

# INVESTMENT FACILITATION IN RECENT INTERNATIONAL INVESTMENT AGREEMENTS

The WTO Agreement on Investment Facilitation for Development  
The African Continental Free Trade Area Protocol on Investment  
The ASEAN Investment Facilitation Framework  
The Angola–European Union Sustainable Investment Facilitation  
Agreement

*Federico Ortino*

## About the paper

This paper was prepared within the framework of a project on “[Investment Facilitation for Development](#)”, implemented by the International Trade Centre. The project supports the World Trade Organization Investment Facilitation for Development Agreement negotiations by building negotiation capacity in developing and least developed countries, channelling ground-level and analytical expertise to negotiators and promoting public discussions of issues related to investment facilitation for development. The results of this project are also relevant for bilateral and regional negotiations dealing with investment facilitation, as well as for the efforts of individual countries seeking to attract sustainable foreign direct investment.

*Disclaimer: The views and opinions expressed in this paper are those of the author and do not necessarily reflect the views of the International Trade Centre.*

**Publisher:** International Trade Centre (ITC)

**Title:** Investment Facilitation in Recent International Investment Agreements

**Publication date and place:** Geneva, September 2024

**Page count:** 23

**Language(s):** English

**Citation:** Oritino, F. (2024). *Investment Facilitation in Recent International Investment Agreements*. International Trade Centre, Geneva, Switzerland.

For more information, contact: Quan Zhao, Senior Programme Officer, Division for Market Development, ITC, [zhao@intracen.org](mailto:zhao@intracen.org)

For more information on ITC's project on Investment Facilitation for Development, see <https://www.intracen.org/itc/Investment-Facilitation-for-Development/>

ITC encourages the reprinting and translation of its publications to achieve wider dissemination. Short extracts of this paper may be freely reproduced, with due acknowledgement of the source. Permission should be requested for more extensive reproduction or translation. A copy of the reprinted or translated material should be sent to ITC.

© International Trade Centre (ITC)

ITC is the joint agency of the World Trade Organization and the United Nations Conference on Trade and Development

## Acknowledgements

The author would like to thank Chuwankorn Sasanabanchakul (Project Officer, ITC), Karl P. Sauvart (Senior Advisor, ITC) and Quan Zhao (Senior Programme Officer, ITC) for their useful comments.

## About the author

Federico Ortino is Co-Director of the Centre for International Governance and Dispute Resolution (CIGAD) and Professor of International Economic Law at King's College London. He joined King's in 2007. He is a member of the ILA Committee on the Rule of Law and International Investment Law; founding Committee Member (and former co-Treasurer) of the Society of International Economic Law; consultative member of the Investment Treaty Forum; editorial board member of the *Journal of International Economic Law*; *Journal of International Dispute Settlement*, *Journal of World Investment and Trade*; and series editor of *Studies in International Trade and Investment Law* with Hart Publishing. He is a Consultant to Clifford Chance.

## Contents

INTRODUCTION.....	6
A. OBJECTIVES AND SCOPE .....	8
B. KEY INVESTMENT FACILITATION DISCIPLINES .....	10
<i>I. Transparency</i>	10
<i>II. Streamlining and Simplification of Administrative Procedures</i>	12
<i>III. Investment Assistance Services</i>	14
<i>IV. Regulatory Coherence</i>	15
<i>V. Sustainable Investment</i>	16
C. INSTITUTIONS, IMPLEMENTATIONS AND DISPUTE SETTLEMENT ....	19
CONCLUDING REMARKS .....	20

## Acronyms

AfCFTA	African Continental Free Trade Area
ASEAN	Association of Southeast Asian Nations
ASEAN IFF	ASEAN Investment Facilitation Framework
Angola – EU SIFA	Angola–European Union Sustainable Investment Facilitation Agreement
CIFA	Cooperation and Investment Facilitation Agreement
CSR	Corporate social responsibility
DSU	Dispute settlement understanding
FDI	Foreign direct investment
IDB	Inter-American Development Bank
IFD	Investment facilitation for development
IAs	International investment agreements
JSI	Joint Statement Initiatives
ITC	International Trade Centre
ISDS	Investor-State dispute settlement
IP	Protocol on Investment
LDC	Least developed country
MSME	Micro, small and medium size enterprise
OECD	Organisation for Economic Co-operation and Development
RBC	Responsible business conduct
RCEP	Regional Comprehensive Economic Partnership
SDT	Special and differential treatment
UN	United Nations
WTO	World Trade Organization

## INTRODUCTION

In the past ten years, there has been a growing reliance on ‘investment facilitation’ as an approach to attract foreign direct investment (FDI). Investment facilitation focuses on improving the investment climate within a country, rather than protecting investors' rights, improving market access or affording investor-State dispute settlement (ISDS). These three elements, in fact, are explicitly carved out in some international investment agreements, such as the World Trade Organization's (WTO) Agreement on Investment Facilitation for Development (IFD). Instead, investment facilitation involves such technical measures as increasing transparency, streamlining administrative procedures by reducing red tape, providing one-stop shops for investors, and enhancing digital infrastructure. Investment facilitation aims to make the investment process smoother, more efficient and more transparent. By focusing on creating a favourable business environment, countries can attract investment more effectively without compromising their regulatory sovereignty.

Furthermore, investment facilitation complements investment liberalization by addressing the operational challenges that foreign investors face within a country. It acknowledges that, even in liberalized markets, investors encounter bureaucratic hurdles, legal complexities and logistical difficulties. By improving the ease of doing business and providing a supportive ecosystem, investment facilitation ensures that investors can navigate the local environment more effectively, leading to higher FDI inflows, as well as greater investment retention. Some of the key reasons for supporting investment facilitation include: (i) to enhance a country's competitiveness in the global market; (ii) to contribute to job creation and economic growth; (iii) to diversify host States' sources of FDI; and (iv) to attract innovation and technology.

While the concept of ‘investment facilitation’ was introduced in the new investment treaties signed by Brazil in 2015, aptly titled ‘Cooperation and Investment Facilitation Agreement’, investment facilitation has been included in several other bilateral, regional and multilateral negotiations ever since. The present comparative study focuses on the following four international instruments:

1. The WTO Agreement on Investment Facilitation for Development (IFD) (the Agreement was finalised in November 2023 and parties published the Agreement's text on 25 February 2024; integration into the WTO's legal framework is pending; not yet in force);
2. The African Continental Free Trade Area (AfCFTA) Protocol on Investment (IP) (adopted on 19 February 2023; ratification is in progress; not yet in force);
3. The ASEAN Investment Facilitation Framework (IFF) (adopted in 2021); and
4. The Angola–European Union Sustainable Investment Facilitation Agreement (SIFA) (negotiations were concluded on 18 November 2022, and parties signed the Agreement on 17 November 2023; entered into force on 1 September 2024).<sup>1</sup>

While the ASEAN IFF is a non-binding instrument based on voluntary actions, all three other instruments, while not all yet in force, include international obligations. Moreover, differently from the other instruments under review that include exclusively investment facilitation provisions,<sup>2</sup> the AfCFTA IP is part of a broader, continent-wide economic integration agreement that also seeks to establish a harmonized investment framework for intra-African investment; the AfCFTA IP hence covers matters beyond investment facilitation.

---

<sup>1</sup> The EU is expected to negotiate more of such agreements.

<sup>2</sup> The WTO IFDA expressly excludes the ability of the Agreement to create new or modify existing disciplines on market access, investment protection and investor-State dispute settlement. See Article 2.2.

This paper seeks to identify similarities and differences among these four instruments with regard to ‘objectives and scope’ (section A), ‘key investment facilitation disciplines’ (section B) and ‘institutions, implementation and dispute settlement’ (section C).

## A. OBJECTIVES AND SCOPE

The preambles of the four investment facilitation instruments under review identify various rationales underlying these instruments. First, they all expressly recognise the importance of investment facilitation as a tool to attract and retain FDI, stressing in particular the need to create a transparent and facilitative investment environment. For example, the preamble to the ASEAN IFF recognises “the importance of investment facilitation as an essential pillar of investment that contributes to the retention and growth of investments in a country, through the creation of an enabling environment that facilitates investors in establishing, operating and expanding their investments and businesses”.<sup>3</sup>

Moreover, the EU-Angola SIFA, the AfCFTA IP and the WTO IFDA (but not the ASEAN IFF) expressly emphasise the link between investment and investment facilitation in particular, and the aim of promoting sustainable development, as expressed in the United Nations 2030 Sustainable Development Goals. For example, in the preamble to the EU-Angola SIFA, the Parties underline their cooperation with “the aim of promoting sustainable development” and recognise that “investment can support sustainable development, economic growth, diversification of economic activities, and contribute to the achievement of the goals defined under the United Nations 2030 Agenda for Sustainable Development”.<sup>4</sup>

The Preambles to the WTO IFDA and the EU-Angola SIFA recognise the importance of “technical assistance and capacity building” for the implementation of the Agreement, while the AfCFTA IP emphasises “the different levels of development of the State Parties and the challenges they may face in the adoption and implementation of this Protocol and other related investment policies”. The WTO IFDA, AfCFTA IP and EU-Angola SIFA recognise the right of the Parties to regulate in the public interest within their territories so as to meet their policy objectives.<sup>5</sup>

---

<sup>3</sup> See also the WTO IFDA stating that “[t]he purpose of this Agreement is to improve the transparency of measures, streamline administrative procedures, adopt other investment facilitation measures and promote international cooperation, as a means of facilitating the flow of foreign direct investment between the Parties, particularly to developing and least-developed country Parties, with the aim of fostering sustainable development.” (Article 1: Objectives). See also Article 1 Objectives of the EU-Angola SIFA.

<sup>4</sup> See also the Preamble to the AfCFTA Investment Protocol “recalling the 2030 Agenda for Sustainable Development” and “recognising the significant contribution investment can make to the sustainable development of the State Parties, including the reduction of poverty, and the furtherance of investment-related human rights and human development while understanding that sustainable development requires the fulfilment of its economic, social and environmental pillars”.

<sup>5</sup> For example, the Preamble to the AfCFTA IP reaffirms “the inherent right of State Parties to regulate in their territories and to introduce measures in order to achieve their national public policy objectives, promote sustainable development objectives and protect legitimate public welfare objectives, such as public health, national security, the environment, the conservation of living and non-living exhaustible natural resources, labour standards, the integrity and stability of the financial system and public morals”. Article 2.2 of the EU-Angola SIFA states that “[t]he Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment, including climate change, public morals, social protection, consumer protection, privacy and data protection, and the promotion and protection of cultural diversity.”



**Table 1: Preambular statements**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
Increase FDI	V	V	V	V
Sustainable development	V		V	V
Sustainable FDI/RBC	V			V
Right to regulate	V			V
Technical assistance	V		V	
Special & differential treatment	V			V

With regard to the scope of application, the four instruments under review apply to a variety of State measures relating or affecting (foreign) investment, which usually include laws, regulations, procedures, and administrative actions adopted or maintained by central, regional or local governments or authorities, as well as non-governmental bodies in the exercise of powers delegated to them by such governments or authorities.<sup>6</sup> Two of the four instruments (AfCFTA IP, WTO IFDA), however, qualify the scope by clarifying that each Party shall take “reasonable steps” to ensure that regional and local governments and authorities and relevant non-governmental bodies comply with obligations and commitments under those instruments.

More interestingly, with regard to the subject matter scope of application of the four instruments under review, there appears to be an overall focus on ‘foreign direct investment’. The AfCFTA IP provides the clearest example of such a focus, as it opts for an enterprise-based definition,<sup>7</sup> and it expressly excludes from its scope ‘portfolio investment’ (defined as “investment that does not give the investor the possibility to exercise effective management or influence in the management of the enterprise”). In this respect, it is worth noting two novel features adopted by the AfCFTA IP, as it requires that a covered enterprise “maintains substantial business” in the territory of the host State and that the covered investment, in addition to the usual characteristics (such as commitment of capital, and expectation of gain or profit) must have “a significant contribution to the Host State’s sustainable development”.<sup>8</sup> The definition of ‘investment’ in the AfCFTA IP also includes the so called ‘legality requirement’.<sup>9</sup>

While the WTO IFDA does not contain a definition of ‘investment’ as in the AfCFTA IP, it also focuses its subject matter scope of application on ‘foreign direct investment’, as it expressly links its scope to the “aim of facilitating foreign direct investment” (Art 2.1).<sup>10</sup>

<sup>6</sup> See Articles 2 and 3 of the EU-Angola SIFA, in particular the definitions of ‘measure’ and ‘measure of a Party’; Articles 1 and 3.3 of the AfCFTA IP, in particular the definition of ‘measures’ (“Measures’ include any regulatory, administrative, legislative, judicial or policy decision that is taken by the Host State, relating to or affecting an investment in the Host State”); Articles 2.1, 2.3 and 3 of the WTO IFDA, in particular the definition of ‘measure’ (“‘measure’ means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form”). The ASEAN IFF, which does not contain express provisions on defining the scope of application, takes a slightly narrower approach as it states in a footnote that “[f]or purposes of this Framework, ‘measures’ refers to laws, regulations and administrative guidelines of general application.” See footnote 1.

<sup>7</sup> Article 1 states in the relevant part: “‘Investment’ means an enterprise or company, as defined in this Article, which is established, acquired or expanded in conformity with the laws and regulations of a Host State by an investor”.

<sup>8</sup> Such greater clarity with regard to the subject-matter scope is not particularly surprising in light of the overall broader scope of the AfCFTA IP, which includes investment protection commitments.

<sup>9</sup> See the reference to “in conformity with the laws and regulations of a Host State” in Article 1.

<sup>10</sup> See also the reference to ‘foreign direct investment’ in Article 1 IFDA on Objectives and in the Joint Ministerial Declaration on 29 February 2024, WT/MIN(24)/17/Rev.1.

The WTO IFDA and EU-Angola SIFA define the subject matter scope of application by focusing on the kind of activities undertaken by foreign investors. The former provides that the Agreement “applies to measures adopted or maintained by a Party relating to investment activities of investors of another Party” (Art 2.1 WTO IFDA), and ‘investment activities’ are defined to mean “the establishment, acquisition, expansion, operation, management, maintenance and sale or other disposal of an investment” (Art 3(a) WTO IFDA). Similarly, the EU-Angola SIFA expressly provides that the agreement “applies to measures adopted or maintained by the Parties affecting investment” (Art 2(1)), where ‘investment’ is defined to mean “the establishment and operation to perform economic activities by investors of one Party in the territory of the other Party” (Art 3(7)), where ‘economic activities’ mean “any activity of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority” (Art 3(4) EU-Angola SIFA).

Finally, the WTO IFDA and the EU-Angola SIFA include express subject-matter exclusions from the scope of application, such as ‘government procurement’ and ‘subsidies’.<sup>11</sup>

**Table 2: Scope of application**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
Focus on definitions of ‘investment’ & ‘investor’				V
Focus on ‘investment activities’	V		V	
Legality requirement				V
Local government measures are covered	V	V	V	V
Express exclusions (i.e., subsidies, gov. procurement, taxation)	V			V

## B. KEY INVESTMENT FACILITATION DISCIPLINES

Investment facilitation disciplines found in the four international instruments under review may be divided in the following five discrete categories: (1) transparency, (2) streamlining and simplification of administrative procedures, (3) investment assistance services, (4) regulatory coherence, and (5) sustainable investment.

### I. Transparency

All four instruments under review include provisions requiring to publish or make otherwise publicly available, including via electronic means, relevant measures of general application falling within the scope of the underlying instrument.<sup>12</sup> With the exception of the ASEAN IFF, which is a non-legally binding framework, these transparency provisions are generally drafted in binding form (“shall publish”).

Furthermore, the WTO IFDA and the EU-Angola SIFA go further by expressly identifying some of the specific investment-related ‘measures’ or ‘information’ that shall be made publicly available. For

<sup>11</sup> See Article 2.5 WTO IFDA and Article 3.4 AfCFTA IP.

<sup>12</sup> The exception is the ASEAN IFF, which does not expressly refer to online publication; but it does encourage “the publication of measures adopted or maintained by Member States related to investments through a single digital platform” (Art 4.3).

example, Article 7 WTO IFDA requires to promptly publish (including via electronic means) and keep updated “the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing” any investment authorization and such information shall include any relevant ‘requirements’, ‘forms’, ‘procedures’, ‘timeframes’ and ‘fees’.<sup>13</sup> Article 12 WTO IFDA also has specific publication requirements with regard to information on the entry and temporary stay of natural persons for the purpose of conducting investment activities. With regard to the EU-Angola SIFA, Article 10 requires to make available via electronic means (such as a website), and keep updated, information (such as legal basis, form, eligibility, application process) on all the incentives available to investors, including financial and fiscal incentives, as well as in-kind transfers, while Article 11 encourages each Party to make available “information on domestic suppliers with the view to strengthening linkages with the local economy”. All these additional requirements are also backed up by provisions in the two instruments encouraging the setting up of a ‘single information portal’ (Art 8 WTO IFDA and Art 9 and 10 EU-Angola SIFA).

The WTO IFDA and EU-Angola SIFA also provide for express requirements (i) to publish “in advance” investment-related laws, regulations, procedures, and administrative rulings of general application (Art 10 IFDA and Art 8 SIFA), (ii) to provide investors and other interested persons a “reasonable opportunity to comment” on proposed measures (Art 10.3 IFDA and Art 8.3 SIFA) and (iii) to explain the purposes and rationale of laws and regulation of general application (Art 6.3 IFDA and Art 8.5 SIFA). However, these additional requirements are often subject in both agreements to the following two conditions: “to the extent practicable” and “in a manner consistent with [the Party’s] legal system”.

Furthermore, all four instruments under review (i) envisage the need to provide for a mechanism (such as a focal point) to answer enquiries from governments, investors and other interested parties<sup>14</sup> and (ii) include an exception guaranteeing the parties’ ability to safeguard ‘confidential information’.<sup>15</sup>

**Table 3: Transparency**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
Publication	V	V	V	V
Online publication	V		V	V
Single information portal	V		V	
Publication in advance and opportunity to comment	V		V	
Specific publication requirement: Authorization (A) & Business (B) visas & Incentives (C)	A & B		A & I	
Enquiry points	V	V	V	V
Confidential information	V	V	V	V
Domestic supplier database			V	

<sup>13</sup> See also Article 12 WTO IFDA on “Information to be Made Publicly Available on the Entry and Temporary Stay of Natural Persons for the Purpose of Conducting Investment Activities”.

<sup>14</sup> See Article 22.1(a) WTO IFDA, Article 1.2 ASEAN IFF, Article 22.2 EU-Angola SIFA, Articles 9 and 11 AfCFTA.

<sup>15</sup> See Article 40 WTO IFDA, Article 1.1.3 ASEAN IFF, Article 12 EU-Angola SIFA, Article 11 AfCFTA.

## II. Streamlining and Simplification of Administrative Procedures

While ‘streamlining’ of administrative procedures is a common feature in all four international instruments under review, only the WTO IFDA, the ASEAN IFF and the EU-Angola SIFA provide various and detailed provisions on ‘streamlining’. The AfCFTA IP only includes the following, general and best-endeavour provision: “State Parties are encouraged to streamline investment administration procedures and requirements, establish mechanisms for business entry facilitation including setting up One Stop Shops, aftercare services and digitalisation of business facilitation procedures” (Art 7.3).

Moreover, despite the general references to ‘administrative’ procedures and requirements found in several of the international instruments under review (i.e., WTO IFDA, ASEAN IFF, AfCFTA IP), the specific focus of investment streamlining is principally on the ‘authorization of investment’.<sup>16</sup> However, authorization is usually defined broadly to include “a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements”.<sup>17</sup>

Streamlining disciplines contained in the WTO IFDA, the ASEAN IFF and the EU-Angola SIFA all include the following four key provisions.

- Provisions setting **general principles** that any authorization procedure and requirement need to comply with. For example, the EU-Angola SIFA provides that measures relating to authorizations need to be “based on clear, objective, and transparency criteria” (such as the competence and ability to pursue the authorised economic activity) and that authorization procedures need to be “impartial, easily accessible to all applicants, and adequate to allow applicants to demonstrate whether they meet the requirements”.<sup>18</sup> The ASEAN IFF sets out instead the following two more general guiding principles: (i) “that investment procedures do not act as barriers to the ability of investors to invest” (Art 2.2) and (ii) “that investment procedures and documentation requirements are applied in a manner that does not unduly incur more time and cost than necessary to fulfil the respective Member State’s policy objectives” (Art 2.3).
- A set of specific **procedural requirements** focusing on the simplification of the various phases of the authorization process, including (i) when applications can be received, (ii) acceptance of electronic applications and copies of authenticated documents, (iii) timeframes within which applications should be processed, (iv) how to address incomplete applications, and (v) in case the application is rejected, providing reasons for the rejection and the timeframe for an appeal.<sup>19</sup> All three instruments also require Parties, to the extent practicable, to “avoid requiring an applicant to approach more than one competent authority for each application for authorisation”.<sup>20</sup>
- Provisions addressing **authorization fees**, in particular requiring that any fee charged by the competent authority is “reasonable and transparent”, “do not in themselves restrict the investment” and can be paid online.<sup>21</sup>
- Provisions requiring **independent decision making**, or, in other words, that the authority processing an authorization application reaches its decision “in a manner independent from”

---

<sup>16</sup> Interestingly, the EU-Angola SIFA expressly limits the scope of its investment streamlining provisions to “measures of the Parties relating to the authorization of investment” (Art 13).

<sup>17</sup> Article 3(2) EU-Angola SIFA.

<sup>18</sup> Article 21 EU-Angola SIFA. For almost identical language, see also Article 14 WTO IFDA.

<sup>19</sup> Articles 15 and 18 WTO IFDA, Articles 2.4-2.8 and 3.1-3.3 ASEAN IFF, Articles 15-17 EU-Angola SIFA.

<sup>20</sup> See Article 16 WTO IFDA, Article 4.1 ASEAN IFF, Article 14 EU-Angola SIFA.

<sup>21</sup> See Articles 17-18 WTO IFDA, Articles 2.9, 3.4, 4.5 ASEAN IFF, Article 18 EU-Angola SIFA.

any person carrying out the economic activity for which authorization is required.<sup>22</sup> In addition, the EU-Angola SIFA also requires that the competent authority reaches its decisions “objectively and impartially” (Art 19).

Most of these streamlining provisions in the WTO IFDA and the EU-Angola SIFA cast the various binding requirements as ‘obligations of conduct’ rather than ‘obligations of result’, since many of these provisions use the phrase “Parties shall ensure”. In other words, an obligation ‘to ensure’ may be interpreted as an obligation to deploy adequate means to obtain a certain result (for example, that the competent authorities accept authorization applications in electronic format), rather than as an obligation to achieve, in each and every case, such a result. Such a characterisation is strengthened by the fact that these provisions often condition the various streamlining requirements “to the extent practicable”.

Finally, the streamlining sections of the three above-mentioned international instruments also contain provisions going beyond authorization procedures. For example, the WTO IFDA and the ASEAN IFF require the Parties to ensure that all measures of general application within the scope of each agreement “are administered in a reasonable, objective and impartial manner” (Art 13 and Art 2.1, respectively). This provision mirrors similar provisions in WTO law, which have been interpreted not to apply to the measures of general application *themselves*, but rather to the *administration* of those measures.<sup>23</sup>

Furthermore, all three instruments encourage the Parties to periodically review measures of general application, including those relating to administrative procedures and requirements, to determine whether any such measure should be modified, streamlined, expanded, or repealed so as to make the investment regime more effective in achieving each Party’s policy objectives.<sup>24</sup>

Interestingly, the ASEAN IFF and the AfCFTA IP have provisions aimed at facilitating the temporary entry and stay of business persons for investment purposes by encouraging, inter alia, “expeditious processing of applications concerning the temporary entry and stay of business persons for investment purposes within a reasonable period of time” (Art 7.3 ASEAN IFF) and by requiring Parties, subject to their respective laws and regulations, to “facilitate the granting of visas and permits to foreign workers, employees and consultants as designated by the investor” (Art 7.2 AfCFTA IP).<sup>25</sup>

---

<sup>22</sup> See Article 19 WTO IFDA, Article 6 ASEAN IFF, Article 19 EU-Angola SIFA.

<sup>23</sup> See Article X:3 GATT and Appellate Body Report, *EC—Bananas III*, 1997, para 200: “The text of Article X:3(a) clearly indicates that the requirements of ‘uniformity, impartiality and reasonableness’ do not apply to the laws, regulations, decisions and rulings *themselves*, but rather to the *administration* of those laws, regulations, decisions and rulings.”

<sup>24</sup> See Article 21 WTO IFDA, Article 2.10 ASEAN IFF, Article 26 EU-Angola SIFA.

<sup>25</sup> As noted above, the WTO IFDA provision on business visa only focuses on making available online relevant information on the requirements and procedures for entry and temporary stay (Article 12).

**Table 4: Streamlining of authorization procedures**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
General principles/objectives	V	V	V	V
Procedural requirements (including online submission)	V	V	V	
Multiple applications	V	V	V	
Fees (including electronic payment)	V	V	V	
Independent decision making	V	V	V	
Periodic review	V	V	V	
Granting visas to business persons		V		V

### III. Investment Assistance Services

All four international instruments under review include provisions aimed at assisting investors. The most common way these instruments do this is by requiring the establishment of ‘focal points’ or other appropriate mechanisms, which may be entrusted with certain specific functions. One set of assistance functions attributed to such mechanisms is to respond to enquiries from investors and to assist investors in obtaining relevant information (Art 22.1 WTO IFDA, Art 22 EU-Angola SIFA, Art 9 AfCFTA IP).

A second set of assistance functions is to receive complaints raised by investors relating to government policies and activities impacting their investments and to assist in resolving difficulties or problems of investors (Art 5.1 ASEAN IFF, Art 22.3 WTO IFDA, Art 23.1 EU-Angola SIFA). Interestingly, only the ASEAN IFF expressly links the latter assistance function to the broader objective of “preventing disputes” and helping “investors in amicably resolving complaints or grievances with government bodies that have arisen during their investment activities” (Art 5.1). However, one can see an implicit link between this investment assistance function and dispute prevention.

Moreover, while not included as part of its investment facilitation provisions, the AfCFTA IP does provide for a general obligation on the State Parties, through their designated competent bodies, to “facilitate the prevention of disputes and management of grievances”, for example by “receiving complaints or grievances from investors in relation to their investments” or by “providing effective assistance in resolving difficulties experienced by investors and their investments in such a manner as to avoid disputes” (Article 45).

A third function that has been attributed to investment assistance mechanisms, at least in the WTO IFDA and ASEAN IFF, is “to make recommendations addressing recurrent issues affecting investors to each Member State’s competent authorities” (Art 5.2 ASEAN IFF).

All four international instruments under review include provisions encouraging (or at least envisaging) the adoption by contracting parties of measures aimed at strengthening the linkages

between investors and domestic suppliers through, for example, the establishment of ‘domestic supplier databases’ or the implementation of ‘supplier-development programmes’.<sup>26</sup>

Finally, all the various assistance provisions are often written in strictly binding language (“shall establish”),<sup>27</sup> but at times some adopt a softer approach (“shall endeavour to establish” or “Parties are encouraged to”).<sup>28</sup>

**Table 5: Investment assistance services**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
Establishment of focal points/ or appropriate mechanisms:	✓		✓	✓
- respond to enquiries and provide information	✓		✓	✓
- provide support				✓
- provide assistance in resolving problems/ receive complaints	✓	✓	✓	✓
- recommend measures to improve	✓	✓		
Strengthening linkages between investors and domestic suppliers	✓	✓	✓	✓

#### IV. Regulatory Coherence

While there is no clear definition of ‘regulatory coherence’, one can use this umbrella concept to cover various strategies aimed at improving domestic regulatory processes and, in turn, facilitate the flow of trade and investment. Regulatory coherence may refer to ‘transparency and public consultation’, ‘regulatory impact assessments’, ‘interagency coordination’, and ‘periodic review of existing regulation’.<sup>29</sup> All four international instruments under review contain at least some of these strategies, although only the WTO IFDA and EU-Angola SIFA expressly refer to the term ‘regulatory coherence’ as such.

With the exception of some of the ‘transparency’ provisions, all other ‘regulatory coherence’ provisions contained in the four international instruments under review are principally casted in best endeavour language (“each Party is encouraged”). Moreover, the EU-Angola SIFA expressly excludes its ‘regulatory coherence’ provisions from the scope of the chapter on ‘dispute avoidance and settlement’ (Art 27).

As noted above in the section on transparency, both the WTO IFDA and EU-Angola SIFA include provisions on ‘**public consultation**’, in particular requiring Parties to (i) publish “in advance”

<sup>26</sup> See Articles 24 and 25 WTO IFDA. See also Article 11 EU-Angola SIFA (“Each Party is encouraged to make available to investors and persons seeking to invest in its territory information on domestic suppliers with a view to strengthening linkages with the local economy, increasing the competitiveness of domestic suppliers and enhancing the contribution of investment to sustainable development.”); Article 28 AfCFTA IP (“[...] State Parties may introduce measures to promote domestic development including local content [...]. Measures covered under this Article include among others: [...] b. supporting the development of local entrepreneurs and to establish linkages with local firms, supply chains, industries and institutions with a view to strengthening local capabilities”); Article 8 ASEAN IFF (“Assist investors in identifying investment supporting factors such as labour force, funding sources, domestic suppliers and business matchmaking opportunities.”).

<sup>27</sup> See Article 22.1 WTO IFDA.

<sup>28</sup> See Article 23.1 EU-Angola SIFA or Articles 24-25 WTO IFDA.

<sup>29</sup> See, for example, Chapter 25 on ‘Regulatory Coherence’ of the 2018 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

investment-related laws, regulations, procedures and administrative rulings of general application (Art 10 IFDA and Art 8 SIFA) and (ii) provide investors and other interested persons a “reasonable opportunity to comment” on proposed measures (Art 10.3 IFDA and Art 8.3 SIFA). Even more broadly, Article 9.1 ASEAN IFF encourages Parties to set up mechanisms “for regular consultation and dialogue with interested stakeholders, including investors and private sector bodies, with the view to soliciting updates and inputs on their business and investment facilitation needs and challenges.”

Both the WTO IFDA and EU-Angola SIFA include provisions on ‘**regulatory impact assessments**’. These provisions focus on ‘major’ regulatory measures that each party is preparing (Art 23.1 IFDA and Art 25.2) and expressly specify that such impact assessments should consider the potential impact of proposed measures on micro, small and medium sized enterprises (MSMEs). The EU-Angola SIFA also specifies that, when conducting the impact assessment, the proposed measure’s potential impact “on sustainable development” should be taken into account (Art 25.3).

The WTO IFDA, EU-Angola SIFA and AfCFTA IP include provisions encouraging ‘**interagency coordination and cooperation**’, which entails coordination and cooperation among domestic authorities to “facilitate investment”, and/or to “encourag[e] regulatory coherence and predictability of government measures and procedures”.<sup>30</sup> Article 24.3 of the EU-Angola SIFA, in order to facilitate coordination, specifically encourages each Party “to designate a lead agency in a manner consistent with its legal system.”

Finally, the WTO IFDA, ASEAN IFF, and the EU-Angola SIFA include provisions encouraging the parties to ‘**review**’ their measures of general application (falling within the scope of the relevant Agreement) to determine whether such measures should be modified, streamlined, expanded, or repealed with the aim of making the domestic investment framework more effective in achieving its policy objectives (including addressing the specific needs of MSMEs).<sup>31</sup> In carrying out such review exercises, in addition to consider ‘stakeholder feedback’, the EU-Angola SIFA also encourages each Party to “make use of relevant international performance indicators” (Art 26.3).

**Table 6: Regulatory coherence**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
Impact assessment	V		V	
Interagency coordination	V		V	V
Stakeholder participation	V	V	V	
Periodic review	V	V	V	

## V. Sustainable Investment

Of the four international instruments under review, only the WTO IFDA, EU-Angola SIFA and AfCFTA IP include provisions focusing on ‘sustainable investment’,<sup>32</sup> in line with the broader

<sup>30</sup> See Article 23.3 WTO IFDA, Article 24.1 EU-Angola SIFA and Article 7.4 AfCFTA IP.

<sup>31</sup> See for almost identical provisions Article 21.1 WTO IFDA, Article 26.1 EU-Angola SIFA and Article 2.10 ASEAN IFF. The ASEAN IFF also encourages the parties to set up “mechanisms for the regular evaluation and update of investment measures with the view to ensuring that the investment environment remains conducive and responsive to evolving business practices and needs” (Article 9.2).

<sup>32</sup> See Section VI on ‘Sustainable Investment’ of the WTO IFDA, Chapter V on ‘Investment and Sustainable Development’ of the EU-Angola SIFA, and Chapter 4 on ‘Sustainable Development-Related Issues’ and Chapter 5 on ‘Investors’ Obligations’ of the AfCFTA IP. On the contrary, the ASEAN IFF is completely silent on this front.



objective of promoting sustainable development as recognised in their respective preambles. While there are several similarities across these sustainable investment/ sustainable development-related provisions, each of the three international instruments under review adopts a specific approach when it comes to linking investment and sustainable development.

The EU-Angola SIFA imposes obligations on the contracting Parties that cover a wider set of objectives such as labour protection, environmental protection, climate change and biodiversity, forest and marine biological resources management, responsible business practices, and gender equality. For example, Article 29 of the EU-Angola SIFA requires each Party (i) “to strive to ensure ... high levels of environmental and labour protection, and ... to improve such levels”, (ii) “not to weaken or reduce the levels of protection afforded in its environmental or labour laws in order to encourage investment”, and (iii) not to “waive or otherwise derogate from ... its environmental or labour laws in order to encourage investment”.

The WTO IFDA takes another approach and imposes on the contracting parties two sets of obligations focusing on (i) encouraging investors to adopt ‘responsible business conduct’ and (ii) adopting measures to prevent and fight corruption and money laundering with respect to matters falling within the scope of the Agreement. Additionally, in the footnotes to the two obligations, the WTO IFDA indirectly refers to broader social objectives such as human rights, labour conditions and environmental protection, by making references to international instruments that pursue those objectives.<sup>33</sup>

Finally, in addition to a wider set of obligations imposed on State Parties on various sustainable development-related issues, the AfCFTA IP includes obligations imposed directly on investors on a range of issues such as ‘ethics, human rights and labour standards’, ‘environmental protection’, ‘indigenous and local communities’, ‘anti-corruption’, ‘social corporate responsibility’, and ‘taxation and transfer pricing’.<sup>34</sup>

The ‘sustainable investment’ provisions in the EU-Angola SIFA, AfCFTA IP and WTO IFDA adopt a variety of approaches with regard to the binding nature of the various obligations included therein, going from non-binding (‘Parties should’ or ‘Parties recognise the importance of’), to binding obligations of conduct (‘Investors shall endeavour’ or ‘Parties shall ensure’), to binding obligations of result (‘Investors shall comply’ or ‘Parties shall develop’). It appears however that, in these three agreements, non-binding obligations are the exception.

Moreover, while the WTO IFDA expressly excludes Parties’ recourse to dispute settlement under the WTO Dispute Settlement Understanding “for matters arising under the ‘sustainable investment’ section of the Agreement (Art 44.4), the EU-Angola SIFA and AfCFTA IP do extend their dispute settlement mechanisms to sustainable investment provisions. Interestingly, while the AfCFTA IP rules and procedures governing ‘dispute prevention, management and resolution’ still need to be developed (and to be eventually included in an annex to the Investment Protocol), it appears that the AfCFTA IP leaves open the option to develop a ‘dispute resolution’ mechanism that would be

---

<sup>33</sup> The international instruments referred to in the WTO IFDA under Article 37 on ‘Responsible Business Conduct’ are the United Nations Guiding Principles on Business and Human Rights, the International Labour Organization’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises and related due diligence guidance and in Article 38 are the United Nations Convention against Corruption done at New York on 31 October 2003, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on 21 November 1997, or the Inter-American Convention Against Corruption, done at Caracas on 29 March 1996.

<sup>34</sup> See principally Chapter 4 on ‘Sustainable Development-Related Issues’ and Chapter 5 on ‘Investors’ Obligations’ of the AfCFTA IP.

available for (and thus be activated by) both ‘an investor of a State Party’ and ‘the Host State’.<sup>35</sup> Furthermore, the AfCFTA requires State Parties to “develop rules and procedures that allow for, or do not prevent or unduly restrict, the bringing of court actions relating to the civil liability of investors in the territory of their Home States.” (Art 47.2). These provisions may be explained by the inclusion in the AfCFTA IP of several binding obligations on investors, rather than only on State Parties.

With regard to the content of the various sustainability provisions, one can make several points. First, as noted above, the EU-Angola SIFA and AfCFTA IP impose on the contracting parties obligations aimed at **labour and environmental protection** through, for example, so called ‘non-regression provisions’ (prohibiting parties from ‘lowering the level of protection’ or ‘derogating from its standards’ to encourage investment)<sup>36</sup> or ‘improvement provisions’ (requiring parties to improve the level of protection and to ensure that their domestic laws are consistent with internationally recognised standards).<sup>37</sup> In this context, both the EU-Angola SIFA and AfCFTA IP have provisions specifically requiring Parties to facilitate investment, which contributes to sustainable development, such as “investment in sustainable production and consumption, in environmental goods and services, and investment of relevance for climate change mitigation and adaptation”<sup>38</sup> or “investment of relevance for a fair and just transition in sectors such as renewable energy, low-carbon technologies” or “investment in the public sector”.<sup>39</sup>

Second, the WTO IFDA, the EU-Angola SIFA and the AfCFTA IP include provisions on **responsible business conduct (RBC)** and/or **corporate social responsibility (CSR)**, requiring the contracting parties to promote or encourage the uptake of RBC/CSR standards by investors and enterprises.<sup>40</sup> However, the AfCFTA IP also imposes an obligation directly on “investors and their investments ... to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices”, in accordance with certain CSR principles and standards, which are specified in the protocol (Art 38.3). Interestingly, only the WTO IFDA and EU-Angola SIFA make express reference to various international soft instruments, such as the OECD Guidelines for Multinational Enterprises or the UN Guiding Principles on Business and Human Rights.<sup>41</sup>

Third, the AfCFTA IP and EU-Angola SIFA in particular include certain sustainable development provisions that are not often found in recent international investment agreements, including a provision on ‘investment and gender equality’ (Art 35 EU-Angola SIFA), ‘human resources development’ (Art 29 AfCFTA IP), ‘transfer of technology’ (Art 30 AfCFTA IP), and ‘taxation and transfer pricing’ (Art 40 AfCFTA IP).

Finally, the WTO IFDA encourages the Parties to implement supplier-development programmes, aimed at “strengthening the capabilities of local suppliers, especially MSMEs, to meet sourcing demands of investors of another Party.”<sup>42</sup>

---

<sup>35</sup> Article 46.2 states: “[...] in the event that an investor of a State Party and the Host State are unable to amicably resolve the dispute in accordance with Paragraph 1, *they may seek to resolve such dispute* in accordance with the dispute resolution mechanisms to be provided in the Annex referred to in Paragraph 3” [emphasis added].

<sup>36</sup> See Article 29.3-5 EU-Angola SIFA; Article 25.2 AfCFTA IP.

<sup>37</sup> See Articles 29.1-2, 30 and 31 EU-Angola SIFA; Article 25.1 AfCFTA IP.

<sup>38</sup> Article 33.1 EU-Angola SIFA.

<sup>39</sup> Articles 26(c) and 27.2 AfCFTA IP.

<sup>40</sup> See Article 37.1 WTO IFDA; Article 34.2 EU-Angola SIFA; and Article 38.3 AfCFTA IP.

<sup>41</sup> See Footnote 42 to Article 37.1 WTO IFDA and Article 34.3 EU-Angola SIFA. Interestingly, Article 39.6 WTO IFDA specifically requires the WTO Committee on Investment Facilitation to maintain “close contact with relevant international organizations in the field of responsible business conduct.”

<sup>42</sup> See Article 25 WTO IFDA. As noted above, all the other investment facilitation instruments under review similarly envisage encouraging the linking between foreign investors and local suppliers. See Article 11 EU-Angola SIFA, Article 28 AfCFTA IP, Article 8 ASEAN IFF.

**Table 7: Sustainable investment**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
<b>States' obligations:</b>				
- RBC/CSR	✓		✓	✓
- Due diligence	✓		✓	
- Local communities	✓			
- Anti-corruption	✓			
- Facilitate investment contributing to sustainable development (SD)			✓	✓
- SD incentives				✓
- Labour and environmental provisions			✓	✓
<b>Investors' obligations</b>				✓

### C. INSTITUTIONS, IMPLEMENTATIONS AND DISPUTE SETTLEMENT

All four international instruments under review rely on existing<sup>43</sup> or newly established<sup>44</sup> institutions to strengthen the implementation by the contracting Parties of their investment facilitation commitments. In some instances, the underlying agreement attributes specific functions to these institutions. For example, the WTO IFDA provides, inter alia, that the WTO Committee on Investment Facilitation (i) “shall develop procedures for the sharing, by Parties, of information and experiences on investment facilitation, as well as the identification of best practices” (Article 39.4), (ii) “maintain close contact with other international organizations in the field of investment facilitation” (Article 39.6), and (iii) “explore and discuss the possibility of establishing an Investment Facilitation Facility with the aim of assisting developing country Parties, and especially the least-developed country Parties, to implement the provisions of this Agreement” (Article 39.10).<sup>45</sup> Furthermore, regarding consultation and dialogue with stakeholders, the EU-Angola SIFA requires the Parties to “organise a dialogue with civil society to discuss the implementation of this Agreement” on the basis of a “balanced representation of relevant stakeholders including non-governmental organisations, business and employers’ organisations and trade unions, active on economic, sustainable development, social, environmental and other matters.” (Art 46).<sup>46</sup>

Moreover, these agreements envisage international cooperation among relevant and competent national authorities. For example, the WTO IFDA requires Parties to “encourage cooperation between their respective competent authorities with respect to any matter falling within the scope of this Agreement” and in particular with regard to “(a) exchange of information and sharing of experiences regarding the implementation of this Agreement; (b) exchange of information on

<sup>43</sup> Article 12 of the ASEAN IFF refers to the ASEAN Coordinating Committee on Investment (CCI), which is comprised of senior officials responsible for investment and other senior officials from relevant government agencies, and which already assists the ASEAN Investment Area (AIA) Council in the performance of its functions.

<sup>44</sup> The WTO IFDA envisages the establishment of the WTO Committee on Investment Facilitation (Article 39); the EU-Angola SIFA envisages the establishment of the Committee on Investment Facilitation (Article 43); the AfCFTA IP envisages the establishment of the Committee on Investment (Article 41) and the Pan-African Trade and Investment Agency (Article 42).

<sup>45</sup> See also Article 44.1 EU-Angola SIFA, which provides that the “Committee on Investment Facilitation shall (a) consider ways to further enhance investment relations between the Parties; [...] (c) seek appropriate ways and methods of preventing or solving problems that may arise in areas covered by this Agreement, or of resolving disputes that may arise regarding the interpretation or application of this Agreement; (d) consider any other matter of interest relating to an area covered by this Agreement, as the representatives of the Parties may agree [...]”.

<sup>46</sup> See also Article 9 ASEAN IFF on ‘Consultative Mechanism for Investment Policies’ and Article 42.4 AfCFTA IP.

domestic investors; and (c) the promotion of facilitation agendas with a view to increasing investment for development, including investment in and by MSMEs.” (Art 26.2 IFDA).<sup>47</sup>

The four international instruments under review adopt different approaches with regard to any flexibility allowed to (some of) the contracting parties in implementing the respective investment facilitation obligations. While the EU-Angola SIFA does not envisage any flexibility, the other three instruments provide for different levels and details of flexibility. For example, in line with its overall non-binding nature, the ASEAN IFF provides no time frame within which to adopt all required investment facilitation measures. Lack of a specific time frame is one of the challenges identified by the ASEAN Secretariat in its 2022 ASEAN Investment Report (pag 195). On the other hand, the AfCFTA IP specifies that State Parties are required to bring their national laws, regulations and policies into alignment with the Investment Protocol, including its investment facilitation provisions, within a period of five years from its entry into force (Art 52). The WTO IFDA has adopted a more complex discipline providing ‘special and differential treatment’ (SDT) to developing and least-developed country (LDC) members, modelled on the WTO Trade Facilitation Agreement. While developed country members are expected to implement all the obligations by the time the Agreement enters into force, developing and LDC members can choose to schedule implementation of the commitments in a more staggered manner and depending on the availability of technical assistance and capacity building support (Artt 27-30). Some developing country members have already started carrying out ‘needs assessment’ analyses, to determine any implementation gaps and any technical assistance and capacity building necessary to fill those gaps. Moreover, the WTO IFDA includes additional flexibility such mechanisms as the possibility to extend implementation dates in case of additional difficulties (Art 31), the establishment of expert group to support implementation (Art 32) and grace periods for the application of the dispute settlement mechanism (Art 34).

While all international instruments under review make reference to the need to provide technical assistance and/or capacity building,<sup>48</sup> they operationalise such need to different extent. On the one hand, the ASEAN IFF simply invite each Member State to facilitate communication and cooperation with other Member States on matters relating to investment facilitation, including “through the exchange of information on [...] technical assistance and capacity building” (Art 10). On the other hand, the WTO IFDA includes a more detailed provision dealing with the provision of assistance and support for capacity building, which, for example, registers the agreement by ‘donor Parties’ to facilitate the provision of technical assistance and support, in particular to LDC members (Art 35.1-2) and identifies certain principles for providing assistance and support for capacity building with regard to the implementation of this Agreement (Art 35.3).<sup>49</sup>

With the exception of the ASEAN IFF, the three other instruments under review include dispute settlement mechanisms. While the WTO IFDA simply refers to the WTO Dispute Settlement Understanding (DSU) as providing the exclusive mechanism to address any dispute between the Parties concerning the interpretation and application of the Agreement (Art 44), the EU-Angola SIFA dedicates an entire chapter on ‘dispute avoidance and settlement’ (chapter VI), which includes provisions on consultations, mutually agreed solutions, arbitration, transparency, time-periods, and mediation. Given its broader scope, the AfCFTA IP envisages both State-State and investor-State dispute settlement, but the rules and procedures governing dispute prevention, management and

---

<sup>47</sup> See also Article 7.4 AfCFTA IP and Article 10 ASEAN IFF.

<sup>48</sup> As noted above, the Preambles to the WTO IFDA and the EU-Angola SIFA expressly recognise the importance of “technical assistance and capacity building” for the implementation of the agreement, while the AfCFTA IP emphasises “the different levels of development of the State Parties and the challenges they may face in the adoption and implementation of this Protocol and other related investment policies”.

<sup>49</sup> “Parties shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement: (a) take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programmes; (b) include, where relevant and appropriate, activities to address regional and subregional challenges and promote regional and sub-regional integration; (c) ensure that ongoing investment facilitation reform activities of the private sector are factored into assistance activities; (d) promote coordination between and among Parties and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. [...]” (Article 35.3 WTO IFDA). For the AfCFTA IP, see Article 42 on the ‘Establishment of the Pan-African Trade and Investment Agency’ and Article 43 on ‘Technical Assistance, Capacity Building and Cooperation’ and for the EU-Angola SIFA see Article 42 on ‘Technical assistance and capacity-building for investment facilitation’.

resolution of disputes covered by the protocol will be developed later and included in a separate annex (Art 46).

With regard to the enforcement of dispute settlement decisions, the WTO IFDA relies on the implementation mechanism in the WTO DSU, which envisage countermeasures by the prevailing member, including the suspension of obligations (Art 22 DSU). On the other hand, the EU-Angola SIFA envisages a narrower option, that is “the Party that requested arbitration may adopt measures within the scope of this Agreement that are proportionate to the failure to fulfil the specific obligations” (Art 38.4).

## CONCLUDING REMARKS

The comparative analysis of the four instruments under review, WTO IFDA, ASEAN IFF, EU-Angola SIFA, and the AfCFTA IP, shows several key similarities and differences:

- While the WTO IFDA, ASEAN IFF and EU-Angola SIFA focus principally on investment facilitation, the AfCFTA IP is part of a broader, continent-wide economic integration agreement and seeks to establish a harmonized investment framework for intra-African investment and, hence, has a broader scope than the other three agreements. This difference is reflected in certain distinctive systemic features of the AfCFTA IP, compared to the other three instruments, such as the inclusion of a detailed definition of ‘investment’ and investor-State dispute settlement.
- The WTO IFDA, EU-Angola SIFA and the AfCFTA IP, while they have not all entered into force, include international obligations, while the ASEAN IFF is a non-binding instrument based on voluntary actions.
- When it comes to the legal nature of the various obligations included in the three former instruments, there is a variety of approaches, within and across the various instruments, going from non-binding provisions (‘Parties should’ or ‘Parties recognise the importance of’), to binding obligations of conduct (‘Parties shall ensure’), or obligations of result (‘Parties shall publish’). As shown in table 8, across the same three instruments under review, ‘transparency’ disciplines are principally drafted as binding obligations of result, while ‘regulatory coherence’ ones as best-endeavour obligations.

**Table 8: Non-binding/binding nature of investment facilitation provisions**

	WTO IFDA	ASEAN IFF	EU-Angola SIA	AfCFTA IP
Transparency	BR	NB	BR	BR
Streamlining	BC	NB	BC	NB
Assistance services	NB, BR	NB	NB, BC, BR	NB, BR
Regulatory coherence	NB	NB	NB	NB
Sustainable investment	NB, BC	NB	BC, BR	BC, BR

NB: Non-binding/best-endeavour/ (‘should’/recognize the importance of)

BC: Binding obligation of conduct (‘shall ensure’)

BR: Binding obligation of result (‘shall’)

- While all four international instruments under review include similar key investment facilitation provisions, in particular ‘transparency’, ‘streamlining/expediting/digitizing investment administrative procedures’, ‘investment assistance services’, ‘regulatory coherence’, and ‘sustainable investment’, there are differences in the extent to which each instrument addresses each specific discipline. The WTO IFDA is the instrument with overall the most extensive investment facilitation disciplines across the four instruments under review, although with regard to ‘sustainable investment’ disciplines, the EU-Angola SIFA and AfCFTA IP (given its different nature and scope) go much further than the WTO IFDA

(see table 7). On the other hand, the ASEAN IFF is the instrument with overall the least developed investment facilitation disciplines.

**Table 9: Extent of key investment facilitation disciplines**

	WTO IFDA	ASEAN IFF	EU-Angola SIFA	AfCFTA IP
Transparency	Extensive	Moderate	Extensive	Moderate
Streamlining	Extensive	Extensive	Extensive	None/minimal
Assistance services	Extensive	Moderate	Extensive	None/minimal
Regulatory coherence	Moderate	None/minimal	Moderate	None/minimal
Sustainable investment	Moderate	None/minimal	Extensive	Extensive

- Given the overall similarities of the investment facilitation disciplines included in the WTO IFDA, on the one hand, and the AfCFTA IP and EU-Angola SIFA, on the other, it is not surprising that many WTO Members from the African continent are also parties to the WTO IFDA.<sup>50</sup>
- The WTO IFDA provides the most extensive disciplines when it comes to providing ‘special and differential treatment’ (SDT) to developing and least-developed country (LDC) members (see table 10). Modelled on the WTO Trade Facilitation Agreement, the WTO IFDA allows developing and LDC members to implement the commitments at their own pace, depending on their capacity to implement and the availability of technical-assistance and capacity-building support to do so.<sup>51</sup> Furthermore, to help developing and LDC members to avail themselves of such SDT provisions, an Investment Facilitation Self-Assessment Guide has been developed by seven partner international organizations, coordinated by the WTO Secretariat. It is currently already being employed to assist some members in identifying possible implementation gaps, as well as their technical assistance and capacity-building-support needs and key priorities for implementing the IFDA. It is thus not surprising that many developing and LDC countries participate in the WTO IFDA.<sup>52</sup>
- Similarly, while all four instruments under review make reference to the need to provide technical-assistance and/or capacity-building support, the WTO IFDA includes the most detailed set of provisions (see table 10) including, for example, the identification of certain principles for providing assistance and support for capacity building as well as the requirement for donor Parties to provide information on such assistance and support. To the extent that there is an overlap between investment facilitation disciplines in the WTO IFDA and the other three agreements, participants in these latter agreements (assuming they are WTO members) benefit from the implementation commitments contained in the WTO IFDA. In fact, several partner international organizations (such as the ITC and the IDB) are already

<sup>50</sup> 44 out of the 55 member states of the African Union are WTO members. Among these 44 member states, 31 (70%) participate in the IFDA, namely: Angola, Benin, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Congo, Côte d’Ivoire, Democratic Republica of the Congo, Djibouti, Gabon, Gambia, Guinea, Guinea-Bissau, Liberia, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Seychelles, Sierra Leone, Togo, Uganda, Zambia, and Zimbabwe (information taken from [the WTO Investment Facilitation for Development webpage](#) on 1 August 2024).

<sup>51</sup> Article 27.3 of the IFDA stipulates that “The extent and timing of implementation of the provisions of this Agreement shall be related to the implementation capacities of developing and least-developed country Parties. Where a developing or least-developed country Party continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired”.

<sup>52</sup> Of the current 125 members parties of the IFDA, 89 are developing countries, among which 27 are LDCs (information taken from [the WTO Investment Facilitation for Development webpage](#) on 1 August 2024).

providing technical assistance and capacity building to several WTO members in carrying out 'needs assessments' under the WTO IFDA.

**Table 10: Extent of 'implementation' disciplines**

	<b>WTO IFDA</b>	<b>ASEAN IFF</b>	<b>EU- Angola</b>	<b>AfCFTA IP</b>
Special differential treatment	Extensive	Moderate	None/ minimal	Moderate
Technical assistance and capacity building	Extensive	None/ minimal	Moderate	Moderate

In sum, all four international instruments under review cover the same ground as far as investment facilitation is concerned and are complementary to each other in many respects. They all include key measures to facilitate FDI flows in the interest of helping to advance sustainable development. The WTO IFDA, in addition, provides for extensive special and differential treatment and technical assistance and capacity building support to help developing countries and LDCs implement the Agreement's provisions—which also supports the implementation of the other agreements.