

The State of Play for Sustainable Development in the Joint Statement Initiative on Investment Facilitation for Development

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Introduction

The proponents of the Joint Statement Initiative (JSI) on Investment Facilitation for Development (IFD) have emphasised that a central objective of the IFD Agreement will be to deliver important development outcomes, notably by increasing investment flows into developing and least developed country (LDC) members. As recently as December 2021, Signatories to the JSI issued a Joint Statement reiterating their objective to conclude an agreement “that will help WTO Members attract, expand and retain foreign direct investment flows and to achieve sustainable development goals” (WTO, 2021a). In light of such expectations, an increasing number of developing and LDCs have signed onto the Joint Ministerial Statement on Investment Facilitation for Development, thereby indicating their willingness to support and actively participate in the negotiations.

The purpose of the paper is to examine more closely the development-oriented elements that are at present included in the framework, and to understand to what extent and in what ways such elements are expected to lead to sustainable development outcomes. This brief will examine special and differential treatment (S&DT), including notification and implementation; the investment facilitation needs assessment; specific proposals for promoting more sustainable investments; and the potential role of home state measures. These topics were selected for closer examination because the proposals are either reflected in the negotiating text, or in the Annex.

The paper will review whether and how the policy positions of members regarding these issues have been reflected in the negotiating text. It will also look into some of the main challenges encountered in the negotiations of such provisions, and to what extent these challenges have limited the level of ambition to deliver more concrete sustainable development outcomes.

Section 1: Needs Assessment reports and S&DT

S&DT provisions are one of the most important types of measures for development-related considerations in the WTO. These measures provide developing and LDCs special rights in the form of benefits and flexibilities for the implementation of the WTO rules. More than 150 S&DT-related provisions are included in the various WTO agreements, and depending on the provision, the benefits granted can range from market access concessions, access to technical assistance and capacity building, to longer grace periods or exemption from the implementation of select rules (IISD, 2021).

The negotiation of the Trade Facilitation Agreement (TFA) prompted significant changes on how S&DT was treated at the WTO. Under the TFA, rather than committing to uniform exemptions or standard implementation periods; developing countries and LDC members were able to determine for themselves the specific conditions and transition periods that they would need to implement the various obligations contained in the Agreement. For the provisions that could be

implemented immediately upon ratification, such provisions were committed to under Category A (unconditional commitments).¹ For the provisions that could only be committed to after a transition period, such commitments were classified under Category B, and finally for the provisions which could only be implemented on the condition of capacity building and technical assistance and after a certain transition period, such commitments were referred to as Category C commitments. In the event of delays or changing circumstances, the members had the right to request for extensions or shift the classification of provisions between Category B and C (WTO, 2013). Further to these phasing-related commitments, the TFA included other types of provisions on technical assistance and capacity building, as well as transparency related commitments relating to donor information.

For the IFD Agreement, negotiators have considered the TFA approach to S&DT as a model to replicate. Under Section V of the revised version six of the Easter Text, members are discussing a range of TFA-like S&DT provisions, which are summarised in the following table (Table 1).

Table 1: Outline of Section V on Special and Differential Treatment for Developing and Least-Developed Country Members

Section V. Special and Differential Treatment for Developing and Least-Developed Country Members	
Article 25	General Principles
Article 26	Categories of Provisions, Notification, and Implementation
	Categories of Provisions
	Notification and Implementation of Category A
	Notification of Dates for Implementation of Categories B and C
Article 27	Other Special and Differential Provisions
	Early Warning Mechanism: Extension of Implementation dates for provisions in Categories B and C
	Expert Group to support implementation of Category B and Category C
	Shifting between Categories B and C
	Grace Period for the Application of the Understand on rules and procedures governing the settlement of disputes
Article 28	Provision of assistance and support for capacity building
Article 29	Information on assistance and support for capacity building to be submitted to the committee

Source: WTO, 2022a

The efforts to replicate the TFA's S&DT approach within the Investment Facilitation (IF) context is not, however, a straightforward matter, and have resulted in sets of challenges that negotiators are at present seeking to resolve. One such set of challenges is in relation to the use of a critical tool – the needs assessment reports – which had played a central role under the TFA, both during and after the negotiations. Developing and LDC members, with the support of the WTO Secretariat, had used the needs assessment tool to identify their regulatory and policy gaps, so that they could determine how best to classify the various TFA provisions under the categories of A, B and C for the negotiations. The analysis conducted focused on understanding which TFA provisions the members were already complying with under their current legislation,

¹ For LDCs, the provisions under Category A would only come into force after a year).

and those for which they needed more time or assistance to implement. When leveraging this critical tool within the IF context however, a range of issues emerge, notably in relation to scope and coverage, stakeholders, timeline, financing, and content.

The first challenge is in relation to scope and coverage. IF negotiators are having to contend with a broader scope versus what had been addressed in the context of the TFA. The TFA's scope had focused on three GATT provisions: Article V (Freedom of Transit); Article VIII (Fees and Formalities connected to Importation and Exportation); and Article X (Publication and Administration of Trade Regulations). Those provisions cover a narrow range of activities, specifically those relating to customs-related measures with rules only applying to the movement of goods and having to only be implemented at the border. In turn, investment facilitation measures cover a broader range of activities that includes the entire lifecycle of an investment from the establishment, acquisition, expansion, operation, management, maintenance, and sale or other disposal of an investment. It also affects a broadened range of sectors, including services and non-services sectors (WTO, 2022a). And finally, it would cover, not only measures applied at the border, but may be applicable behind-the border and how they are administered. Beyond such features, members are still negotiating other aspects of the scope, notably whether the framework would cover a narrower type of investment, that of foreign direct investment (FDI), or would cover a broader definition of investment.

The broadened scope and coverage mean that there is a larger number of policies, administrative actions and regulatory elements that will have to be evaluated by the needs assessment tool, than what had been done under TFA. Not only will the analysis be significantly more substantial, it also has yet to be fully clarified, given the various features of the scope and coverage, including key definitions² that negotiators are still discussing (in some cases with considerably different positions) and would need to agree upon.

A second challenge is in relation to the number of stakeholders to engage and coordinate for the undertaking of the needs assessments. To identify the regulatory and policy gaps in a country's legislative landscape, there is a need to interview the relevant government agencies to understand what type of measures are available, and how they are implemented in practice (i.e., there is a need to understand both *de jure* and *de facto* elements). The TFA's narrower scope meant that a limited and a more manageable number of government and private sector stakeholders were consulted for the assessments. Examples of stakeholders that were consulted included representatives from border agencies and customs, ministries of trade or commerce or foreign affairs, ministries of law or justice, and private sector representatives such as those from industry and trade associations, custom brokers, and chambers of commerce (OECD/WTO, 2015).

Since the draft IFD Agreement would cover the entire lifecycle of an investment in the services and non-services sectors, the number of agencies at different levels of government, from federal to sub-national, that have a role in defining and implementing the policies, administrative actions and regulations that affect or relate to the investment activities is considerably higher. In addition, a broader range of private sector and civil-society stakeholders are involved in or could be affected by those investment activities. Consequently, there is a need to clarify the various

² Some of these definitions include investment, investment activities, investor, authorization, among others.

types of stakeholders that must be consulted, and to determine how best to coordinate the inputs from these diverse stakeholders. Given the number of stakeholders involved, the process will likely be more complex than the one undertaken for the TFA.

The issues relating to the expanded scope, coverage and broadened set of stakeholders gives way to the third challenge, which is the timeline to conduct the needs assessments for the IFD Agreement. The needs assessments under the TFA were conducted under two phases. The first phase, which had been initiated roughly five years before the completion of the negotiations, and which took place from 2007 to 2010, focused on helping members assess their trade facilitation needs and priorities with the objective of helping them enhance their participation in the negotiating process. Given the significant changes in the negotiated text over the years, a second phase was launched in 2013, to assist members to update their assessment results, with the objective of supporting members in preparing their S&DT category related notifications and to determine their technical assistance needs (WTO, 2022b). The number of members that leveraged the support to conduct the needs assessments were substantial. Between 2007 to 2017, 94 needs assessments were conducted, and between 2013 to 2014, another 90 assessments were conducted (OECD/WTO, 2015)

In essence, the TFA, despite being less complex and involving less stakeholders, benefitted from a longer timeline than what is at present being considered for the IFD framework. As mentioned above, signatories to the JSI have set themselves the objective to conclude text negotiations by the end of 2022 (WTO, 2022c). This means that should members decide to notify the designation of the categorisation of the provisions prior to the finalisation of the negotiations, then the timeline to conduct the needs assessments under the IFD process would be limited to a little more than eight months, compared to the five years under the TFA process. Groups of developing and LDC members have submitted communications expressing their concerns relating to the tight timeline and the delay in launching the process for conducting needs assessments.

Given the critical nature of the needs assessment as a tool that enables members to self-designate their commitments, which under the TFA was an essential pre-requisite for finalising the negotiations, members will have to consider how to undertake the more complex analysis needed for the IF context within such tight timelines. Solutions currently under consideration include kicking off a preliminary needs assessment phase that will be based on the current text and pertaining to provisions that are considered as to have been largely “stabilised”, (i.e., provisions on which there is significant degree of convergence among members). This would then require a follow up phase in which the assessments would include an analysis of an updated negotiating text.

Another solution put forward by some members, also currently under discussion, is to extend the timeline for the notification of the designation of all categories, which would not be finalised before the conclusion of the negotiations. Rather, the members would adopt some provisions regarding notification to inform how they will designate the categorisation of the IFD provisions and their associated implementation timelines, at a later period. Proponents consider that this approach in the IFD Agreement would provide members with the time they require to undertake the needs assessment tests, which in turn would allow them to appropriately self-designate and

notify their capacity building needs and implementation periods, without the pressure of having to do so before the finalisation of the IF negotiations.

The fourth challenge is the issue of financing. Under the TFA, donor countries had set up a trust fund – the trade facilitation facility – which among other types of financing, covered coordination and logistical costs, as well as the staff time of the WTO secretariat to undertake the various needs assessments. Participating members will have to determine the feasibility of setting up a similar fund within the IF context. Given the fact that the IF negotiations are not a multilateral initiative, given its budgetary implications, some negotiators are considering whether it could be possible to set up a formal trust fund without the full backing of the wider membership. It would also raise questions relating to the extent to which the expertise and knowledge of the WTO secretariat can be leveraged for the process.

The final challenge that will need to be addressed is the content of the needs assessment tool. Under the TFA, to ensure that the needs assessment reports were produced based on a standardised process, a few templates and guides were created to support such process. When developing these guides and templates, members will have to consider to what extent the templates and guides that had been developed under the TFA are well-suited and can be adapted for the IFD framework. The adaptation of the TFA needs assessment templates and guides may not be necessarily straightforward, given that the IFD Agreement has a different scope, and includes more diverse provisions than what had been integrated in the TFA, as explained above.

Members recognise the need to discuss such challenges, and therefore participated in a dedicated session on Investment Facilitation Needs Assessment, which was held on 14 February 2022. As an outcome of that meeting, members supported the set-up of a dedicated Working Group that would include the participation of other relevant international organisations, and which would focus on the objective of developing a self-assessment guide for conducting the IF needs assessment (WTO, 2022d).

Beyond the concerns relating to needs assessments, there are other S&DT elements that are being debated, notably on the text formulations, including on whether donor governments are bound, or should only have to make best endeavour efforts, when providing donor support toward the implementation of the IFD framework for LDCs. Some members have submitted written communications emphasising that given the high level of complexity of the implementation of the IFD will be a highly complex matter, donor support should be crafted through binding provisions, rather than through best endeavour clauses.

Section 2: Sustainable investments

A central objective of the IFD Agreement is to improve the investment and business climate, so that it can be easier for investors to invest and conduct their day-to-day operations and expand. By implementing investment facilitation measures, members are expected to improve their ability to attract, retain and expand investments. The improved flow of investments is expected to fuel economic activities, notably by “diversifying and expanding production capacities and exports, promoting economic growth, building-up critical infrastructure and creating more

resilient economies – especially in the context of recovery from the COVID-19 crisis” (WTO, 2021b).

Given that the main purpose of traditional investments is to optimise financial outcomes, they may not necessarily lead to optimal purpose-related outcomes of maximising environmental, social and governance related achievements. Consequently, some proponents are advocating for the inclusion of more specific provisions, those which focus on promoting the flow of more purpose-driven investments, which aim to maximise both financial and purpose-oriented outcomes, especially within the local context. Such provisions, often referred to as sustainable investment provisions, are focused on increasing the flow of higher quality investments, those which purposefully maximises the sustainable development impact of the investment.

While several types of sustainable investment provisions have been recommended, this paper will focus on the specific proposals of Responsible Business Conduct, Measures against Corruption, and the Domestic Supplier Database. This section will examine what the various ideas are, and how they have been considered in the IFD negotiating process. Furthermore, what are the challenges preventing negotiators from integrating some of the ideas, or for raising the ambition level?

2.1 Responsible Business Conduct

Responsible Business Conduct (RBC) provisions focus on encouraging companies to promote more-purpose driven private sector behaviours by encouraging such actors to adhere to internationally recognised principles, standards, and guidelines on good corporate behaviour. While many of the members supported the incorporation of an RBC Article in the IFD framework, they were of the view this should be done on a non-binding basis.

Specific provisions on RBC are included in the revised Easter Text under Section VI on Sustainable Investment. At present, there are four provisions that have been “stabilised” (i.e., broadly supported). The first is a best endeavour provision that promotes members to encourage investors and enterprises operating within the host state to voluntarily integrate and comply with the RBC-related international principles, standards and guidelines that are supported or endorsed by that state. The second provision focuses on Members encouraging the investors or enterprises operating in their territory to engage more closely with traditional communities, indigenous peoples, and local communities. A third provision recognises the importance of implementing due diligence to identify and address supply chain risks. And finally, the fourth is a commitment requiring members to exchange information and best practices on the experience and implementation of responsible business practices and reporting to the Committee on Investment Facilitation (WTO, 2022a).

Prior to this text, members also considered alternative formulations throughout the negotiating process. One consideration was to include a publication-related measure that encouraged members to publish via electronic means the RBC standards and principles that the host state endorsed or supported. Such a measure was not ultimately included given that some members questioned the value of publicising standards that are already widely available online. Furthermore, the existing formulation was deemed as providing sufficient flexibility for members to promote the uptake of RBC standards (WTO, 2021c). Another suggestion which was

discussed and ultimately not implemented, was to significantly soften the language of the RBC provision by deleting the specific list of indicative principles, standards, and guidelines, such as the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises, that had been included in a footnote (WTO, 2021d). Other provisions that had been considered (but had not been included) encouraged more specific business conduct objectives, including those on developing quality employment, facilitating green investments and promoting equal access between men and women.

Members have debated certain challenges, notably on implementation, in more depth. Some members have questioned whether it is appropriate to include provisions that focus on private sector actions in an Agreement that is meant to focus on state-to-state norms. Another concern was the extent to which members can encourage investors and enterprises to undertake RBC-related voluntary actions, given that such decisions tend to be solely within the purview of the decision-making body of that actor (e.g., board of members). Two members raised the potential for a conflict with their domestic laws, which prohibits companies from pursuing interests other than purely shareholder interests (WTO, 2021e).

Another type of concern is the extent to which the RBC provisions currently under consideration, are useful for promoting sustainable investments that are aligned to local context needs and priorities. If the ambition for promoting sustainable investments is to maximise the development impact within the local context, i.e., for the local communities where the investors or enterprises operate in, then there is a need to better understand the specific sustainable development concerns and needs are for such a context. In this regard, some experts are of the view that international guidelines, principles, and standards may not be sufficient, for promoting investments that can meet the more specific development objectives of the host state (Sauvant K and Mann H, 2017). Members may therefore have to consider whether there is a need for provisions that not only promote members to encourage investors and enterprises to incorporate internationally aligned RBC principles, standards, and guidelines, but also to promote RBC behaviours that are more closely aligned to specific local sustainable development objectives, principles, and standards.

Beyond submissions made by members, several recommendations on RBC Articles have been provided by third-party actors, including experts and representatives from inter-governmental organizations (IGOs). Examples of recommendations include encouraging investors and enterprises to widely publicise the international instruments that they pledge to comply with; providing clear guidance on CSR and responsible conduct to outward investors as well; providing support to investment authorities to better identify, track, and measure sustainable investments that comply with responsible business conduct; and to better link the provision of facilitation support to the compliance of RBC (Berger, A., and Sauvant, K., eds, 2021). Such recommendations have so far not been specifically incorporated into the current text.

2.2 Measures Against Corruption

The other type of provision that is included in the Section VI on Sustainable Investment are Measures against Corruption. These provisions focus on ensuring that members implement measures that can tackle corruption-related activities that may fall within the scope of the IFD framework. There are three provisions that are largely stabilised in the current version of the

Easter Text. The first is a provision that requires host states, in accordance with its legal systems and internationally agreed standards and commitments, to implement measures that prevent and fight corruption that fall within the scope of the IFD framework. In addition to corruption, members are considering whether host states should also be required to undertake measures that can tackle money laundering activities. The second provision focuses on recognising central principles, such as accountability, transparency, and integrity, which should be required when developing anti-corruption policies. The third provision is an obligation requiring members to exchange information and best practices, via the Committee on Investment Facilitation, regarding their experience of implementing the first two provisions (WTO, 2022a).

Prior to this text, members had considered the incorporation of a more detailed article on Measures Against Corruption, one that was based on the provisions of the United Nations Convention against Corruption (UNCAC), and which clarified how those provisions applied within the scope of investment facilitation relevant matters. Some members argued that such a detailed approach was useful, as it provided more clarity on the obligations that members should undertake in relation to this matter. Other members argued, that given the anti-corruption matter was already addressed at great length through other international instruments, such as the UNCAC, it would therefore be more appropriate to include a simple and more streamlined version of the Anti-corruption article (WTO, 2021c). The simplified text is the version included in the current version of the Easter Text.

Other concerns that were discussed throughout the negotiating process include the relevance of incorporating a specific provision on anti-corruption, given that such matters are not usually within the ambit of the WTO. Some members questioned whether money-laundering should be included in the text, while others justified its inclusion by noting that the matter is closely linked to anti-corruption (WTO, 2021f). Some members also emphasised that the Article on anti-corruption should not be subject to dispute settlement (WTO, 2021g).

Third party actors have also put forward recommendations, notably on the need to include safeguards against corruption that conform with the intergovernmental standards of the Financial Action Task Force (Berger, A., and Sauvart, K., eds, 2021).

2.3 Domestic Supplier Database

The Article on Domestic Supplier Database focuses on recommending the establishment of databases that includes relevant information on domestic suppliers, with the objective of making this information easily accessible to investors and enterprises. The Article at present is included under Section IV on Focal Points, Domestic Regulatory Coherence, and Cross-Border cooperation, in the revised Easter Text. It includes three provisions: the first one is a best-endeavour provision encouraging members to establish domestic supplier database(s), that makes information on domestic suppliers (including those that are MSMEs) easily available to investors and enterprises. The implementation of such a database is at the discretion of the member, in that it can either be set up and managed by a public or private entity. The second provision contains an indicative list of features that the supplier database can have, including the type of content that should be displayed, the relevant languages, and that it should ideally

be available online. The third provision is also a best-endeavour provision, encouraging members to keep the domestic supplier database up to date (WTO, 2022a).

Regarding this Article, members have discussed various concerns throughout the negotiating process. One concern was whether the database should be included in the Agreement, or whether it would be better suited as a future Work Programme item (WTO, 2021e). Many members however saw value in including the provisions in the Agreement, given that such databases are considered as a useful instrument for facilitating matches between investors, enterprises, and local suppliers. Other elements discussed were additional features that could be highlighted through the second provision, but which were ultimately not included. This included the possibility to highlight local production and services capacity through company factsheets; that the database information be provided preferably through a single portal; and that the database be linked to aftercare services for investors (WTO, 2020).

When developing the Article, members emphasised the need for the provisions to be included as best-endeavour efforts, to limit a member's liability regarding the information shared through such a database (WTO, 2021g). The other concern that was ultimately also reflected in the text, was the need to clarify that the database could be developed and maintained by either public, private, or joint public-private entities (WTO, 2020b).

Recently a member has proposed that the Article on Domestic Supplier Database be moved to Section VI under Sustainable Investments. Further to this shift, it was recommended that the Article be merged with the recommendation on the Supplier Development programmes to make a new Article on the Establishment of supplier-development programmes and domestic supplier databases. The member recommending the Article argued that the two types of supplier-related programmes are complementary efforts, that are critical for not only for facilitating foreign investments, but also for optimising the development impact of such investments. By establishing the two activities together, this would help with the creation of linkage-ready domestic firms that would help in attracting more investors and enterprises.

The member also put forward more specific provision language to support the establishment of the Supplier Development Programme. Given that the members have yet to discuss the latter Article in more depth, it is at present included in the Annex under Section IV BIS. There are four provisions that are to be discussed, with the first encouraging members to implement a supplier development programme that would strengthen the capabilities of domestic suppliers, so that they can be more competitive and be better matched with investors and enterprises. The second provision describes the features such programmes should exhibit, including the undertaking of matching services, facilitating improvement plans and access to financial instruments, access to advisory support, and to be designed close collaboration with domestic and foreign investors, among other features. The third and fourth provision focuses on the need and the timeline for technical assistance for developing and maintaining the supplier-development programmes.

Experts and IGO representatives have also often put forward recommendations encouraging the establishment of domestic supplier databases. Some recommendations advocated for the inclusion of additional types of information to be displayed in the supplier database. One such recommendation was to include information on the sustainability dimensions of the firms listed

in the databases, for example by providing information on environmental management, training, and gender equality. The rationale for including such a feature, was to help with the matching between more sustainability-oriented investor and enterprises to domestic firms that operate according to sustainability principles (Berger, A., and Sauvart, K., eds, 2021). Some of these additional features were not ultimately included in the Easter Text.

2.3 Other aspects

As previously mentioned, various ideas had been forwarded with a focus on the notion of facilitating the flow of more sustainable investments. Some of these ideas had been submitted through written communications but have not been included in the Easter Text. One idea was the creation of a special category of “Recognised Sustainable Investor,” which would provide more facilitation benefits and services to more sustainability-oriented investors that are recognised under the sustainable investor category. Another idea was to designate a responsible business conduct coordinator to facilitate linkages between investors and local suppliers. Other ideas included developing targeted marketing strategies for sustainable investments, and support to conduct ex-ante impact assessments for large FDI projects, to ensure that they are better aligned to sustainable development goals. Many of these ideas had the common theme of providing more targeted facilitation-related benefits or support for more sustainability-oriented investors and enterprises. These target-oriented provisions, however, often ended up not being reflected in the negotiating text.

Section 3: Home state measures

There is a growing recognition that not only host states (i.e., the state in which an investment is made) have a role to play when it comes to investment facilitation – and in particular its sustainable development aspects, but so do home states (i.e., the state or territory from which the investor originates). In recent literature, policies that are set at the home state level or policies that are targeted at facilitating outward FDI (OFDI) in general are referred to as home country obligations or home state measures.

In most home states there is not a single institution centrally responsible for facilitating OFDI; instead, these responsibilities are distributed among various public institutions (such as IPAs, trade promotion agencies, export credit agencies, development finance institutions etc.). As such, existing home state measures at present are a “patchwork” of facilitation measures (see Table 1 below). Especially for foreign investors and small and medium-sized enterprises (SMEs), it is not always clear which support measures from which institution are available to whom. Clearly, investment flows would be facilitated if the transparency and accessibility of measures and the institutions that provide them were increased, maintained, and perhaps even bundled, for example by a designated institutional focal point. In sum, in the same way as host countries are expected to be transparent about their inbound FDI facilitation measures, home states could increase transparency of their own measures, as this would likewise provide valuable information for investors (Berger, A., and Sauvart, K., eds, 2021).

Table 1: Illustrative inventory of Home State Measures

Information and other support services
1. Information support

2. Investment missions
3. Match-making services
<i>a. Organization of contacts with government officials and entrepreneurs in host countries</i>
<i>b. Maintaining business match-making databases</i>
4. Educational services: seminars, webinars, and conferences on OFDI-related topics
Financial measures
1. Grants
<i>a. For feasibility studies, market research and other pre-investment activities</i>
<i>b. For costs of setting up overseas offices</i>
<i>c. For training and human capital development</i>
2. Loans
<i>a. Concessional loans</i>
<i>b. Non-concessional loans</i>
<i>c. Structured financing options</i>
<i>d. Currency options</i>
<i>e. Syndication, public-private/public-public risk-sharing arrangements</i>
<i>f. Development financing</i>
3. Financial guarantees
4. Equity participation
Fiscal measures
1. Tax exemptions
<i>a. Exemption from corporate income tax on certain incomes</i>
<i>i. Tax exemption of foreign spin-offs' income</i>
<i>ii. Tax exemption of start-up expenses of foreign operations</i>
<i>b. Tax deductions for qualifying expenditures</i>
2. Corporate tax rate relief: Corporate tax rate relief for enterprises in particular sectors of economy
3. Tax deferral for qualifying income earned overseas
4. Tax credits for certain credits of expenditures
5. Allowances for qualifying activities
Investment insurance

Source: Sauvart, K., et al., 2014

Home state measures also have inherent potential to contribute to sustainable development objectives, which becomes evident if one considers the fundamental capacity asymmetries between developed and developing countries. Many developing countries, especially LDCs, are often not well positioned to demand from powerful international investors to contribute as much to the sustainable development of host states' economies as they would wish. In contrast, home states are usually well-positioned to do so, especially if they offer support measures to their investors. Linking investment facilitation measures in home countries to incentives for sustainable investments, e.g., by making investment support dependant on firms' due diligence to meet their RBC policies or certain specific sustainability conditions like positive impact on the host state's environment, would be a tangible way to generate more sustainable FDI flows. One existing example for this is South Africa, which has issued guidelines for its domestic firms to invest responsibly and sustainably in other African markets. Linking home state measures to sustainability goals would also provide some balance in the commitments between host and

home countries included in the IFD framework, which could be of political importance as a trade-off in negotiations and in general to provide for a sense of shared responsibility. The latter is crucial for sustaining an active dialogue between and involvement of both host and home state governments, highly significant for effective long-term capacity building (Berger, A., and Sauvant, K., eds, 2021).

For the IFD Agreement, home state measures have only been brought into the negotiations through the submission of a proposal from a WTO member. In their communication, the proponents argued that their proposal aims to stress the role of home states to facilitate OFDI, “by encouraging Members to adopt or maintain, and make publicly available, appropriate measures to facilitate outward investment in areas such as investment guarantees, insurance, investor support services and fiscal measures.” Further, the proposed text also aims to motivate members to exchange information on related matters in the Committee on Investment Facilitation (WTO, 2021h).

To this date, specific provisions on Home State Obligations have not yet been included in the revised Easter Text, but only positioned as a placeholder under Section IV BIS. Therefore, the five suggested provisions are still found in the Annex of the revised Easter Text only. These five provisions are unchanged from the original proposal made by a WTO member. The first provision recognises the role of home states in facilitating OFDI that contributes to sustainable development. The second is a best endeavour provision that encourages members adopt or maintain measures to facilitate FDI through legal frameworks, investment guarantees and insurance, technical assistance, information provision and support services, as well as financial and fiscal measures. The third provision is a commitment requiring members to publish or make available through different (electronic) means their facilitation measures for OFDI. The fourth provision builds on the third in that it requires members to share and make available when requested information on their outwards-oriented investors, including their history of RBC and sustainable investing. Lastly, the fifth provision provides for members to share experiences and information on policies and practices to facilitate OFDI for sustainable development in the Committee on Investment Facilitation (WTO, 2022a).

In the discussions about the proposal on Home State Obligations, some members acknowledged the value of the proposal and the role that home states could play in investment facilitation. However, other members have also raised concerns linked to the proposal. Some of these concerns relate to whether home state measures belong within the scope of the Agreement, or not. Members who raised such concerns argue that home state measures are focused on investment promotion rather than facilitation, which makes them not pertinent to the final IFD agreement. The discussions on the proposal have also touched upon the issue of the structure of the provisions, notably on whether they should be included as a stand-alone section, or whether the different provisions could be incorporated into the existing sections of the final Agreement, for example, into sections on Transparency and Administrative Streamlining (WTO, 2021i). It is thus likely that the proponents will present a revised text of their proposal, which would address some concerns shared by other members.

The current proposal, although focusing more on increasing transparency and accessibility of home state measures, also specifically links some provisions to sustainability. However, in terms of linkages to sustainable development, the provisions do not go as far as previous text

examples suggested by some experts (Sauvant, K., et al., 2014). This is especially evident in the second provision, which aims to encourage members to adopt or maintain specific home state measures, where sustainability is not mentioned.

Conclusion

With negotiators aiming to finalize the IFD Agreement by the end of 2022, there are a number of development-related aspects that have yet to be discussed and resolved. These include challenges and open questions related to S&DT, including the investment facilitation needs assessment; specific proposals for promoting more sustainable investments such as RBC, measures against corruption and the domestic supplier database; as well as on home state measures.

Given the importance of the needs assessment tool in helping developing and LDCs self-designate their S&DT categorisation, negotiators are at present seeking to resolve a number of challenges. This includes issues arising from the increased scope and coverage of the IFD Agreement, the need to interview and coordinate a higher number of stakeholders, and a reduced timeline vis-a-vis the TFA. Further, members need to strive for clarity related to financing and regarding the contents of a needs assessment tool. Solutions that are being explored include negotiating longer notification timelines, so that the members would have additional time to carry out the needs assessments, without the time pressure of having to do so prior to the finalisation of the negotiations.

Other development-related aspects that are getting discussed are the Articles on RBC, Measures against Corruption, and the Domestic Supplier Database. The former two Articles focus on encouraging members to promote more responsible corporate behaviour, with the objective of facilitating more sustainability-oriented investments flows into the host state. Concerns relating to these provisions often focus on challenges and issues relating to implementation. The Article on Domestic Supplier Database focuses on promoting improved access to useful information on domestic suppliers, with the hope that this information can promote linkages between investors and enterprises and domestic suppliers. Some members are requesting the consideration that this Article be linked to another recommendation, that of supplier development programmes. By promoting these complementary programmes, the expectation is that the host state will be able to promote more linkage-ready domestic firms, which in turn will be valuable for attracting and facilitating more investment flows.

Regarding home state measures, members currently await discussion on the shape and potential role of home state measures. The current proposal aims to increase transparency and accessibility of home state measures to facilitate OFDI as well as to link these measures with incentives for positive sustainability outcomes, however, both language and scope are still subject to further clarification.

Given the main goal for the IFD Agreement is to be able to deliver important development outcomes, notably by increasing investment flows into developing and LDC members, it is crucial that the development-related challenges negotiators are facing are constructively discussed with this objective and possible sensitivities of developing and LDC members in mind.

References

- Baliño, S., Brauch, M. & Jose, R. (2020). Investment Facilitation: History and the latest developments in the structured discussions. IISD and CUTS International Geneva. Retrieved from: <https://www.iisd.org/system/files/publications/investment-facilitation.pdf>.
- Berger, A., & Sauvant, K., eds (2021). *Investment Facilitation for Development: A toolkit for policymakers*. International Trade Centre. Retrieved from: https://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Investment%20Facilitation%20for%20Development_rev.Low-res.pdf.
- IISD. (2021). *WTO S&DT Talks Consider Proposals on Technical Barriers to Trade, Customs Valuation*. IISD SDG Knowledge Hub. Retrieved from: <https://sdg.iisd.org/news/wto-sdt-talks-consider-proposals-on-technical-barriers-to-trade-customs-valuation/>.
- OECD/WTO (2015), *Aid for Trade at a Glance 2015: Reducing Trade Costs for Inclusive, Sustainable Growth*. OECD Publishing. Retrieved from: https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap4_e.pdf.
- Sauvant, Karl P. and Mann, Howard. (2017). *Towards an Indicative List of FDI Sustainability Characteristics*. ICTSD and WEF. Retrieved from: <https://ssrn.com/abstract=3055961>
- World Trade Organization. (2013). *Agreement on Trade Facilitation*. Retrieved from https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm#art14.
- World Trade Organization. (2020a). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 24 and 25 September 2020 Summary of discussions by the Coordinator*. (INF/IFD/R/16).
- World Trade Organization. (2020b). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 7 and 8 December 2020 Summary of discussions by the Coordinator*. (INF/IFD/R/19).
- World Trade Organization. (2021a). *Joint Statement on Investment Facilitation for Development*. (WT/L/1130). Retrieved from: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/L/1130.pdf&Open=True>.
- World Trade Organization. (2021b). *Factsheet on investment facilitation for development in the WTO*. Retrieved from: https://www.wto.org/english/tratop_e/invfac_public_e/factsheet_ifd.pdf.
- World Trade Organization. (2021c). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 12 and 13 July 2021 Summary of discussions by the Coordinator*. (INF/IFD/R/25).
- World Trade Organization. (2021d). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 15 and 16 June 2021 Summary of discussions by the Coordinator*. (INF/IFD/R/24).

World Trade Organization. (2021e). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 11 and 12 May 2021 Summary of discussions by the Coordinator.* (INF/IFD/R/23).

World Trade Organization. (2021f). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 2 and 3 November 2021 Summary of discussions by the Coordinator.* (INF/IFD/R/28).

World Trade Organization. (2021g). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 8 and 9 March 2021 Summary of discussions by the Coordinator.* (INF/IFD/R/21).

World Trade Organization. (2021h). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 7 and 8 September 2021 Summary of discussions by the Coordinator.* (INF/IFD/R/26).

World Trade Organization. (2021h). *WTO structured discussions on investment facilitation for development: Negotiating meeting held on 4 and 5 October 2021 Summary of discussions by the Coordinator.* (INF/IFD/R/27).

World Trade Organization. (2022a). *WTO structured discussions on investment facilitation for development: Consolidated document by the coordinator "Easter Text" Revision version 6.* (INF/IFD/RD/74/Rev.6).

World Trade Organization. (2022b). *WTO Needs Assessments.* WTO Trade Facilitation Agreement Facility webpage. Retrieved from: <https://www.tfafacility.org/assistance-grants/wto-needs-assessments>.

World Trade Organization. (2022c). *Investment facilitation negotiators resume work, aim at conclusion by end of 2022.* WTO news webpage. Retrieved from: https://www.wto.org/english/news_e/news22_e/infac_27jan22_e.htm.

World Trade Organization. (2022d). *WTO structured discussions on investment facilitation for development: Negotiating meeting of 15 and 16 March 2022 Annotated Agenda by the Coordinator.* (INF/IFD/W/44).