

Report: 5th virtual meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development, 16 February 2021, 15:00-16:15 CET

The 5th meeting of the Expert Network took place on 16 February 2021. The meeting was attended by 14 participants, including the project support team and speakers. The meeting was chaired by Axel Berger (Senior Researcher at the German Development Institute / Deutsches Institut für Entwicklungspolitik, DIE). The meeting included the following opening speakers: Manjiao Chi, Professor and Founding Director, Center for International Economic Law and Policy, Law School, University of International Business and Economics, China, Makane Moïse Mbengue, Professor and Director, Department of Public International Law and International Organization, Faculty of Law, University of Geneva, and Lauge Poulsen, Associate Professor and Director, Graduate Studies, School of Public Policy, University College London. The meeting was concluded by Karl P. Sauvant (Resident Senior Fellow, Columbia University/CCSI). The invitation and the list of participants are attached.

The meeting focused on **the potential value added of an Investment Facilitation Framework for Development (IFF4D)**.

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

Discussion highlights

The discussion focused on two main issues. First, the potential benefits of an IFF4D; and second, the main elements that should be put in place to realise such benefits, as the potential value added depends on the content of the IFF4D. It was emphasised that the agreement will establish a floor and a reference point for any agreements and investment chapters that will be negotiated in the future.

I. An IFF4D can help developing countries implement and lock-in domestic reforms

Looking at past experience, World Trade Organization (WTO) agreements have assisted countries, such as is China, in implementing domestic reforms. In order to ensure that an IFF4D can indeed assist developing countries in implementing domestic reforms the following factors should be considered.

Clear obligations: Creating clear obligations for member states that are enforceable is key to ensuring the implementation of domestic reforms. For example, under the China-EU Comprehensive Agreement on Investment (CAI), most of the investment facilitation obligations were aligned with unilateral reforms that China had already implemented. This means that the treaty imposed on China the obligation not to change policies, but to maintain its reforms. In

addition, if home states establish corporate social responsibility obligations, these obligations will encourage host states to adopt similar obligations.

Review mechanisms: It is important to establish a strong review mechanism, both at the WTO and national levels, as an obligation under the IFF4D. A strong review mechanism at the national level should have the authority to review the existing laws of the state and analyse whether they are compliant with investment facilitation rules under the agreement.

Capacity building: Developing countries are in need of strong supportive technical assistance commitments to ensure that their commitments under the IFF4D will be implemented.

II. The IFF4D can establish benchmarks of good investment facilitation practices

The IFF4D can reduce the fragmentation that currently characterizes investment facilitation frameworks and can establish benchmarks for good investment facilitation practices.

There are two levels of fragmentation: conceptual fragmentation and regulatory fragmentation. For example, African economies have a different understanding of the *concept* of investment facilitation. These differences may slow down negotiations and discussions regarding the future African Continental Free Trade Area (AfCFTA) Investment Protocol in the area of investment facilitation. Having a universal investment facilitation framework can help establish a consensus on what investment facilitation includes and thus facilitate negotiations in the African region. This conceptual challenge was also mentioned with respect to different international initiatives.

In addition, it will be a challenge to negotiate the AfCFTA Investment Protocol as there are so many different *regulatory* frameworks and approaches to investment facilitation in the African region, in national investment laws and in bilateral investment treaties. A universal IFF4D will provide clear benchmarks on appropriate investment facilitation provisions. Then, countries can adopt investment facilitation provisions in their specific region while building on a coherent approach and an approach that was validated at the universal level, which will give regional agreements additional legitimacy.

III. The establishment of firm capacity building commitments under the IFF4D

One of the value-added of an IFF4D will be the commitment by donors to provide funding for capacity building to ensure implementation in developing countries in need of support. This is particularly important for least developed countries (LDCs). The current text does not include such a firm commitment. Without such a commitment, countries seeking to reform their investment facilitation frameworks will clearly have more difficulties to implement their obligations.

IV. Welfare gains of an IFF4D for developing countries

Almost all countries spend resources to promote FDI, as they believe it helps to advance development. Results from a DIE draft study on the potential welfare gains from different investment facilitation framework scenarios were mentioned during the meeting. It was stated that, while economies have an incentive to unilaterally implement investment facilitation measures,

many have not done so, especially developing countries at the lowest levels of development and with the greatest need for investment; an IFF4D containing strong technical assistance commitments would therefore be particularly useful for these countries.

Annex 1: Invitation



d.i.e

Deutsches Institut für
Entwicklungspolitik



German Development
Institute

Invitation: 5th virtual meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development, 16 February 2021, 15:00-16:15 CET

Dear Expert Network members,

Thank you very much again for your willingness to participate in the Expert Network 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 5th meeting of the Expert Network will take place on **16 February 2021**, from 9:00am to 10:15am Eastern Daylight-Saving Time (EDT), 15:00 to 16:15 Central European Time (CET), and 21:00 to 22:15 China Standard Time (CST).

The meeting will focus on **the potential value added of an Investment Facilitation Framework for Development**. More specifically, we would like to discuss the following questions:

- Can an Investment Facilitation Framework for Development help developing countries implement and lock-in domestic reforms?
- Should such a Framework require transparency of home country measures and encourage the observance of investors' CSR commitments?
- To what extent can an Investment Facilitation Framework for Development establish benchmarks of good investment facilitation practices and help members to share experiences?
- What is the relationship between a multilateral Investment Facilitation Framework for Development and emerging bilateral negotiations involving investment facilitation provisions (EU-China CAI, RCEP, EU-ESA EPA, etc.)?

The discussion will be held under Chatham House Rule to enable a frank and open exchange. The main results of the discussion will be summarized in a short report which will be fed into the WTO process on investment facilitation.

Moderator: Axel Berger, Senior Researcher at the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE).

Opening speakers:

Manjiao Chi, Professor and Founding Director, Center for International Economic Law and Policy, Law School, University of International Business and Economics, China

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

Lauge Poulsen, Associate Professor and Director, Graduate Studies, School of Public Policy, University College London

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

To join the meeting, kindly, click on the link below shortly before 15:00pm CET on 16 February 2021 and follow the instructions. If you are not able to connect online, you could connect using the dial-up options provided at the end of this email.

[Join Zoom Meeting](#)

If you would like to request the floor to speak or send written questions or comments during the meeting, please feel free to type your question or request in the chat window by pressing on the chat icon in the middle-bottom pane of the Zoom window.

For your reference, the reports of the last Expert Network meetings can be found [here](#).

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

With best regards,

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

Axel Berger, Senior Researcher, DIE

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

Bios

Axel Berger

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

of Bonn and regularly advises developing countries, development agencies and international organisations on trade and investment matters.

Manjiao Chi

Manjiao Chi is currently Professor and Founding Director at the Center for International Economic Law and Policy (CIELP), Law School, University of International Business and Economics (UIBE), China. He is also founding editor-in-chief of the Asian Yearbook of International Economic Law. His recent research focus includes international economic law, dispute settlement and sustainable development. He frequently advises international organizations, government bodies as well as private firms on legal and policy issues of his research fields.

Makane Moïse Mbengue

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

Lauge Poulsen

Lauge Poulsen is Associate Professor and Director of Graduate Studies at the School of Public Policy, University College London. Poulsen's first book, *Bounded Rationality and Economic Diplomacy: The Politics of Investment Treaties in Developing Countries* (Cambridge Press), won the International Studies Association's inaugural award for best book in International Political Economy. His second book, *The Political Economy of the Investment Treaty Regime*, was published in 2017 (Oxford Press; with Bonnitcha and Waibel). Poulsen has advised governments and private organisations on investment policies and given expert testimonies to parliamentary committees in the UK and abroad.

Karl P. Sauvant

Karl P. Sauvant introduced the idea of an International Support Program for Sustainable Investment Facilitation in the E15 Task Force on Investment Policy in 2015. From there, the proposal was taken forward in the WTO. He has written extensively on this subject (see <https://ssrn.com/author=2461782>), participated in various events relating to it and currently assists the ITC and DIE on a project on Investment Facilitation for Development. He retired in 2005 as Director of UNCTAD's Investment Division and established, in 2006, what is now the Columbia Center on Sustainable Investment (CCSI), stepping down as its Executive Director in 2012, to focus his work, as a CCSI Resident Senior Fellow, on teaching, research and writing.

Annex 2: Attendance list

First name	Last name	Affiliation
Rudolf	Adlung	Independent Trade Policy Analyst, former Counsellor, WTO Trade in Services Division
Axel	Berger	German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE)
Jansen	Calamita	Centre for International Law
Khalil	Hamdani	Visiting Professor, Lahore School of Economics
Federico	Ortino	King's College London
Christian	Pitsch	Gesellschaft für Internationale Zusammenarbeit
Rodrigo	Polanco	World Trade Institute
Karl P.	Sauvant	Columbia Center on Sustainable Investment (CCSI)
Matthew	Stephenson	World Economic Forum (WEF)
Speakers		
Manjiao	Chi	Professor and Founding Director, Center for International Economic Law and Policy, Law School, University of International Business and Economics, China
Makane Moïse	Mbengue	Professor and Director, Department of Public International Law and International Organization, Faculty of Law, University of Geneva
Lauge	Poulsen	Associate Professor and Director, Graduate Studies, School of Public Policy, University College London
Secretariat		
Yardenne	Kagan	International Trade Centre (ITC)
Quan	Zhao	International Trade Centre (ITC)