Investment Facilitation for Development **Agreement**

Investment facilitation in the WTO must be seen against the backdrop of the complementary and reinforcing relationship between trade and investment, as well as their potential for promoting sustainable development. Over the last decades, many countries have adopted policies aimed at facilitating investment to attract, retain and expand foreign investment flows. In that context, in April 2017, a group of developing and least-developed country Members launched an Informal Dialogue on Investment Facilitation for Development in the WTO.

Discussions on investment facilitation have made steady progress in the WTO. At the 11th WTO Ministerial Conference (MC11) held in Buenos Aires in December 2017, 70 WTO Members co-sponsored a Joint Ministerial Statement calling for the start of Structured Discussions with the aim of developing a multilateral framework on investment facilitation.

Following over two years of preparatory work and discussions, the participants formally launched negotiations on an 'Agreement on Investment Facilitation for Development' (IFD Agreement) in September 2020. In November 2023, after more than three years of negotiations, participants finalized the text of the IFD Agreement, after concluding its legal review. Given the inclusive nature of the Initiative, the negotiating process has been transparent and open to all WTO Members. Great emphasis is put on outreach efforts.

Currently 'co-coordinated' (chaired) by H.E. Dr. Sofía Boza (Chile) and H.E. Ms. Sung-yo Choi (Republic of Korea), the IFD Initiative counts more than **120 WTO Members parties**,[1] including nearly 90 developing countries, amongst which 27 LDCs.

Key Milestones of the IFD Initiative

April 2017	The 'Friends of Investment Facilitation for Development' (FIFD) submit a proposal for a WTO Informal Dialogue on Investment Facilitation for Development (IFD).
December 2017 (MC11), Buenos Aires	**70 WTO Members** co-sponsor a Joint Ministerial Statement calling for Structured Discussions on IFD.
November 2019, Shanghai	**98 WTO Members** issue a second Joint Ministerial Statement committing to work towards a 'concrete outcome' on IFD at MC12.
September 2020	The IFD Initiative formally launches negotiations on a future IFD Agreement.
December 2021	Participants sign a third Joint Statement.
December 2022	Circulation of the 'Draft IFD Agreement' (single negotiating text)
July 2023	Participants conclude negotiations on the text of the IFD Agreement
February 2024 (MC13), Abu Dhabi	**IFD key landmark** IFD Joint Ministerial Declaration marking the finalization of the IFD Agreement and making it public & request of incorporation of Agreement into Annex 4 of Marrakesh Agreement

With the finalization of the IFD Agreement, participants achieved another **key landmark at the WTO's 13th Ministerial Conference (MC13)** in Abu Dhabi in February 2024. For this purpose, an IFD Ministerial gathering was held on 25 February, in Abu Dhabi, to issue a **Joint Ministerial Declaration on IFD**, which **officialised the finalization of the IFD Agreement** and made it **available to the public**. In light of the growing momentum achieved by this Agreement, IFD Members parties aim to **incorporate the plurilateral IFD Agreement,** which is open to all

[1] For more information on the IFD Initiative, including the updated list of participating Members, please refer to the WTO IFD portal: https://www.wto.org/english/tratop_e/invfac_public_e/invfac_e.htm.

Members wishing to join, into **Annex 4** of the WTO Agreement as soon as possible, in order for the IFD Agreement to produce its pro-development benefits. Participants will further enhance their outreach to other WTO Members and continue with the IFD needs assessment process to help developing and LDC Members implement, and reap the full benefits from, this Agreement.

The potential benefits of an Investment Facilitation Agreement in the WTO

In the WTO context, the concept of investment facilitation means the setting up of a **more transparent, efficient and investment-friendly business climate** – by making it easier for investors to invest, conduct their day-to-day business and to expand their existing investments (whole-investment-lifecycle approach), as well as for host and home governments to work cooperatively and in mutually beneficial ways to facilitate not only more, but also more sustainable investment. The focus of the IFD Initiative is **not on changing Members' investment policies in substance,** but on making such investment policies more transparent and investment-related administrative procedures more streamlined and efficient – which, according to numerous surveys, is where investors and businesses most want to see investment reforms.

The World Bank Group's 2018 Global Investment Competitiveness Survey showed that 82% of surveyed investors considered transparency and predictability in the conduct of public agencies as an important or critically important investment climate factor for choosing an investment location. Likewise, an investor survey carried out by ITC and the German Institute of Development and Sustainability (IDOS) in Latin America and the Caribbean, found that transparency measures, one stop-shops allowing investors to deal with administrative procedures and e-government services were considered "very important" by investors. Investment for Investors – A toolkit for policymakers (2022).

The focus on investment facilitation comes with the recognition that in today's integrated global economy, expanding investment flows, like trade flows, depends crucially on simplifying, speeding up and coordinating processes, *not* primarily on liberalizing policies. By aligning facilitation policies with global benchmarks, investment facilitation measures can help economies attract, retain and expand investment, which is key for them to diversify and expand their production capacities and exports, promote economic growth, build-up their critical infrastructure and become more resilient – especially in the current context of tightening financing conditions and weak growth. The aftereffects of the pandemic coupled with rising inflation, high food and energy prices and debt pressures have further widened the investment gap in developing countries to meet the 2030 Sustainable Development Goals (SDGs) to $4 trillion per year - from $2.5 trillion in 2015.[2]

The WTO Agreements, in particular the GATS, already contain obligations that can facilitate investments. The WTO is also facilitating global trade through the Trade Facilitation Agreement (TFA). The IFD Agreement could complement and reinforce Members' existing efforts to facilitate investment by:

- ***Creating clear and consistent global benchmarks for investment facilitation***, thus ensuring that (minimum) common standards are applied across economies, reducing regulatory uncertainty, minimizing transaction costs, and making it easier for investors to invest.
- ***Anchoring domestic investment facilitation reforms in shared international commitments***, thus decreasing policy uncertainty, strengthening Members' reform efforts, and sending a positive signal to investors.
- ***Providing a global forum to promote best investment facilitation practices***, thus enhancing cross-border regulatory cooperation, and improving information exchanges.

A study analysing the economic impacts of an Agreement on IFD in the WTO shows empirically relevant gains associated with the removal of investment barriers (e.g., publication of information and procedures affecting investment; focal points providing guidance on related legislation, processes, and responsible agencies). **According to this study, the expected global welfare gains range between 0.56% and 1.74% depending on the depth of a potential Agreement** – *Edward J. Balistreri and Zoryana Olekseyuk, 'Economic impacts of investment facilitation', Center for Agricultural and Rural Development, Iowa State University, February 2021 - available on Deutsches Institut für Entwicklungspolitik (IDOS)/ German Development Institute Website.*

[2] See Page 30 World Investment Report 2023 (unctad.org)

- *Linking global investment facilitation reforms to Members' ability to implement them*, ***allowing developing and least-developed country Members to receive the technical assistance and capacity building support they need to implement*** and benefit from the IFD Agreement.

Emphasizing the significant role of investment and trade for inclusive economic growth and poverty reduction, the Agreement will help attract not only more but **better, longer-term investment, contributing to achieving the Sustainable Development Goals**.

Investment facilitation reforms are inherently non-discriminatory and benefit all investors – foreign as well as domestic ones.

Overview of the IFD Agreement

In November 2023, after finalizing the legal review of the text, the co-Coordinators circulated the text of the IFD Agreement to all WTO Members. It reflects the outcome of the text-based negotiations among IFD participants. The adjacent table provides an overview of the disciplines contained in the Agreement. The IFD Agreement is formulated as a plurilateral agreement, welcoming all Members to join, and binding only on those participating Members.

The IFD Agreement focuses on foreign direct investment (FDI); it applies to FDI in all economic sectors. As clearly stated by IFD participants since the beginning of the Initiative, the IFD Agreement explicitly **<u>excludes</u> market access, investment protection, and investor-State dispute settlement (ISDS).** Government procurement and certain subsidies are also excluded from the scope of the Agreement.

The IFD Agreement also includes a so-called 'firewall provision', aimed at insulating it from International Investment Agreements (IIAs) and at preventing spillover effects from the IFD Agreement on IIAs and vice-versa.

The key pillars of the IFD Agreement are its Sections on transparency of investment measures; streamlining and speeding up investment-related authorizations procedures; enhancing international cooperation, information sharing, and the exchange of best practices; as well as on sustainable investment.

Under the latter section, participating WTO Members have included provisions encouraging the uptake of responsible business conduct principles and standards by investors and enterprises, as well as measures by Members to combat corruption.

Key disciplines of the IFD Agreement
Preamble
Section I: Scope and General Principles
- Objectives; scope of application; exclusion of market access, investment protection and ISDS; definitions - 'Firewall' provision (aimed at insulating the Agreement from international investment agreements) - Most-favoured-nation (MFN) Treatment
Section II: Transparency of Investment Measures
- Publication of measures and relevant information (including online publication) - Publication of proposed/draft measures and opportunity to comment on proposed measures - Single information portal - Notification to the WTO - Publication of requirements and procedures on the entry/temporary stay of natural persons to conduct investment activities
Section III: Streamlining and Speeding up Administrative Procedures
- General principles for authorization procedures - Investment authorization procedures: processing of applications; acceptance of authenticated copies; authorization fees; submission of applications online - Independence of competent authorities - Appeal or review
Section IV: Focal Points, Domestic Regulatory Coherence and Cross-border Cooperation
- Focal points for assisting investors and persons seeking to invest - Promoting domestic regulatory coherence - Domestic supplier databases - Supplier development programmes - Cross-border cooperation on investment facilitation

In a nutshell

The purpose of the IFD Agreement in the WTO is to improve the investment climate and to promote international cooperation to facilitate the flow of foreign direct investment between WTO Members, particularly to developing and least developed country Members, with the aim of fostering sustainable development.

The aim is to help Members attract not only more, but also better, higher quality investment that contributes to sustainable development.

Providing special and differential treatment, including technical assistance and support for capacity building, to developing and least-developed country Members is also a key component of the IFD Agreement.

- General principles on SD&T - Notification of dates for implementation based on categorization of provisions - Technical assistance and capacity building support
Section VI: Sustainable Investment
- Responsible business conduct (RBC) - Measures against corruption
Section VII: Institutional arrangements and final provisions
- WTO IFD Committee - Exceptions - Dispute settlement - Final provisions

An Agreement for development

Since the outset, facilitating greater developing and least-developed Members' participation in global investment flows constitutes a core objective of the IFD Agreement.

- The IFD Agreement includes a **dedicated Section on 'Special and Differential Treatment'** (S&DT), modelled on the one contained in the Trade Facilitation Agreement (TFA). It provides that the extent and timing of implementation of the provisions of the IFD Agreement shall be related to the implementation capacities of developing and LDC Members. Where a Member continues to lack the necessary capacity, implementation of the provisions concerned will not be required until implementation capacity has been acquired. Furthermore, LDCs will only be required to undertake commitments to the extent consistent with their individual development and financial needs or their administrative and institutional capabilities. The S&DT Section provides that developing and LDC Members will be allowed to designate the provisions of the IFD Agreement under one of the three categories (A, B, C), and, by doing so, request additional time and given the case, the provision of technical assistance and capacity building (TACB) to implement the provisions. Likewise, as in the TFA, this Section includes other flexibilities such as an 'Early Warning Mechanism' and the possibility to shift between categories B and C.

Many developing, and least-developed countries are already implementing or developing national investment facilitation reforms with the aim of encouraging inward FDI. According to UNCTAD, progress has focused on information provision, regulatory transparency, and streamlining of administrative procedures for investors through digital information portals and single windows. Since 2016, the number of countries with digital information portals increased from 130 to 169 (https://ger.co/).

- Based on the IFD Agreement's comprehensive special and differential treatment provisions, participants have highlighted the **importance of investment facilitation Needs Assessments** to assist developing and least-developed WTO Members, who so request, self-assess their needs and priorities regarding each of the substantial provisions of the IFD Agreement, to enable them to effectively implement the Agreement. In particular, the needs assessments will help developing and LDC Members identify possible implementation gaps, assess their technical assistance and capacity building support needs, and categorize the Agreement's provisions in categories A, B, and C. To this end, the WTO Secretariat, in cooperation with seven partner international organizations,[3] developed an **Investment Facilitation Self-Assessment Guide**, drawing on the extensive experience of the TFA Self-Assessment Guide. The aim is to use this Guide as a basis and common methodology to conduct the IFD Needs Assessments in those developing and LDC Members who so request.

[3] The International Trade Centre (ITC); the Organisation for Economic Co-operation and Development (OECD); the United Nations Conference on Trade and Development (UNCTAD); the United Nations Economic Commission for Africa (UNECA); the World Bank Group (WBG); the Inter-American Development Bank (IDB); and the World Economic Forum (WEF).