

Report on the 1st virtual meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development

20 March 2020

The 1st virtual meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development took place between 15:00 and 17:00 CET and hosted 21 members of the Expert Network. This meeting discussed the lessons learnt from investment facilitation provisions in Bilateral Investment Treaties (BITs) and investment chapters in Preferential Trade Agreements (PTAs), generally referred to as international investment agreements (IIAs).

The meeting was chaired by Mr. Axel Berger. Mr. Berger commenced the meeting with an introduction of the project and the Expert Network and asked members to introduce themselves. The virtual meeting was structured under the following guiding questions:

- Which dedicated investment facilitation provisions are included in BITs and PTAs?
- Which countries are the main drivers of these trends?
- What can be learnt from the negotiation and implementation of investment facilitation provisions in BITs and PTAs? What has worked, what not?

The discussion was held under Chatham House Rules to enable a frank and open exchange.

Two inputs were provided by Ms. Michelle Ratton Sanchez Badin and Mr. Rodrigo Polanco Lazo to kick-off the discussion among the experts. The first presentation explained the experience of Brazil with the country's Cooperation and Facilitation Investment Agreements (CFIAs), which include provisions on development, including CSR. The second presentation provided an overview of the investment facilitation components in IIAs. Each of the presentations was followed by an exchange of questions, opinions and suggestions by members of the Expert Network.

Which dedicated investment facilitation provisions are included in IIAs?

The definition and scope of investment facilitation has changed considerably since its inception and categorising such measures as *facilitation* measures is a recent development. There has been **a trend of increasing explicit inclusion of investment facilitation measures in IIAs since 1996**. This trend started with the beginning of the discussion on trade facilitation and increased with the conclusion of the WTO Trade Facilitation Agreement in 2013. This **trend is observable** in the data provided by the data analysis conducted by Mr. Rodrigo Polanco.¹ The paper shows that, by 2020, 56 IIAs included explicit reference to investment facilitation. Only 21 of these agreements are bilateral investment treaties (BITs). Many more agreements make implicit reference to investment facilitation. **The most frequently referenced measures** are 1) granting facilitating permits for the establishment of an investment (1,277 references), 2) entry and sojourn of investment-related personnel (1,037 references) and 3) transparency (360 references). As investment facilitation is being discussed in the WTO and becoming increasingly recognised and included in recent IIAs, it is essential to establish a common understanding of its scope.

While it is established that investment facilitation includes transparency and simplification measures, investment facilitation could also cover other investment related matters, such as investor services, including aftercare. These services provide foreign investors with solutions to challenges they face frequently, including access to utilities, construction permits, taxation, and minor disputes with governmental agencies. Having such services in place also helps in retaining investment and informing policies on the needs of foreign investors. The scope of investment facilitation continues to **cover more areas and gain more clarity** in recent IIA practice. Hence, it could be posited that investment is moving from only protecting property rights to including process and stakeholder rights.

Which countries are the main drivers of these trends?

Between 1996 and 2014, the main drivers of investment facilitation provisions in IIAs were China, Japan and the ASEAN countries. The Brazilian CFIAAs concluded after 2014 contain several original provisions that show consideration for the needs of host as well as home countries. This development can be explained by the fact that Brazil has not ratified any of the traditional BITs and because it has moved from a recipient to an exporter of FDI in the past decade. Another example of countries driving the dialogue on investment facilitation forward are **the US Trade and Investment Framework Agreements**. These framework agreements

¹ Polanco, R. J. (2018). Facilitation 2.0: Investment and trade in the digital age. *RTA Exchange*, 1-24.

create a forum for high-level political dialogue between the parties. They involve annual meetings on the ministerial level to discuss measures without the burden of an agenda of a framework.

What can be learnt from the negotiation and implementation of investment facilitation provisions in IIAs?

The analysis of **traditional BITs shows that they failed to promote cooperation** among signatories and incorporate more elaborate provisions on national coherence. Future BITs could strengthen international cooperation to simplify compliance of investors by aligning outward and inward investment procedures and adopting common international standards.

The **creation of an investment facilitation committee** as part of a multilateral framework on investment facilitation for development could contribute, to a large extent, to promoting international cooperation. For example, joint government-to-government committees were instrumental in the implementation of several Brazilian CFIAs. The Brazilian approach could inform the provision for the establishment of an investment facilitation committee in a multilateral framework on investment facilitation for development.

To continue the discussion after the conclusion of a multilateral framework on investment facilitation for development, the framework could introduce a mechanism to keep international investment facilitation discussions alive. For example, the WTO Revised Agreement on Government Procurement includes a **treaty-mandated work program that continues the discussion** on government procurement. A similar work program could be mandated in the final text of a multilateral framework on investment facilitation for development.

Annex I: Members of the Expert Network on a Multilateral Framework on Investment Facilitation for Development participating in the meeting on 20 March.

First name	Last name	Affiliation
Rudolf	Adlung	Independent Trade Policy Analyst, Former Counsellor, WTO Trade in Services Division
Robert	Basedow	London School of Economics (LSE)
Axel	Berger	German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE)
Ayelet	Berman	National University of Singapore (NUS)
Julia	Calvert	University of Edinburgh
Jaime	de Melo	University of Geneva
Pablo Agustín	Escobar-Ullauri	Permanent Mission of Ecuador to the WTO
Mohamad	Fakhreddin	International Trade Centre (ITC)
Geoffrey	Gertz	Brookings Institute
Ahmad	Ghourri	University of Sussex
Khalil	Hamdani	Graduate Institute of Development Studies at the Lahore School of Economics
Chi	Manjiao	University of International Business and Economics (UIBE)
Peter	Muchlinksy	SOAS University of London
Federico	Ortino	King's College London
Christian	Pitschas	Gesellschaft für Internationale Zusammenarbeit (GIZ)
Rodrigo	Polanco	World Trade Institute (WTI)
Michelle	Ratton Sanchez Badin	Getulio Vargas Foundation
Karl P.	Sauvant	Columbia Center on Sustainable Investment (CCSI)
Wenhua	Shan	Xi'an Jiaotong University
Matthew	Stephenson	World Economic Forum (WEF)
Quan	Zhao	International Trade Centre (ITC)

Annex II: Invitation and Agenda

Invitation 1st virtual meeting of expert group on a multilateral framework on investment facilitation for development, 20 March, 15:00-17:00 CET

Dear Expert Network Members,

Thank you very much for your willingness to participate in the expert group on a multilateral framework on investment facilitation for development, established in the framework of a project carried out by the International Trade Centre (ITC) and the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE).

The first virtual meeting of the expert group will take place on **Friday, 20 March 2020 at 15:00pm to 17:00pm CET**. We would appreciate if you are able to participate. **Please register here.**

The first meeting will discuss the lessons learnt from investment facilitation provisions in bilateral investment treaties (BITs) and preferential trade agreements (PTAs). The following questions should guide our discussion:

- Which dedicated investment facilitation provisions are included in BITs and PTAs?
- Which countries are the main drivers of these trends?
- What can be learnt from the negotiation and implementation of investment facilitation provisions in BITs and PTAs? What has worked, what not?

After an introduction to the project and the expert group, we will have two inputs by Rodrigo Polanco (Senior Researcher at the World Trade Institute, WTI) and Michelle Raton Sanchez Badin (Professor at the Getulio Vargas Foundation) to kick-off the discussion among all experts. The discussion will be held under Chatham House Rule to enable frank and open exchange. The main results of the discussion will be summarised in a short report which will be fed into the WTO process on investment facilitation.

To join the meeting, kindly click on the link below shortly before 15:00pm on 20 March 2020 and follow the instructions. If you are not automatically joined in the meeting after clicking the link, click on "[Join the Meeting](#)".

Join Skype Meeting

After that, download and install the Skype Meetings App plug-in and click on "[Join Using Skype for Business Web App instead](#)". To join through the phone you can dial [+41 22 730 0999](#).

If you would like to also send written questions or comments during the meeting, please feel free to type them in the chat window in the bottom-left corner of the Skype window.

Thank you in advance for participating in the Expert Group and sharing your expert insights.

With best regards,

Axel

Annex III: Background literature

[Facilitation 2.0: Investment and Trade in the Digital Age](#)

[Strengthening multi-stakeholder cooperation in the international investment regime: The Brazilian model](#)

[The useful institution of an investment ombudsperson](#)

[The New Brazilian Agreements on Cooperation and Facilitation of Investments \(ACFIs\):](#)

[Navigating between resistance and conformity with the global investment regime](#)