



WTO Joint Initiative on Investment Facilitation

On the road to MC13

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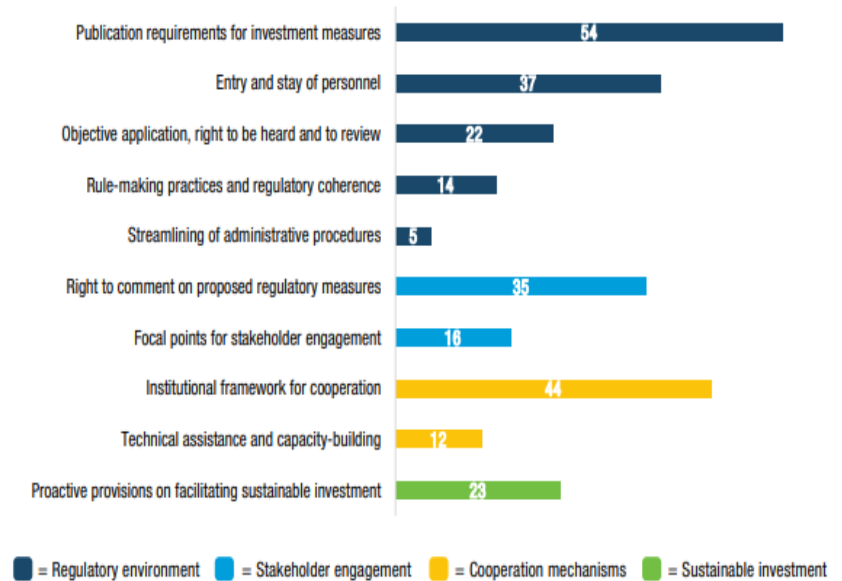
Presentation Outline

1. Bilateral and regional developments
2. WTO Investment Facilitation for Development Agreement (IFDA)
 - a) Background on process
 - b) What's in the Agreement?
3. What's next?

1. Bilateral and regional developments

- International investment agreements | Since 2015, investment facilitation provisions more prevalent, diverse, and robust
- Dedicated treaties on investment facilitation gaining traction | Brazil and EU models

Figure 1. Prevalence of selected investment facilitation features in recent IIAs, 2015–2023
(Per cent of IIAs)



Source: UNCTAD.

Note: Based on 221 IIAs, 142 bilateral investment treaties (BITs) and 79 broader treaties with investment provisions (TIPs) concluded in the period 2015–2023 for which texts are available. For TIPs, the mapping included provisions in all parts of the treaty that apply to investment, including chapters on economic and development cooperation, good regulatory practices, transparency and anti-corruption, movement of natural persons, among others. The mapped investment facilitation provisions include strict and best-effort commitments, including ones subject to the countries' domestic laws, as well as softer language.

2. WTO Negotiations Background

Co-coordinators: Chile and Republic of South Korea

117 WTO members participating (1 member observing)*

- 21 LDC (out of 36)
- 59 Developing** (out of 90)
- 37 Developed** (out of 38)

Examples of non-participating members: United States, India and South Africa



SECTION I: SCOPE AND GENERAL PRINCIPLES

- Article 1: Objectives
- Article 2: Scope
 - “measures...relating to investment activities of investors of another Party”
 - Excludes government procurement and subsidies
- Article 3: Definitions
- Article 4: Relation to international investment agreements
 - “this Agreement shall not serve as a means to interpret any provision of an [IIA], and shall not be used as the basis for a claim....between investors and states provided for in an [IIA].”
- Article 5: Most-favored nation treatment
 - “Each Party shall accord to the investors of another Member...treatment no less favourable than it accords...to investors of any other Member...in applying the provisions set out in this Agreement.”

SECTION II: TRANSPARENCY OF INVESTMENT MEASURES

- Article 6: Publication and availability of measures and information
 - “Each Party shall make available, via electronic means, information of importance to investors and keep the information updated as appropriate.”
 - Includes relevant laws and regulations, information on open or restricted sectors, practical information like construction permits, access to infrastructure, business registration.
- Article 7: Information to be made publicly available if an authorization is required for an investment
- Article 8: Single information portal (“to the extent practicable”)
- Article 9: No fees imposed for access to information
- Article 10: Publication in advance and opportunity to comment on proposed measures (“to the extent practicable”)
- Article 11: Notification to the WTO
- Article 12: Information to be made publicly available on the entry and temporary stay of natural persons for the purpose of conducting investment activities

SECTION III: STREAMLINING AND SPEEDING UP ADMINISTRATIVE PROCEDURES

- Article 13: Reasonable, objective and impartial administration of measures
- Article 14: General principles for authorization procedures
 - “Each Party shall ensure that authorization procedures...to not unduly complicate or delay investment activities.”
- Article 15: Authorization procedures
 - Time periods for applications, authenticated copies of documents, communicating progress of applications, completion of incomplete applications....
- Article 16: Multiple applications
- Article 17: Authorization fees, and article 17 bis authorization fees – financial services
- Article 18: Use of ICT or e-government
- Article 19: Independence of competent authorities
- Article 20: Appeal or review
- Article 21: Periodic review

SECTION IV: FOCAL POINTS, DOMESTIC REGULATORY COHERENCE AND CROSS BORDER COOPERATION

- Article 22: Focal points
- Article 23: Domestic regulatory coherence
 - Parties are encouraged to carry out an impact assessment of proposed major regulatory changes within the scope of the Agreement, including comments from interested persons
- Article 24: Domestic supplier databases
- Article 25: Supplier-development programmes
- Article 26: Cross-border co-operation on investment facilitation

SECTION V: SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING AND LDC MEMBERS



Category A: Implement by the time the Agreement enters into force (LDCs longer timeline)



Category B: Additional time needed to implement



Category C: Additional time *and* capacity building support needed to implement

SECTION V: SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING AND LDC MEMBERS

- Article 27: General principles
- Article 28: Categories of provisions
- Article 29: Notification and implementation of Category A
- Article 30: Notification of dates for Implementation of Categories B and C
- Article 31: Early warning mechanism: extension of implementation dates for provisions in categories B and C
- Article 32: Expert group to support implementation of category B and category C
- Article 33: Shifting between categories B and C
- Article 34: Grace period for the application of the understanding on rules and procedures governing the settlement of disputes
- Article 35: Provision of assistance and support for capacity building
- Article 36: Information on assistance and support for capacity building to be submitted to the committee

SECTION VI: SUSTAINABLE INVESTMENT

- Article 37: Responsible business conduct
 - “each Party shall encourage investors....to voluntarily incorporate into their business practices...internationally recognised principles, standards or guidelines of responsible business conduct that have been endorsed or are supported by that Party.” [FN lists as examples principles concluded by the UN, ILO and OECD]
- Article 38: Measures against corruption
 - “In accordance with its legal system and international standards ... that is supports, each Party shall ensure that measures are taken to prevent and fight corruption and money laundering with respect to matters falling within the scope of this Agreement.” [FN lists as examples UN conventions against corruption]

SECTION VII: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS

- Article 39: WTO Committee on Investment Facilitation
- Article 40: Disclosure of Confidential Information
- Article 41: General and Security Exceptions
 - GATS and GATT General and Security exceptions apply.
- Article 42: Financial Exceptions
- Article 43: Monetary and Exchange rate policies
- Article 44: Dispute Settlement
- Article 45: Final Provisions

3. What's next?

Try and incorporate IFDA in WTO Framework

- Plurilateral Agreement under Annex 4 | Requires consensus of all 164 WTO members; buy-in will be difficult
- Prioritise outreach with non-participants in run-up to MC13

Needs Assessment Analysis

- For S&DT- developing/LDC Parties must understand gap between domestic framework and IFDA by using needs assessment toolkit
- Analysis critical to ensure sufficient time for implementation and for capacity building benefits
- Need to start asap: Time-consuming process that requires whole-of-government engagement.
- S&DT must be scheduled by the time the Agreement comes into force

Useful Resources

- IISD: [TAF2+ Umbrella Grant Project Page](#)
- IISD Policy Analysis: [What's happening on investment facilitation: A survey of recent global developments](#)
- IISD Policy Analysis (by Prof Calamita): [Looking for Sustainable Development and Sustainable Investment in the WTO Draft Investment Facilitation for Development Agreement](#)
- UNCTAD: [Investment Facilitation in IIAs: Trends and Policy Options](#)

Forthcoming: IISD's Reader's Guide on the Investment Facilitation for Development Agreement

Thank You!

For more information:

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