorded to domestic producers helped to address concerns of developing countries that trade facilitation was a Trojan horse for liberalisation. Research documenting that trade facilitation is a vehicle for lowering prices and disciplining the scope for corruption and rent-seeking behaviour further increased political support for engaging in trade facilitation talks. Over time, the analysis provided by international organisations and researchers became more precise, focused on specific types of trade facilitation measures and addressing questions that concerned negotiators. Examples include analysis of the distributional effects (incidence) of trade facilitation measures across different types of firms – small vs. large; domestic vs. foreign<sup>9</sup> and the salience of trade facilitation for diversification goals.<sup>10</sup>

Initial studies estimated the effects of trade costs created by administrative processes at borders using World Bank-type indicators.<sup>11</sup> Once the TFA negotiators had identified specific trade facilitation

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<sup>7</sup> Haas, P. (1992). Introduction: Epistemic Communities and International Policy Coordination. *International Organization*, 46(1), 1-35, defines this as a group of professionals with: a shared set of normative and principled beliefs that provide a value-based rationale for the social action of community members; shared causal beliefs, derived from their analysis of practices to address problems in their domain, that serve as the basis for understanding linkages between possible policy actions and desired outcomes; shared notions of validity—criteria for weighing and validating knowledge in the domain of their expertise; and a set of common practices—associated with the problems to which their professional competence is directed with a view to enhance welfare. For an application of the framework to the negotiations that led to the General Agreement on Trade in Services (GATS), see Drake, W.J. and Nicolaïdis, K. (1992). Ideas, Interests, and Institutionalization: "Trade in Services" and the Uruguay Round. *International Organization*, 46(1): 37-100.

<sup>8</sup> Comprehensive handbooks on customs modernization and trade facilitation were compiled by the World Bank. See De Wulf, L. and Sokol, J. (eds.). (2005). *Customs Modernization Handbook*. Washington, DC: World Bank. Last accessed 6 of January 2021 from: <https://openknowledge.worldbank.org/handle/10986/7216>; and McLinden, G., Fanta, E., Widdowson, D., and Doyle, T. (eds.), (2010). *Border Management Modernization*. Washington DC: World Bank.

<sup>9</sup> See, e.g., Hoekman, B. and Shepherd, B. (2015). Who Profits from Trade Facilitation Initiatives: Implications for African Countries. *Journal of African Trade*, 1(2): 51-70.

<sup>10</sup> See e.g., Beverelli, C., Neumueller S. and The, R. (2015). Export Diversification Effects of the WTO Trade Facilitation Agreement. *World Development*, 76: 293-310.

<sup>11</sup> Work to estimate the overall economic effects of (non-) trade facilitation included; Wilson, J., Mann, C., and Otsuki, T. (2005). Assessing the Benefits of Trade Facilitation: A Global Perspective. *The World Economy*, 28(6): 841-71; Djankov, S., Freund, C., and Pham, C. (2010). Trading on Time. *Review of Economics and Statistics*, 92(1): 166-73; Hoekman, B. and Nicita, A. (2010).

measures, it became possible to define and measure detailed trade facilitation indicators, allowing more fine-grained assessments of potential benefits and associated implementation costs. The OECD compiled a set of specific trade facilitation indicators<sup>12</sup> that helped to establish a baseline for the state of play across countries. The relevant international organisations continue to compile trade facilitation performance indicators, allowing assessments of progress in implementing the TFA and the economic effects of trade facilitation initiatives. Following the signature of the TFA, the regional United Nations (UN) economic commissions launched an initiative to track implementation of the TFA through a Global Survey on Trade Facilitation and Paperless Trade Implementation. The survey collects data on the state of play for 128 countries on each of the major substantive provisions of the TFA as well as areas not covered by the TFA such as digital trade facilitation, sustainability dimensions (gender, SMEs) and trade finance.<sup>13</sup> The most recent survey (2019) reveals much progress in setting up the domestic institutional framework required by the TFA, with 81 percent of countries having put in place a national trade facilitation committee (NTFC) and over 70 percent satisfying the transparency provisions of the agreement. Less progress is observed in areas involving paperless transactions such as a facility for electronic application and issuance of preferential certificates of origin and electronic application for customs refunds (37% and 34% respectively). Progress on “single window” provisions is also below average, with only half of all countries having put in place measures through which government agencies delegate control functions to customs authorities.<sup>14</sup> This type of monitoring exercise is important to be able to track progress and identify areas to focus on.

This epistemic community also provided substantial technical assistance to countries requesting this during the negotiations. One significant contribution involved estimating the likely costs of implementing different types of trade facilitation measures,<sup>15</sup> documenting – based on experience and assessments

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Assessing the Doha Round: Market Access, Transactions Costs and Aid for Trade Facilitation. *Journal of International Trade & Economic Development*, 19(1): 65-80; Hoekman, B. and Nicita, A. (2011). Trade Policy, Trade Costs and Developing Country Trade. *World Development*, 39(12): 2069-79; Hufbauer, G. and Schott, J. (2013). Payoff from the World Trade Agenda 2013. *ICC Research Foundation report*, Washington DC: Peterson Institute for International Economics; World Economic Forum. 2013. Enabling Trade: Valuing Growth Opportunities. Last accessed on 6 of January 2021 from: [http://www3.weforum.org/docs/WEF\\_SCT\\_EnablingTrade\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_SCT_EnablingTrade_Report_2013.pdf); and World Trade Organization. (2015). World Trade Report 2015: Speeding up trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement. Geneva: WTO. (WTO (2015)). Such work was complemented by initiatives by the World Bank and the OECD to define and measure trade facilitation indicators, e.g., World Bank’s logistics performance indicators (starting in 2007. Last accessed on 6 of January 2021 from: <https://lpi.worldbank.org/report>) and Trading across Borders indicators (starting in 2003. Last accessed on 6 of January 2021 from: <https://www.doingbusiness.org/en/data/exploretopics/trading-across-borders/what-measured>).

<sup>12</sup> Moïsé, E., and Sorescu, S. (2013). Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries’ Trade. *OECD Trade Policy Papers*, No. 144. Last accessed on 6 of January 2021 from: <http://dx.doi.org/10.1787/5k4bw6kg6ws2-en>; Moïsé, E., Orlic, T., and Minor, P. (2011). Trade Facilitation Indicators: The Impact on Trade Costs. *OECD Trade Policy Papers*, No. 118. Last accessed on 6 of January 2021 from: <http://dx.doi.org/10.1787/5kq6nk654hmr-en>.

<sup>13</sup> Regrettably, the UN agencies do not provide open access to the underlying data, while the option to access the TFI data on the OECD website was not functional when this paper was written. It is also noteworthy that the OECD is one of the few international organisations that continues to maintain a policy of placing its publications behind a paywall – e.g., its 2018 report Trade Facilitation and the Global Economy – inhibiting access to its analysis of progress in implementing the TFA.

<sup>14</sup> UNESCAP. (2019). UN Global Survey on Digital and Sustainable Trade Facilitation 2019. Last accessed on 6 of January 2021 from: <https://unnext.unescap.org/content/un-global-survey-digital-and-sustainable-trade-facilitation-2019>.

<sup>15</sup> World Bank. (2006). Needs, Priorities and Costs Associated with Technical Assistance and Capacity Building for Implementation of a WTO Trade Facilitation Agreement: A Comparative Study Based on Six Developing Countries. Last accessed on 6 of January 2021 from: <http://documents1.worldbank.org/curated/en/852991468179960487/text/430090WP0Needs1and1Priorities01PUBLIC1.txt>; McLinden, G. (2011). World Bank Gap Assessment Study. Last accessed on 6 of January 2021 from: [http://www.wto.org/english/tratop\\_e/tradfa\\_e/case\\_studies\\_e/wb\\_pres\\_e.ppt](http://www.wto.org/english/tratop_e/tradfa_e/case_studies_e/wb_pres_e.ppt); Moïsé, E. (2013). The Costs and Challenges of Implementing Trade Facilitation Measures. *OECD Trade Policy Paper*, 157. Last accessed on 6 of January 2021 from: <https://www.oecd-ilibrary.org/docserver/5k46hzqxt8jh-en.pdf?expires=1609956120&id=id&accname=guest&checksum=E9D9D5017F745801C7A168FBD4B1EFFC>

of specific countries – that such costs were not insignificant but manageable if donors were to support implementation in low-income nations. Once the TFA had been agreed, many of the organisations have continued to work together to help countries to implement the different provisions of the agreement. In doing so the organisations working in this area benefited from dedicated coordination mechanisms. These include national trade facilitation committees, the WTO Trade Facilitation Committee overseeing the implementation of the TFA, the aid-for-trade partnership between the WTO and the donor community, and several dedicated (earmarked) multi-donor trust funds supporting TFA implementation assistance.

This experience is relevant for the ongoing investment facilitation discussions, raising the question whether there is an equivalent epistemic community that brings together the relevant actors, and what (more) could (or should) be done to do so. In the TFA context the epistemic community anchored around the WCO and the research/operational arms of international development organisations (World Bank, UN bodies) provided analysis of the potential economic effects of trade facilitation that was an important factor supporting efforts to cooperate. By providing information on the size of the possible benefits, their distribution – e.g., whether small firms would benefit as well as large traders – and the costs on implementing trade facilitation measures, a common understanding emerged regarding the salience of the trade facilitation agenda for helping to achieve national development goals. Similarly, the IFF4D discussions need to be informed by analysis that identifies the elements of an investment facilitation agenda that would have the greatest potential positive effects in terms of supporting FDI and realising sustainability goals. The same observation pertains to existence of metrics (indicators) that help governments assess where their country stands on different dimensions of investment facilitation and providing a basis for engagement with stakeholders, including addressing concerns regarding the potential cost implications of moving towards whatever emerges as agreed good practices from the negotiating group.

The ‘Investment Facilitation for Development’ project managed at the International Trade Centre (ITC) and German Development Institute/ Deutsches Institut für Entwicklungspolitik (DIE) can be seen as playing an analogous role to that played by the international organisations in the trade facilitation context. Deliberations of a Commentary Group comprising national investment promotion agencies, business representatives and FDI service providers are captured in an Inventory of investment facilitation measures,<sup>16</sup> which also benefits from contributions by the World Bank and the OECD. This is complemented by an Expert Network that provides policy papers and regular engagement with delegations participating in the JSI or interested in investment facilitation. As discussed further below this type of initiative is particularly important in the investment facilitation context because there is no analogue to the WCO for investment facilitation. As a result, there is no established network of government officials responsible for policies salient to inward FDI who know each other and have a

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<sup>16</sup> Sauvart, K., Stephenson M., Hamdani K., and Kagan Y. (2020). An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?. Geneva and Bonn, International Trade Centre (ITC) and German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE). Last accessed on 6 of January 2021 from: <https://www.intracen.org/uploadedFiles/intracenorg/Content/Redesign/Events/IFD%20Inventory%20as%20of%2026%20Nov.%2020%20rev.pdf>.

track record of working together to define good regulatory practices in areas that are of common interest. This was arguably critical for the establishment of the TFA as it meant much of the technical work regarding standards-setting and defining good practice had already been undertaken at the WCO.

### III. FEATURES OF THE TFA THAT ARE SALIENT TO AN INVESTMENT FACILITATION INITIATIVE

As noted above, in several respects the TFA is an innovative agreement for the WTO.<sup>17</sup> Elements that differentiate the TFA from the 'usual' type of WTO agreement include the focus on defining good practices as opposed to seeking agreement on measures to liberalise market access – the goal of most extant WTO agreements. The TFA entails so-called positive integration: all WTO members agree to adopt a variety of specific trade facilitation practices as opposed to 'negative integration' measures centred on committing not to use certain types of policies or to reduce the extent of discrimination against foreign products.

This focus on good practices that have been agreed by all WTO members explains why there is much less in the way of permanent exceptions or provisions that call for developing countries to do only X% of what developed nations have committed to do.<sup>18</sup> The presumption is that all WTO members will seek to implement all the different substantive and procedural obligations because these will be welfare enhancing for all countries, including developing economies. The counterpart of the focus on agreeing what constitutes good trade facilitation practices is the common judgement emerging from the negotiation process that implementation of TFA provisions is consistent with and supports economic development. Thus, the TFA does not include the "standard" WTO approach to address development differentials – special and differential treatment. Instead, the agreement that was negotiated considered the need to ensure that its provisions were supportive of development. One reflection of this is that no use is made of uniform implementation or transition periods for all developing countries. Instead, these are determined by each developing economy for themselves. There are three categories of commitments by developing countries and LDCs: (A): unconditional commitments; (B): commitments conditional on a transition period determined by the country itself; and (C): commitments conditional on an indicative transition period and acquisition of implementation capacity through assistance and capacity building.

Another reflection of this is explicit linkage between the provision of requested technical assistance and implementation obligations for TFA provisions where individual developing country signatories have specified such conditionality. Donors agreed to facilitate provision of assistance, either bilaterally or

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<sup>17</sup> This section only highlights some aspects of the TFA. For in depth discussions of the agreement see Neufeld, N. (2014). *The Long and Winding Road: How WTO Members Finally Reached a Trade Facilitation Agreement*. *WTO ERSD Working Paper*, 2014-06. Last accessed on 6 of January 2021 from: [https://www.wto.org/english/res\\_e/reser\\_e/ersd201406\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd201406_e.pdf) and see above footnote 6, Hoekman, B. (2016).

<sup>18</sup> The exception here concerns LDCs which are only called on to implement the TFA insofar as "consistent with their individual development, financial and trade needs or their administrative and institutional capabilities" (TFA Art. 13(3) – see World Trade Organization. (2014). *Agreement on Trade Facilitation*, WT/L/940. Last accessed on 6 of January 2021 from: [https://www.wto.org/english/docs\\_e/legal\\_e/tfa-nov14\\_e.htm](https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm).

through relevant international organisations. Although in principle the link between implementation and assistance had already been agreed in 2004, it proved difficult to craft an approach that was acceptable to both developing and high-income countries. The latter opposed suggestions for earmarking of donor funding into a dedicated trust fund. In part this reflected fear of creating a precedent for countries to take a “pay me for reform” position in future negotiations. As if not more important was a desire by donor and development agencies to abide by the 2005 Paris Declaration on Aid Effectiveness, under which donor countries committed to align support with the priorities established by developing countries (so-called country ownership and alignment principles).

The contours of a deal on assistance for implementation of the TFA emerged only a few days before the 2013 Bali Ministerial conference. This comprised a best endeavour promise to assist when requested – that is, assistance was not a binding, i.e., enforceable, commitment. The quid pro quo was acceptance that absent assistance, provisions of the TFA where developing countries indicated a need for external support would not be enforceable. Insofar as the investment facilitation negotiations result in binding (enforceable) commitments by signatories – whether enforcement occurs at the national level through domestic review mechanisms and/or through State-to-State WTO dispute settlement procedures – on matters that give rise to implementation costs, these could similarly be made conditional on provision of assistance. Even if the eventual outcome of the JSI talks is a ‘soft law’ agreement in which provisions are voluntary or ‘best endeavours’ commitments, explicitly incorporating a technical assistance dimension will be important for realising the development goal of the deliberations, with the committee overseeing the implementation of the agreement acting as a coordination and review mechanism for different actors to provide assistance to countries requesting it.

An important TFA innovation was to move away from the default WTO approach to enforce commitments, which centres on transparency via notifications, bilateral consultations and if these do not resolve the matter, invocation of formal dispute settlement procedures. In addition to containing many ‘soft law’ provisions that are not enforceable, the TFA includes various provisions aimed at understanding why an implementation problem has arisen and resolving the difficulties. This includes an ‘early warning’ provision calling for notification by a country and extension of time periods by the WTO membership if implementation difficulties arise, and a call for an expert group to assess notified implementation problems after transition periods have expired to assess the situation and identify possible solutions. In conjunction with the presumption of good faith in providing technical and financial assistance to countries needing it, this approach can be characterized as a reliance on ‘cooperation for compliance’ instead of recourse to adjudication, the standard approach of WTO members when it comes to other multilateral agreements.

This cooperative approach relies in part on the creation of NTFCs that bring together stakeholders – government agencies and the private sector – with a mandate to coordinate and oversee domestic implementation of the agreement.<sup>19</sup> NTFCs act as a bridge connecting both the actors concerned with

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<sup>19</sup> World Trade Organization. 2016. National Committees on Trade Facilitation: current practices and challenges. Geneva: WTO. Last accessed on 6 of January 2021 from:



trade facilitation at the national level with each other and with the donor community, both bilateral agencies and the international organisations. NTFCs provide an institutional mechanism to identify gaps and weaknesses that call for action and potentially external support (technical assistance). NTFC analogues are not called for in other WTO agreements, which tend to be limited to calls for establishing domestic transparency entities (e.g., “enquiry points”) or enforcement bodies (e.g., the Agreement on Government Procurement requires creation of domestic review (appeal) bodies).

NTFCs or analogues already existed in many countries before the advent of the TFA, but the fact that an international agreement (the TFA) requires such bodies is important in ensuring that they are functional as countries must regularly report on progress in implementing the agreement to the WTO. This “commitment device” role is valuable in helping to overcome standard political economy constraints to sustaining a focus on measures to enhance trade facilitation performance. One such constraint is funding. The legal commitment to implement the TFA increases the likelihood of allocation of public resources to these bodies to support their operation. NTFCs can both increase awareness in the country for the trade facilitation agenda and help sustain the attention needed to improve trade facilitation performance over time. In principle, NTFCs need not limit their focus on implementing the TFA. They can go beyond this to leverage the TFA to address constraints and weaknesses in relevant policy areas not covered by the TFA – e.g., logistics services, transport, network infrastructure, etc..<sup>20</sup>

How well they play their role in promoting trade facilitation on the ground and understanding what has worked and what has not in the limited period that the TFA has been operational is important for investment facilitation negotiators. NTFC analogues are salient in the investment facilitation context as well. Indeed, they may be more salient given that the investment facilitation agenda spans sub-central government entities located throughout the country. Investment inevitably is geography specific, so that local and regional authorities are part of the facilitation agenda in a way that does not arise in the trade facilitation context. Based on a survey of 52 NTFCs,<sup>21</sup> these bodies have become the focal point for trade facilitation in many countries, with their mandate, scope, institutional framework and composition evolving to adapt to needs of their constituencies. In about one-third of the surveyed NTFCs, the committee has a donor coordination role, and many report that they interact with NTFCs in neighbouring countries. On average, NTFC membership comprises two-thirds government officials and one-third private stakeholders. Gaps identified included a lack of focus on e-commerce and limited focus on communications and outreach (website; social media). Most NTFCs in LDCs do not have a domestic budgetary resource allocation, instead depending on donor funding, raising potential sustainability concerns.<sup>22</sup>

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[https://www.tfafacility.org/sites/default/files/news/tfa\\_national\\_committees\\_trade\\_facilitation\\_web\\_e.pdf](https://www.tfafacility.org/sites/default/files/news/tfa_national_committees_trade_facilitation_web_e.pdf).

<sup>20</sup> See above footnote 6, Hoekman, B. (2016).

<sup>21</sup> Belastegui, A. (2020). National trade facilitation committees as coordinators of trade facilitation. Transport and Trade Facilitation Series No 14. Geneva: UNCTAD (Belastegui, A. (2020)).

<sup>22</sup> Since the TFA entered into force there have been several country studies of the experience with setting up NTFCs that provide a picture consistent with the main messages emerging from the Belastegui, A. (2020), review of the state of play. Space constraints preclude an in-depth discussion of the rapidly growing literature. This includes Creskoff, S. (2019). India's Path to Improved Trade Facilitation and Enhanced Economic Development. *Trade, Law and Development*, 11(1): 93-111; Hassan, M. (2020). Africa and the WTO Trade Facilitation Agreement: State of Play, Implementation Challenges, and Policy Recommendations in the Digital Era, in Gbadebo, O., Odularu, A., Hassan M., and Babatunde, M. (eds.), *Fostering Trade in Africa Trade Relations, Business Opportunities and Policy Instruments*. Springer; Hossain, M. (2019). Bangladesh. In Abou et al.

Given that trade and investment are closely linked, and that investment facilitation often will be associated with trade, expanding the mandate of NTFCs to also encompass investment facilitation could be considered as a way of focusing domestic attention on trade and investment facilitation. While building on the extant domestic infrastructure embodied in the NTFCs by making them National Trade and Investment Facilitation Committees could have advantages – identifying complementarities and synergies, helping to improve policy coherence – it should be recognised that the two policy areas involve very different parts of government. One important difference is that investment facilitation concerns firms (investors) whereas trade facilitation concerns processes applying to entry of products (consignments) into the country. Another important difference, as discussed below, is that investment facilitation will implicate sub-central government bodies because much FDI regulation and interactions between investors, government agencies and communities is local and specific to a given geography. Trade facilitation in contrast is very much centred on what happens at the border to products/consignments. Expanding the ambit of NTFCs to also encompass investment facilitation matters may therefore generate little in the way of economies of scale and scope.

#### IV. LESSONS FROM THE NEGOTIATION PROCESS AND IMPLEMENTATION EXPERIENCE TO DATE

Eight lessons or implications emerge from negotiations on the TFA that are salient to the talks on a multilateral IFF4D. Some of the suggestions that follow are listed in the Inventory of Investment Facilitation Measures,<sup>23</sup> which includes a compilation of proposals and ideas that have been put forward by governments and analysts on what an IFF4D might cover. Mostly they fall into the category of suggestions that have not (yet) been taken up in the IFF4D discussions.

1. A first lesson from the trade facilitation experience is the importance of mobilizing a broad 'epistemic community' to establish/agree on what constitutes good practice. In the TFA context, such a community existed, organised around the WCO (which brings together all national customs administrations) and several international organisations, including UNCTAD, ITC, OECD, the World Bank and the Inter-American Development Bank. In the investment facilitation context, there is a nascent community with an interest in the agenda, spanning many of these international organisations – many of which participate in the G20 Trade and Investment Working Group. However, there is no analogue to the WCO, i.e., no international organisation representing (bringing together) the national agencies responsible for the *administration* of investment-related policies. The international organisations have

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(eds.); Kumar, U., de Leon, L., and Reddy, S. (2019). Sri Lanka. In Abou et al. (eds.); Odularu A. (2019). Addressing Trade Facilitation Commitments and Implementation Capacity Gaps: Issues and Evidence from Nigeria. In: Odularu G., Alege P. (eds) Trade Facilitation Capacity Needs. Palgrave Pivot, Cham. Last accessed on 6 of January 2021 from: [https://doi.org/10.1007/978-3-030-05946-0\\_2](https://doi.org/10.1007/978-3-030-05946-0_2); Parshotam, A. (2019). Implementing the TFA: Trade Facilitation Activities in Zambia. SAIIA Occasional Paper, 298. Last accessed on 6 of January 2021 from: <https://www.africaportal.org/publications/implementing-tfa-trade-facilitation-activities-zambia/>; Reddy, S. (2019). India. In Abou et al. (eds.); Stijepovic, S. and Konar-Leacy, V. (2017). Establishing a National Trade Facilitation Committee: Lessons Learned from Montenegro. Washington DC: IFC.; Tomlinson, K. (2017). Jamaica's Trade Facilitation Task Force: Involving Public and Private Sectors to Improve Competitiveness. Washington D.C: IFC; and Wangdi, P. (2019). Bhutan. In Abou et al. (eds.). Widdowson, D., Short, G., Blegen, B. and Kashubsky, M. (2018). National committees on trade facilitation. *World Customs Journal*, 12(1): 27-48.

<sup>23</sup> See above footnote 16, Sauvart P. et al. (2020).



departments dealing with elements of investment facilitation, but their work programs usually go beyond facilitation and/or deal with specific mandates such as the promotion of foreign investment.

Most countries have investment promotion agencies (IPAs). Much attention has been given to what makes for good practices in promoting investment, based on reviews and assessments of the operations of IPAs. Good practices include transparency in applicable policies and requirements; creating effective enquiry points for foreign investors; establishing one-stop-shops ('single windows' in trade facilitation speak); and effective coordination between national and sub-national regulatory agencies and strong partnerships between public and private sectors.<sup>24</sup> The activities of IPAs are consistent with a facilitation focus insofar as they are not responsible for investment policies (although some have a mandate to engage in advocacy for changing policies that have adverse impacts on FDI). However, IPAs only partially involve facilitation in the sense of reducing red tape and the transactions costs that confront potential investors when determining the conditions applying to establishment in a country (or a specific location in a country). Their main task is marketing, a function that is distinct from facilitation. Moreover, the instruments used to promote inward FDI are quite naturally country-centric. A consequence is that national IPAs directly compete with each other for investment. Such competition is at most indirect when it comes to trade facilitation, which differentiates the incentives to cooperate on trade facilitation from investment facilitation.

**2. Defining the scope of a potential initiative and generating associated qualitative and quantitative indicators** should be a priority. This helps negotiators – and stakeholders – determine where countries stand with respect to the elements that may figure on the agenda for international cooperation. In the case of trade facilitation and the TFA, the World Bank and the OECD made significant contributions on this front. This comprised in part providing a baseline and regularly updating data on trade facilitation “outcomes” – the Trading Across Borders and Logistics Performance Indicators and more fine-grained time-release studies and corridor-specific measurement of throughput and stoppages.<sup>25</sup> It also involved defining and measuring trade facilitation “inputs,” e.g., use of single windows; risk assessment-based controls, etc. – put together by the OECD in its TFA-specific set of trade facilitation performance indicators. This work was important to establish a common understanding of the state of play on trade facilitation within and across countries and to enable monitoring of changes over time. Cross-country benchmarking and comparisons require compilation of indicators at the country level, which in turn must encompass performance of key ports and (transit) routes. Data on the relative ‘performance’ of a country can be a powerful inducement to initiate and sustain action to pursue facilitation initiatives, in

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<sup>24</sup> UNCTAD. (2016). Global action menu for investment facilitation. Last accessed on 6 of January 2021 from: [https://investmentpolicy.unctad.org/uploaded-files/document/Action%20Menu%202023-05-2017\\_7pm\\_web.pdf](https://investmentpolicy.unctad.org/uploaded-files/document/Action%20Menu%202023-05-2017_7pm_web.pdf); World Bank. (2017). Investment policy and promotion diagnostics and tools: maximizing the potential benefits of FDI for competitiveness and development. Washington D.C: World Bank. Last accessed on 6 of January 2021 from: <https://openknowledge.worldbank.org/handle/10986/28281>; Heilbron, A., and Whyte, R. (2019). Institutions for Investment: Establishing a High-Performing Institutional Framework for FDI. Last accessed on 6 of January 2021 from: <https://openknowledge.worldbank.org/handle/10986/33285>; Sanchiz, A. and Omic, A. (2020). State of Investment Promotion Agencies: Evidence from WAIPA-WBG's Joint Global Survey. Washington, DC: World Bank. Last accessed on 6 of January 2021 from: <http://documents1.worldbank.org/curated/en/499971594008431029/pdf/State-of-Investment-Promotion-Agencies-Evidence-from-WAIPA-WBG-s-Joint-Global-Survey.pdf>.

<sup>25</sup> See e.g., Fitzmaurice, M. and Hartmann, O. (2013). Border crossing monitoring along the Northern Corridor. Washington, D.C.: World Bank Group. Last accessed on 6 of January 2021 from: <https://openknowledge.worldbank.org/handle/10986/16555>.

part because this is something that investors will do in any event. A challenge here is to determine which organisations should do this. In practice a collaborative effort leveraging the comparative advantages of different agencies would appear appropriate, e.g., based on a call by the prospective signatories of an IFF4D and with the financial support of high-income country members.<sup>26</sup>

As mentioned, several international organisations are active in generating trade facilitation indicators, including data that is pertinent to assessing the extent of implementation of TFA provisions.<sup>27</sup> One lesson from the trade facilitation experience is that notwithstanding the cooperation between organisations there are incentives within international organisations to compete and keep information ‘in-house’ with a view of ‘selling’ advisory services to countries. The fact that the OECD and the UN do not provide for easy, immediate download of the underlying data makes life more difficult for analysts in and outside government to assess trends and the effects of trade facilitation programs. Putting up “visualisation tools” and infographics on websites geared towards external communications and general outreach should not come at the expense of making the underlying data publicly and freely available. There is a potential role that the WTO Secretariat could fill by providing an open access platform that brings together disparate investment facilitation indicators and related quantification efforts, making the data accessible to the general public as well as to governments.

**3. Another implication for the investment facilitation talks is the need for analysis to determine which type of investment facilitation measures can be expected to have the greatest impact in reducing uncertainty and transactions costs for investors. Performance indicators are critical inputs for such empirical analysis, including for identification of priorities at the national level and for monitoring progress over time. Analysis of the likely impact of investment facilitation will help mobilise political support for investment facilitation actions, especially if these actions require high-level engagement by political decision makers to overcome resistance to beneficial reforms – e.g., to ensure there is communication, coordination and cooperation between central government agencies, sub-central government entities and the private sectors.**

There has been limited empirical research on the impact of a potential IFF4D.<sup>28</sup> One reason is a lack of clarity regarding what an IFF4D may (should) encompass. Identifying relevant measures based on a mapping of domestic administrative procedures affecting foreign investments is a first necessary step, an effort that is being undertaken by the DIE through the development of an investment facilitation index. This can assist negotiators to narrow down the focus to specific measures based on potential effects and information on the associated implementation requirements, and thus the potential need for and magnitude of technical assistance and capacity-building efforts for developing countries. The need for such analysis arguably is more important in the investment facilitation setting than it was for trade

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<sup>26</sup> Any such effort requires leadership by IFF4D proponent countries, not only in terms of providing the resources needed but also in ensuring there is broad support for giving the relevant organisations such a mandate.

<sup>27</sup> See for example Duval, Y., Utoktham, C. and Kravchenko, A. (2018). Impact of implementation of digital trade facilitation on trade costs. *ARTNeT Working Paper*, 174. Last accessed on 6 of January 2021 from: <https://www.unescap.org/sites/default/files/AWP174.pdf>. For a contrasting assessment see Hillberry, R. and Zhang, X. (2017). Policy and performance in customs: Evaluating the trade facilitation agreement. *Review of International Economics*, 26:438–80..

<sup>28</sup> See above footnote 4, Berger, (2019).

facilitation because many of the issues were already known to policymakers – in part because of the epistemic community associated with the WCO and other international organizations that had raised awareness of the importance of trade facilitation for trade expansion, diversification and economic development.

**4. Mobilization of technical assistance to undertake country-level assessments of needs and gaps.** This helps to address uncertainty regarding the implications of an investment facilitation agenda, enhancing buy-in. Establishing what specifically investment facilitation entails and what types of issues need to be addressed will help countries determine whether to join an IFF4D and to what extent they will need assistance. It is likely that the IFF4D will adopt the TFA approach to address capacity differentials affecting implementation. Here again there is a need for promoting coordination among donors and international organisations in mobilizing the resources needed to do assessments and engage in country level activities if requested to do so by developing country governments. Such assistance should include South-South cooperation, as there is much to learn from the experience of successful developing countries in facilitating FDI.

In the case of trade facilitation this was somewhat easier to orchestrate given the strong evidence base that trade facilitation was beneficial<sup>29</sup> and the types of actions comprising trade facilitation had already been discussed for some time in the WCO and operationalised by the World Bank and other international organisations. The situation is somewhat different for investment facilitation, bolstering the case for country-level analysis and assessments. Generating this may be more difficult than for trade facilitation because the latter could benefit from the aid-for-trade initiative. There is no analogous “aid-for-investment” mechanism – aid resources must come from general official development assistance (ODA) funding or compete with trade projects. This puts a greater burden on developing country governments requesting investment facilitation-related assistance and making clear to donors that this is a national priority.

**5.** Although ISDS is off the table, whether and to what extent formal State-to-State dispute settlement will factor into the IFF4D remains to be determined. Here again there are lessons from the TFA that apply, notably to encourage alternatives to formal dispute settlement, including deliberations in the body charged with oversight of the IFF4D, consultations between parties informed by independent expert groups to understand and propose solutions to implementation problems, and regular monitoring of progress on investment facilitation-related actions and outcomes. Building in (mandating) regular ‘thematic sessions’ of the Investment Facilitation Committee at WTO level – e.g., an annual dedicated session to monitor implementation progress, the assistance provided by donor countries, engage with the private sector and the IPAs to foster exchange of experiences is likely to be more constructive in supporting cooperation. This is an element of the WTO Trade Facilitation committee meetings.<sup>30</sup> Members are asked what new themes they would like next for the informal meetings on implementation

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<sup>29</sup> See footnote 11, WTO. (2015).

<sup>30</sup> Wolfe, R. (2020). Informal Learning and WTO Renewal: Using Thematic Sessions to Create More Opportunities for Dialogue. *EUI RSCAS Working Paper*, 2020/51. Last accessed on 6 of January 2021 from: <https://cadmus.eui.eu/handle/1814/67957>.

of the Agreement. The TFA Committee has a dedicated trust fund that sponsors attendance at its sessions by an official from any developing country Member that needs it. This has facilitated LDC participation, reflected in representatives from LDCs appearing as speakers in Trade Facilitation Committee meetings more frequently than in any other WTO body<sup>31</sup>.

6. Several institutional-cum-governance implications are suggested by the TFA experience. One is to connect to stakeholders. In the trade facilitation setting this included customs administrations (WCO), express carriers and freight forwarders. In the investment facilitation context, an analogue group comprises national IPAs. As IPAs will likely be part of whatever national mechanisms are put in place to implement an IFF4D, connecting with this community during the negotiations would appear sensible. In the case of the TFA, NTFCs play this role, but these did not exist in many countries before the TFA, and thus their experience did not feed into the TFA deliberations. Instead, national considerations were reflected in submissions by WTO delegations, as well as the needs assessments and inputs provided by the international organizations. In the investment facilitation case IPAs already exist in most countries. Creating a platform through which IPAs can engage with each other and with the negotiating group could provide a valuable source of information and feedback on proposals put forward by delegations. The World Association of Investment Promotion Agencies (WAIPA) is an obvious counterpart to engage with in this regard.<sup>32</sup>

At the national level, coordination within government and across different levels of government (national, sub-national, municipal) will be critical in both defining national priorities and the implementation of an agreement. This is a challenge that goes beyond the one that confronted TFA negotiators and the NTFCs that were mandated by the TFA. The WAIPA-World Bank survey of IPAs, shows that limited mandates to encourage cooperation and coordination across agencies regulating FDI, and difficulties in promoting cooperation across regulatory agencies is the most frequently mentioned problem/constraining factor identified by IPAs: 60% of the surveyed IPAs highlight this issue.<sup>33</sup>

Thinking about how to address this matter and how an IFF4D could assist signatories do so would appear an appropriate subject for negotiators to consider, as it will influence the salience of any agreement for investment facilitation “on the ground”. In doing so, it would be useful to reflect on the experience with deliberative mechanisms that bring together key stakeholders – regulators, government officials, business, and NGOs/community groups – to assess the impacts of investment policy regimes and identify potentially beneficial reforms. While IPAs may be a natural focal point for such activities, of the 70% of surveyed IPAs that have advisory or executive boards, only one-half include private sector representation and only a quarter include members of the CSO or academic communities.<sup>34</sup> Moreover,

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<sup>31</sup> Ibid.

<sup>32</sup> Omic, A. and Stephenson, M. (2019). What Can Governments Do to Facilitate Investment? WAIPA and WEF. Last accessed on 6 of January 2021 from: [http://www3.weforum.org/docs/WEF\\_Investment\\_Facilitation\\_2019.pdf](http://www3.weforum.org/docs/WEF_Investment_Facilitation_2019.pdf)). WAIPA is an international nongovernmental organization established in 1995 under the auspices of UNCTAD. WAIPA has worked with UNCTAD, the World Bank and the WEF in generating knowledge products and advocating for investment facilitation – see footnote 24, Sanchiz and Omic (2020).

<sup>33</sup> See above, Sanchiz and Omic (2020).

<sup>34</sup> Ibid.

only a quarter of the IPAs have sub-national affiliated offices. These figures reveal there is much to be done to move towards an institutional framework for deliberation on investment facilitation in most countries.

Putting such an institutional framework in place is particularly pressing if a decision is taken to include sustainability goals in an IFF4D. There has been some advocacy for the inclusion sustainability goals in an IFF4D, including corporate social responsibility (CSR) principles.<sup>35</sup> While this would be consistent with the realisation of the Sustainable Development Goals (SDGs), whether such a dimension will be included and what form commitments might take remains to be seen. Sustainability goals did not figure in the TFA and thus the trade facilitation experience has little to offer in the way of guidance. Realisation of sustainability goals depends on the behaviour of private actors (investors) and on the broader investment climate in a country, including policies that a facilitation agenda takes as given.<sup>36</sup> Public-private policy dialogue or knowledge platforms and multi-stakeholder initiatives are commonly used to pursue environmental or social sustainability and CSR objectives.<sup>37</sup> Examples include initiatives that focus on private governance of specific value chains and promote dialogue between the (private) actors involved in or affected by them. These may include pursuit of voluntary sustainability standards (VSS) systems that include certification of producers and monitoring of implementation.<sup>38</sup> The multi-sector, cross-cutting nature of such initiatives can add to extant national business-government investment policy dialogue mechanisms that are found in some countries.

Multi-stakeholder initiatives can encompass noneconomic issues in a way that purely government or government-private sector IPAs do not. While complex to manage, they can improve the transparency of applied policies, support independent analysis of policies, identify the nature of good practice and the constraints impeding their adoption, and options (based on international experience) for addressing them.<sup>39</sup> A first step could be for IFF4D participants to bring the investment facilitation and VSS/CSR communities together to reflect on the design of NTFC analogues to address national investment facilitation challenges and realise the goals that are agreed in any IFF4D. Doing so can help to emulate and build on specific features of the TFA such as implementation of AEO frameworks. As mentioned previously the concept of an AEO and the applicable standards to obtain AEO status were the subject of extensive international deliberation in the WCO. Insofar as there is interest in developing the concept of a 'recognised sustainable investor' in an IFF4D agreement or including supply chain traceability and sustainability standards as criteria for inward investors to obtain 'fast track' status it is important that

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<sup>35</sup> Sauvart, K. and Mann, H. (2017). Towards an Indicative List of FDI Sustainability Characteristics. E15 Initiative. Geneva: ICTSD and WEF. Last accessed on 6 of January 2021 from: <https://ssrn.com/abstract=3055961>

<sup>36</sup> Research has shown that while investment promotion can influence investor decisions, what matters more is the general investment climate and business environment in a country. See e.g., Harding, T. and Javorcik, B. (2011). Roll Out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows. *The Economic Journal*, 121(557): 1445–76.

<sup>37</sup> Bitzer, V. and Glasbergen, P. (2015). Business–NGO partnerships in global value chains: part of the solution or part of the problem of sustainable change? *Current Opinion in Environmental Sustainability* 12:35–40; Soundararajan, V, Brown, J. and Wicks, A. (2019). Can multi-stakeholder initiatives improve global supply chains? Improving deliberative capacity with a stakeholder orientation. *Business Ethics Quarterly*, 29(3): 385–412.

<sup>38</sup> Schleifer, P., Fiorini, M. and Fransen, L. (2019). Missing the Bigger Picture: A Population-level Analysis of Transnational Private Governance Organizations Active in the Global South. *Ecological Economics*, 164: 106362.

<sup>39</sup> For an argument for public-private policy partnerships anchored on specific value chains and international production networks to facilitate their operation while helping to attain domestic regulatory goals see Findlay, C. and Hoekman, B. (2020). Value Chain Approaches to Reducing Policy Spillovers on International Business. *Journal of International Business Policy*. Last accessed on 6 of January 2021 from: <https://doi.org/10.1057/s42214-020-00083-5>.

associated standards have broad support and ideally have been agreed internationally. As there is no WCO-analogue for investment facilitation, this implies proponents must engage with the VSS/CSR/international business communities.

At the international level consideration could be given to establishing an open 'knowledge platform' to support engagement by the epistemic community concerned with facilitation of investment and learning from implementation experience. This would again need to be a multi-stakeholder initiative. Some of the elements already exist, and a platform can build on the activities and knowledge products provided by WAIPA, UNCTAD, the World Bank and organisations with a country presence dealing with investment matters.

7. If – as seems likely – the investment facilitation talks result in an IFF4D that is plurilateral, encompassing a subset of the WTO membership, ideally this should take the form of an open plurilateral agreement (OPA) – one where commitments are applied on a most-favoured-nation basis; countries that want to join at a later date can do so on the same basis as original signatories; incumbents commit to providing technical assistance not only to developing country signatories but also to countries that initially stay out but want to join later; and the operation of the arrangement is made transparent through open access to documents, meetings and periodic reporting on activities by the WTO secretariat. Committing to a code of conduct that is an integral part of the IFF4D and lays out such principles will ensure that any plurilateral agreement is not detrimental to no signatories.<sup>40</sup> Given the absence of any market access liberalisation dimension and related enforcement mechanisms (including investor-state dispute settlement) there is no reason why an IFF4D cannot become a truly multilateral agreement that is signed by all WTO members. Putting in place mechanisms to support such an outcome will help to realise it.

8. Finally, independent monitoring and evaluation (M&E) of the development impact of an IFF4D should be incorporated into the agreement. Insofar as the IFF4D includes provisions on CSR and sustainability, baseline information will need to be collected to complement specific investment facilitation indicators to permit assessment of progress in improving both facilitation performance and attaining sustainable development objectives. Given that the investment facilitation talks are aimed at identifying a framework for cooperation that will support sustainable development, and that there is less in the way of an established knowledge base and experience with investment facilitation, an important role that can be played by the WTO Secretariat is to put in place a platform that helps to incentivise collection of data on applied investment facilitation measures and that is a repository for relevant work undertaken by other international organisations as well as independent research and analysis of the impacts of investment facilitation efforts. While the WTO has a trade policy monitoring mandate, this is limited to periodic Trade Policy Review reports and associated discussion among WTO members. The Secretariat does not assess the impacts of national policies. Although development practitioners devote much effort to evaluation of projects and programs, the 'E' in M&E is missing when it comes to WTO

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<sup>40</sup> Hoekman, B. and Sabel, C. (2019). Open Plurilateral Agreements, International Regulatory Cooperation and the WTO, *Global Policy*, 10(3), 297-312.

practice, reducing opportunities to learn from experience. An IFF4D could help to change this stylised fact, in the process showing how a domain-specific agreement can help to move the WTO to become more relevant from a sustainable development perspective.

## V. CONCLUDING REMARKS

There are similarities between trade facilitation and investment facilitation, notably the limited salience of cross-border spillovers ('terms-of-trade' effects) and the resulting nature of cooperation: agreeing on what constitutes good practice and assisting those countries that want to realise these do so. But there are also important differences between investment facilitation and trade facilitation. We conclude with a brief recap of key findings.

1. The TFA covers only goods and builds explicitly on already existing provisions in the General Agreement on Tariffs and Trade (GATT) that had a trade facilitation dimension. Investment facilitation spans all sectors, both goods and services. There are provisions in the GATT and the GATS that have a bearing on investment policy, but the facilitation dimension is much weaker than for trade in goods. Thus, there is less to build on. This provides an opportunity for crafting a plurilateral agreement that is 'fit for purpose' as opposed to having to be retrofitted to provisions in extant WTO agreements as was the case for the TFA.
2. The epistemic community that is concerned with investment facilitation is nascent and more diffused than the one that supported the TFA. Because there is no WCO analogue for investment facilitation, and thus less of a common understanding of what constitutes good practice, negotiators confront more of a challenge in defining/agreeing on the substance of a potential agreement, how to measure investment facilitation performance, and to understand what is needed to improve it. The implication is a need to focus on generating relevant indicators and supporting analysis to determine what to prioritise. Such work needs to be encouraged by participants in the JSI deliberations, not only to help determine the contours of an agreement but to be able to monitor and assess progress over time in attaining investment facilitation and sustainable development objectives.
3. Investment facilitation has both a central government and a sub-national dimension. This makes effective investment facilitation more difficult than trade facilitation, as the trade facilitation agenda is centred mostly around what happens at the border. Investment facilitation calls for coordination within a country as well as cooperation across countries to exchange information and learn from national experience. As a result, the design of NTFC analogues mandated to support national implementation of an IFF4D agreement must encompass relevant entities across and within the country.
4. The TFA has no CSR dimension and no focus on sustainability considerations. There are nonetheless dimensions of the TFA that are relevant if an IFF4D includes provisions targeting sustainability goals, including the use of AEO public-private partnerships and risk-based enforcement. A necessary condition for the design of such approaches is to establish applicable



standards. In the case of the TFA negotiators could refer to and use international standards set by the WCO and UN bodies (e.g., UNECE). Investment facilitation negotiators have less to build on. Engaging with actors that have knowledge of and an interest in sustainability should therefore be part of the equation. Multi-stakeholder partnership approaches have emerged to pursue sustainability goals in a range of sectors and activities. The extent to which these can serve to support sustainable development in the investment facilitation context requires analysis and deliberation.

5. The TFA could be and was supported by the broader 'aid for trade' initiative. Donors opposed earmarking of assistance for trade facilitation and instead have worked with (incentivised) international organisations and their national development agencies to assist in TFA implementation. The ODA funding environment today is less supportive than that prevailing when the TFA was being negotiated. With the donor community focused on achieving the SDGs, it is particularly important that an IFF4D will be designed to support sustainable development to mobilise assistance for implementation of provisions that require investments.
6. Only a subset of the WTO membership is participating in the JSI talks on an IFF4D. Although the number of members engaging in the group has expanded to 106 it is likely that not all WTO members will sign an agreement. This makes it important to consider the multilateral governance framework that will apply if it is decided – as advocated above – to make an IFF4D an open plurilateral agreement.



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