

Report on the online workshop for WTO delegates and government officials: Concrete measures to facilitate the flow of sustainable FDI

11 March 2020

The online workshop on a multilateral framework on investment facilitation for development took place on 11 March 2020 between 10:00 and 17:30 CET and hosted around 80 participants. The workshop aimed at providing ground-level perspectives on issues relating to investment facilitation for development. Special attention was given to ombudsperson-type and grievance-management mechanisms within governments. These perspectives are meant to enrich the negotiations of a multilateral framework on investment facilitation for development in the World Trade Organization (WTO). The workshop's discussion drew on the practical experiences of those most directly engaged in investment facilitation, namely foreign direct investment (FDI) service providers, investment promotion agencies (IPAs), representatives of international organizations providing technical assistance in FDI matters, and other experts.

The discussions held during the workshop were informed by “An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?” prepared for this workshop. The draft inventory will be updated in light of the discussions at the workshop, as well as other input from experts collected from other meetings; it will be made available to negotiators of the multilateral framework on investment facilitation for development.

The discussions of each session of the online workshop were interactive and results-oriented. To integrate a diverse set of stakeholder perspectives, speakers representing IPAs, international investors, academia, civil society, and international organizations exchanged opinions in real-time and left ample time and opportunity for questions from the audience. All participants were encouraged to intervene in all sessions to share their perspectives.

The workshop was carried out in the framework of a joint project of the International Trade Centre (ITC) and the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE) on Investment Facilitation for Development.

In the following, the main outcomes of the discussion are summarised:

A multilateral framework on investment facilitation for development should provide clarity on the role of IPAs, ombudsperson-type agencies, ombudsperson institutions and OSS

Several speakers highlighted the need to distinguish the core functions of IPAs, ombudspersons and one-stop-shops (OSS) – even though these functions may be incorporated in practice in one institution. It is especially important to draw clear lines between organizations that promote investment and organizations that regulate investment and may also deal with grievances of investors. Some speakers at the workshop highlighted that it can be problematic for IPAs to also have monitoring and control functions. IPAs' mandates should focus on investment facilitation and promotion, policy advocacy and providing a platform through which the private sector would comment on existing or proposed investment policies. In practice, however, in many countries IPAs are involved in policy and regulation alongside FDI facilitation and promotion. While this does not involve necessarily creating three specific institutional arrangements for these functions, it is important to differentiate the general mandates and responsibilities of each. It is also necessary to address this overlap through better inter-agency coordination.

Some speakers encouraged establishing IPAs that also incorporate the function of an OSS, as demonstrated by the examples of Brazil and Nigeria, where physical and structural proximity offer to simplify and streamline processes. The example of Brazil suggests that an electronic single window could include focal and inquiry point functions.

A multilateral investment facilitation framework for development could suggest concrete measures to guide the delegation and distribution of responsibilities among different agencies. Moreover, the technical assistance and capacity building component of the framework could include provisions to assist economies in implementing investment facilitation measures optimally.

It was also suggested during the workshop that IPAs should be regarded as key implementers of many investment facilitation measures, including the ombudsperson and OSS mechanisms.

A multilateral framework could include provisions that encourage members to put in place a grievance mechanism

Several speakers stressed the importance of introducing mechanisms that help retaining existing investments, which is more cost-effective than attracting new investment. Therefore, speakers agreed that there should be dedicated measures for establishing grievance mechanisms in a multilateral framework on investment facilitation for development, in addition to regular aftercare services such as responding to investor enquiries, assisting investors in obtaining information and resolving investment related difficulties.

Having grievance mechanisms that deal specifically with political risk challenges would enable countries to better manage the concerns of foreign investors in the cases of change of regulations

or legal frameworks. When effectively implemented, such mechanisms could significantly reduce the escalation of grievances into disputes, including investor-state disputes.

A key consideration in the implementation of grievance mechanisms should be the tracking and capturing of data on received and processed grievance cases. These data could be utilised to measure the performance of grievance mechanisms. More importantly, these data could inform policy makers by offering a diagnosis on the most problematic areas in the current investment environment by observing the number of grievances raised per area. A grievance mechanism could be implemented through several models that involve different agencies, such as focal points and IPAs. Nonetheless, grievances could be addressed by a dedicated agency that is often named by the ombudsperson's office.

Independence and impartiality of ombudsperson-type agencies

For an ombudsperson to effectively address the grievances of foreign investors, it is imperative that the ombudsperson enjoy a high level of independence and impartiality. A prominent example of the establishment of an ombudsperson office is the case of the Korean ombudsperson, which followed the Asian financial crisis at the turn of the millennium.

The Korean ombudsperson deals with grievances and issues relating to FDI, including taxation, human resources, intellectual property, environment, finance, construction, tariffs, and investment incentives. According to the Ombudsperson of Korea, Mr Kim Sung-Jin, the primary function of the Korean Ombudsperson is grievance management, followed by the suggestions for FDI policy-making.

The Korean Ombudsperson addresses grievances through the following three approaches: a) the legislative improvements approach, which involves the enactment or amendment of laws and regulations; b) administrative interventions, which involve exploring solutions within existing regulations in cooperation with local institutions; and c) the home doctor approach, which involves the ombudsperson addressing the grievance through a bespoke approach by mobilizing their local network and exploring special arrangements.

The example of the Korean Ombudsperson shows that its non-official legal status allows for addressing issues of investors vis-à-vis different authorities. In particular, the home-doctor approach involves addressing the grievances through liaising with relevant officials to develop an arrangement to address a grievance on an individual basis. This approach is especially relevant when an ombudsperson is approached with grievances that are not directly addressed by existing regulations. For an effective home-doctor process, an ombudsperson should be equipped with access to a network of high-level public officials.

The Brazilian experience provides another example, where the ombudsperson is a member of the foreign trade board, which includes high-level representation from all ministries.

Implementation of investment facilitation requires a coordinated approach.

Throughout the workshop, speakers consistently stressed the importance of having in place a coordinated approach for implementing investment facilitation measures. One concrete example of such an approach is the enactment of a regulatory tool that brings together all relevant authorities with the commitment to implement investment facilitation measures. Another example is the appointment of a national investment facilitation committee to monitor implementation and mobilise political actors as needed. The committee could play a similar role as the National Trade Facilitation Committees play in implementing the WTO Trade Facilitation Agreement. In order to support the subsequent implementation of a multilateral framework it is important to involve relevant governmental and non-governmental stakeholders in the negotiation process.

The negotiations on a multilateral framework should benefit from consultation with civil society and feedback from users of existing investment facilitation mechanisms.

The views and concerns of civil society and potential users of investment facilitation mechanisms, such as foreign investors and national companies investing abroad, should be sought when formulating a country's negotiations agenda. This would inform the formulation of investment facilitation measures and would ensure that investment facilitation provisions are geared towards fulfilling the unique needs of stakeholders in different country contexts.

The involvement of civil society could also ensure that measures addressing the promotion of sustainable development are part of negotiations. A multilateral framework on investment facilitation could promote sustainable development by including provisions that allow for and encourage incentives for sustainable FDI.

Recognised Sustainable Investor

The establishment of the category of "recognised sustainable investor" (RSI) would enable economies to incentivise foreign investors who have a positive track record in supporting sustainable development by undertaking sustainable FDI, including by observing corporate social responsibility (CSR) principles.

The idea of an RSI draws on the Authorised Operator provisions of the Trade Facilitation Agreement. Some speakers argued that many governments are open and willing to engage in this measure as it aligns with their sustainable development strategies and promotes smart investives as opposed to *carte blanche* approaches.

Nonetheless, the implications of a most-favoured-nation obligation for RSIs should be explored. Insights from the Trade Facilitation Agreement could be considered to identify these implications.

A multilateral framework should include home country measures covering outward FDI.

Investment facilitation measures could also address outward investment, especially in countries that have extensive regulatory requirements for outward investment. These measures could promote CSR requirements, including environmental standards. Furthermore, measures relating to financing are quite relevant to outward investment. Outward investment measures are already present in some international investment agreements, including the recent bilateral agreement between Brazil and India.

Annex 1: Programme



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Deutsches Institut für
Entwicklungspolitik



German Development
Institute

International Trade Centre and the German Development Institute

Workshop on Concrete Measures to Facilitate the Flow of Sustainable FDI

Online workshop for WTO delegates and government officials

11 March 2020

This workshop aims at providing ground-level perspectives on issues relating to investment facilitation for development. These perspectives are meant to enrich the negotiations of a multilateral framework on investment facilitation for development that are beginning on 12 March 2020. They draw on the practical experiences of those most directly engaged in investment facilitation, namely FDI service providers, representatives of international organizations providing technical assistance in FDI matters and other experts. Special attention will be given to ombudsperson-type functions/mechanisms and grievance-management mechanisms within governments.

The discussions are partly informed by “An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?” prepared for this workshop (attached). The inventory will be updated in light of the discussions at the workshop, as well as other work.

The workshop is carried out in the framework of the ITC/DIE project on Investment Facilitation for Development.

Programme

10:00-10:20 Opening, objectives and keynotes

Dorothy Tembo, Executive Director a.i., ITC

Roberto Azevêdo, Director-General, WTO

Ambassador Mathias Francke, Coordinator of the Structured Discussions on Investment Facilitation for Development

Ambassador Zhang Xiangchen, Permanent Representative, Mission of the People's Republic of China to the WTO

Ambassador Maria de Jesus Veiga Miranda, Permanent Representative, Mission of Cabo Verde to the United Nations Office and other international organizations

Nicolás Palau Van Hissenhoven, Deputy Permanent Representative, Mission of Colombia to the WTO

Session moderators:

Karl P. Sauvart, Resident Senior Fellow, Columbia University/Center on Sustainable Investment (CCSI)

Axel Berger, Senior Researcher, German Development Institute (DIE)

10:20-11:30 Session I: Identifying key concrete investment facilitation measures: the experience of FDI services providers

Presentation of the inventory:

Khalil Hamdani, Visiting Professor, Lahore School of Economics, Pakistan

Discussion starters:

Henry Loewendahl, CEO of Wavteq

Sebastian Reil, Senior FDI Consultant at FDI Center

Douglas van den Berghe, Vice President Advisory, Conway Inc.

Maria Fernanda Sanchez, Investment Promotion Manager, LATAM—ProColombia

Discussion

11:30 -11:45 Coffee break

11:45-13:00 Session II: Identifying key concrete investment facilitation measures: the experience of international organizations

Discussion starters:

Ivan Nimac, Global Lead, Investment Policy and Promotion, World Bank Group

Ana Novik, Head of the Investment Division, OECD

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

13:00-14:00 **Lunch**

14:00-15:30 **Session III: Ombudsperson-type functions/mechanisms**

Presentations:

Kim Sung-Jin, Foreign Investment Ombudsman, Republic of Korea
Samo S. Gonçalves, Second Secretary, Mission of Brazil to the WTO

Discussion starters:

Mohammad Baba, Deputy Director, *Investor Relations*, Investor Relations Department, Nigerian Investment Promotion Commission

Kathryn Dovey, Manager, Responsible Business Conduct Unit, OECD

Abdul Hannan, Adviser, Federation of Bangladesh Chambers of Commerce and Industry

15:30-15:45 **Coffee break**

15:45-17:15 **Session IV: Grievance-management mechanisms within governments**

Presentation:

Ivan Nimac, Global Lead, Investment Policy and Promotion, World Bank Group

Discussion starter:

Marion Jansen, Chief Economist and Director, Division of Market Development, ITC

Mais Khlaifat, Director, Legal Services, Jordan Investment Commission

17:15-17:30 **Closing remarks**

Karl P. Sauvant, CCSI, and **Axel Berger**, DIE

Background documentation: “An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?”

Annex 2: Invitation



Deutsches Institut für
Entwicklungspolitik



German Development
Institute

Dear Madam/ Sir,

We would like to invite you to attend a virtual workshop on "**Concrete Measures to Facilitate the Flow of Sustainable FDI**", organized in the framework of the Investment Facilitation for Development (IF4D) project carried out by the International Trade Centre (ITC) and the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE). The workshop is meant for WTO delegates dealing with investment facilitation matters, as well as their colleagues in capitals who deal with this matter.

The on-line workshop will take place on **Wednesday, 11 March 2020 from 10:00 am to 17:30 pm Geneva Time (GMT+1)**. (Please note that, due to daylight savings time, the time difference between Geneva and EST is only 5 hours between 8-29 March.) The workshop's program is attached to this email.

To register, please click on the link and confirm your registration:

This workshop aims at providing ground-level perspectives on issues relating to investment facilitation for development to enrich the negotiations of a multilateral Framework on Investment Facilitation for Development, which will begin on 12 March 2020. The discussions are partly informed by "*An Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI: What? Why? How?*" prepared for this workshop and attached to this email. Special attention will be given to ombudsperson-type functions/mechanisms and grievance-management mechanisms within governments.

To join the meeting, kindly click on the link below at 10:00 am Geneva Time (GMT+1) on March 11 and follow the instructions.

[Join Skype Meeting](#)

If you are not automatically joined in the meeting after clicking the link, click on "[Join the Meeting](#)". After that, download and install the Skype Meetings App plug-in and click on "[Join Using Skype for Business Web App instead](#)". You can join the workshop through telephone by calling +41 22 730 0999 (CH). Since we are planning to make the workshop as interactive as possible, you should feel free to intervene whenever you wish. You also have the option to send written questions/observations to the experts during the meeting; you can do that by typing them in the chat window in the bottom-left corner of the Skype window.

Finally, please feel free to invite your investment facilitation colleagues in capital to participate in the workshop as well.

Thank you very much and best regards.

Rajesh Aggarwal, ITC; Axel Berger, DIE; Karl P. Sauvant, Columbia University/CCSI