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"International Investment Facilitation: By Whom and for What?" Presentation to the ICTSD/IDB Roundtable on "Trade Facilitation 2.0 in Regional Trade Agreements: Enabling Trade in the Digital Age"

Karl P. Sauvant

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Session II: What is It and Why is it Relevant? Investment

International Investment Facilitation: By Whom and for What?

by

Karl P. Sauvant

I am supposed to talk briefly about investment facilitation. In doing so, I want to begin with a few words about the inter-relationship between trade and FDI and the beginning discussions of investment facilitation in the WTO,[1] before commenting on two questions concerning the scope of a possible Investment Facilitation Agreement, namely **investment facilitation by whom**, and **investment facilitation for what**.

The inter-relationship between trade and FDI

It is actually a very appropriate time to talk about facilitating international investment flows because, as we have learned from the *World Investment Report* released last week, world FDI flows dropped by 23% in 2017.[2] This is a serious matter, as we know that investment is central to economic development. In the case of FDI, moreover, such investment brings not only capital, but also technology, skills and all sorts of other tangible and intangible assets that are crucial for advancing development.

And one of the crucial advantages associated with FDI is trade. In many countries international investors, i.e., multinational enterprises (MNEs), account for a considerable share of exports and imports. In the case of China, this share is almost half of total imports and exports.

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[1] For the genesis of the discussions of an international investment facilitation agreement, see, ICTSD, "Crafting a framework on investment facilitation", *Policy Brief*, June 2018, available at https://www.ictsd.org/sites/default/files/research/crafting_a_framework_on_investment_facilitation-ictsd-policy_brief.pdf .

[2] UNCTAD, *World Investment Report 2018: Investment and New Industrial Policies* (Geneva: UNCTAD, 2018), p. xi.

Taking a broader view, maybe around one-third of world trade is intra-firm trade, i. e., takes place among the various firms that fall under the common governance of the headquarters of individual MNEs that have integrated international production systems—what we refer to as global value chains.

The implications of this situation are twofold:

For one, MNEs help countries break into the world market, and especially into the highly competitive markets of the developed countries. This is important because trade is an engine of development.

Second, this situation signals how intertwined trade and foreign investment are. Foreign investment leads to trade, and trade leads to foreign investment.

For these two reasons, the drop of world FDI flows by 23% in 2017 is a deplorable development. It is also reflected in the fact that the growth of global value chains has stagnated at about 30% of trade in 2017, after three decades of continuous growth.[3]

Investment facilitation

In light of these circumstances, trade and investment facilitation take on new urgency.

Trade facilitation has already received the attention of the international community, as reflected in the adoption of the WTO Trade Facilitation Agreement, and attention is shifting toward e-commerce facilitation and services trade facilitation. These are important efforts. But they address only one side of the coin, namely trade. In a world of global value chains in which trade and investment are inextricably intertwined, however, you also need to address the other side of the coin, namely investment, to have maximum effect.

Hence, the structured discussions that have started in the WTO[4] on "*Investment Facilitation for Development*" are to be welcomed.[5]

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[3] Ibid., p. xii.

[4] See, WTO, "Joint ministerial statement on investment facilitation for development," WT/MIN(17)/59, available at https://worldtradescanner.com/Investment%20Facilitation%20for%20Development.pdf. See also, Felipe Hees and Pedro Mendonça Cavalcante, "Focusing on investment facilitation—is it that difficult?" *Columbia FDI Perspectives*, no. 202, June 19, 2017, available at http://ccsi.columbia.edu/files/2016/10/No-202-Hees-and-Cavalcante-FINAL.pdf.

[5] The first intergovernmental forum that discussed the issue of investment facilitation was, however, the G20. Begun under the Chinese presidency, the efforts of the German presidency to negotiate agreed text on this subject did, however, not succeed. The T20 Task Force on Trade, Investment and Tax Cooperation has

These discussions have focused so far largely on helping foreign investors start and operate in host countries. The emphasis is therefore on removing ground-level obstacles to FDI in host countries by improving the transparency and predictability of investment measures and streamlining and speeding up administrative procedures and requirements.

Issues to be discussed in the future are enhancing international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention; facilitating greater developing and least-developed WTO member participation in global investment flows; and any other related issues that WTO members may wish to discuss in relation to investment facilitation.

These are no doubt important practical issues that require attention, and they are rightly at the core of the structured discussions aimed at identifying possible elements of a multilateral approach to investment facilitation.

Since this is a flexible approach that also includes a "mapping exercise" of the issues surrounding various practical matters of investment facilitation, it will lead, eventually, to the delineation of the *scope* of a multilateral agreement.

As part of this mapping exercise, let me mention two topics that I think will need to be discussed at one point to determine the *scope* of a possible Investment Facilitation Agreement. (It has already been established that issues pertaining to market access, the protection of investment and dispute settlement are not within the scope of discussions.) They deal with the questions of "investment facilitation by whom" and "investment facilitation for what".

Investment facilitation by whom?

So far, the discussions have focused entirely on what **host countries** can do to facilitate FDI. It makes of course sense to concentrate on the conditions in host

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recommended that the G20 continue to pay attention to this topic, including through the adoption of Guiding Principles for Global Investment Facilitation. See, Axel Berger, Karl P. Sauvant, Silvia Karina Fiezzoni, Rodrigo Polanco, Matthew Stephenson, Akihiko Tamura, and Pavel Trunin, "Moving the G20's investment agenda forward", Policy Brief prepared by the T20 Task Force on Trade, Investment and Tax Cooperation, May 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3195114 . (The Think20 (T20) is a network of research institutes and think tanks from the G20 countries that provides research-based policy advice to the G20.)

countries, as this is where investments take place and operate. (We should not forget, however, that the economic conditions are the single most important determinants for attracting FDI, but these are not the subject of the current discussions.)

However, **home countries,** too, can do a number of things to facilitate investment flows. In fact, virtually all developed countries have various measures in place to help their outward investors. Such measures include the provision of information and other support services, numerous financial measures, various fiscal measures, investment insurance programs, and various treaties.[6] A number of institutions in developed countries provide this kind of support to outward investors, ranging from governmental departments, to export/import banks, to investment insurers. A number of developing countries, too, have begun to support their outward investors; most prominently among them is China's well articulated "going out" strategy.

I think a good case can be made that any agreement dealing with investment facilitation should also address what home countries can do in the area of investment facilitation. In particular, home countries—in an exercise of transparency—could provide information on the various measures they have in place to facilitate their firms' locational investment decisions. Perhaps this could be done through a national focal point. This would not only make sense in the interest of actually assisting investors, but also in terms of giving balance to an agreement by complementing host country commitments with home country commitments.

Investment facilitation for what?

The structured discussions that are underway in the WTO are carried out under the title "Investment Facilitation for Development". This title indicates the *purpose* of the discussions: Investment facilitation is not being undertaken for its own sake, but for the purpose of advancing development—presumably, sustainable development.

This purpose of the structured discussions draws attention to the need to safeguard the ability of host countries—in fact, to strengthen this ability—to benefit from FDI as much as possible. This can be done in various ways, for instance:

[6] For a documentation and analysis of such measures, see Karl P. Sauvant, Persephone Economou, Ksenia Gal, Shawn Lim, and Witold P. Wilinski, "Trends in FDI, home country measures and competitive neutrality," in Andrea K. Bjorklund, ed., *Yearbook on International Investment Law & Policy 2012-2013* (New York: Oxford University Press, 2014), pp. 3-107, available at https://ssrn.com/abstract=2814307.

- The process of streamlining and speeding up administrative procedures and requirements should not overshoot, e. g., by impairing the ability to undertake due diligence in the case of large-scale projects.[7]
- Room should be left for host countries—in fact, even support should be given to them—to increase the benefits associated with FDI for their economies. This could be done, for example, by helping foreign affiliates in developing countries create linkages with domestic firms that upgrade the latter.[8]
- MNEs could be encouraged to engage in particular in sustainable FDI, that is, commercially viable investment that makes a maximum contribution to the economic, social and environmental development of host countries and takes place in the context of fair governance mechanisms.[9] (For example, some governments support outward FDI by their firms on condition that they first prepare environmental impact studies.) In other words: sustainable FDI for sustainable development.

In this context, it needs to be recognized that many developing countries, and especially the least developed among them, will require technical assistance to carry out any commitments that might be enshrined in an Investment Facilitation Agreement, focused in particular on strengthening their institutional infrastructure.[10]

Beyond what governments can do, one could also create opportunities for international investors to draw attention to their corporate social responsibility (CSR) practices, practices that are typically geared toward avoiding harm[11] and increasing benefits for host countries. One way of doing this could be to invite MNEs to inform—in an exercise of transparency—a central institution of their CSR policies.

In other words, structured discussions that are being carried out under the title "Investment Facilitation for Development" should pay full attention *not only* to the

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[7] See, e. g., the various OECD due diligence guidelines, most recently *OECD Due Diligence Guidelines for Responsible Business Conduct* (Paris: OECD, 2018).

[8] For details about how this can be done, see, UNCTAD, *World Investment Report 2001: Promoting Linkages* (Geneva: UNCTAD, 2001).

[9] See, Karl P. Sauvant, "We need an international support programme for sustainable investment facilitation," *Columbia FDI Perspectives*, no. 151 (6 July 2015), p. 1, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896212 .

[10] Note that the WTO's Trade Facilitation Agreement has commitments in this respect; available at https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm .

[11] Rob van Tulder and Jan Anton van Zanten, "MNEs and the Sustainable Development Goals: What do first steps reveal?", *Columbia FDI Perspectives*, no. 227, June 4, 2018, available at http://ccsi.columbia.edu/files/2016/10/No-227-van-Tulder-and-van-Zanten-FINAL.pdf argued that, so far, CSR practices have focused on doing no harm.

"investment facilitation" part of the title, *but also* to the "development" part of the title. This might well increase the interest of countries to participate in these discussions; it would also, at least to a certain extent, reduce the skepticism of those stakeholders that oppose the treatment of investment-facilitation issues in the WTO. On the other hand, failure to take the development purpose fully on board could be misinterpreted as implying that the objective of the effort in the WTO is to make life easier for investors without heeding—in fact, encouraging—their development impact.

Conclusions

It is a good thing that investment facilitation is being discussed actively in the WTO, with a view toward establishing a multilateral approach. I think a part of the "mapping exercise" that is underway in the WTO structured discussion ought to be to consider to what extent home countries and international investors can contribute to investment facilitation for development.

Having said that, it might well be that it is advisable to keep the scope of the structured discussions and an eventual agreement focused on what host countries can do to facilitate investment flows. Once that has been achieved—in other words, in due course and perhaps on the basis of a built-in agenda—the agreement could be expanded to cover also closely related issues.

Ideally, therefore, an Investment Facilitation Agreement that helps to catalyze reforms at the national level aimed at facilitating the flow of sustainable investment;[12] that contains commitments for both host and home countries; that encourages international investors to make their corporate social responsibility policies transparent; and that provides for technical assistance especially for the least developed countries would be a very desirable and balanced achievement. Such an Agreement would be an important tool not only to stem the decline in FDI flows that we are currently witnessing, but, indeed, such an Agreement would help to increase flows of sustainable FDI for sustainable development.

[12] Sometimes, hard law helps to overcome internal resistance to reform.

Time to move ahead with investment facilitation

Karl P. Sauvant

FOREIGN VIEWS

WORLD foreign direct investment (FDI) flows dropped by 23 percent last year. This is cause for concern, considering that such investment can make an important contribution to economic growth and development and reaching the Sustainable Development Goals.

In this situation, investment facilitation takes on new urgency. Hence, the structured discussions that have started in the WTO — and driven by Brazil and China — on "Investment Facilitation for Development" are to be welcomed.

These discussions have focused so far largely on what host countries can do to help foreign investors start and operate in their economies. The emphasis is therefore on removing ground-level obstacles to FDI in host countries by improving the transparency and predictability of investment measures and streamlining and speeding up administrative procedures and requirements. These are no doubt important practical issues that require attention, and they are rightly at the core of the structured discussions aimed at identifying possible elements of a multilateral approach to investment facilitation.

However, home countries, too, can do a number of things to facilitate investment flows. In fact, virtually all developed countries have various measures in place to help their outward investors, such as the provision of information and other support services, numerous financial measures, various fiscal measures, investment insurance programs, and various treaties. A number of developing countries, too, have begun to support their outward investors, most prominently among them China's well articulated "going out" strategy.

A good case can be made that any agreement dealing with investment facilitation should also address what home countries can do in the area of investment facilitation. In particular, home countries could provide information on the various measures they have in place to facilitate their firms' locational investment decisions. Perhaps this could be done through a national focal point. This would not only make sense in the interest of actually assisting investors, but also in terms of giving balance to an agreement by complementing host country commitments with home country commitments.

As the structured discussions in the WTO are carried out under the title "Investment Facilitation for Development," their purpose is clear: Investment facilitation is not being undertaken for its own sake, but for the purpose of advancing development.

This purpose of the structured discussions draws attention to the need to safeguard the ability of host countries to benefit from FDI as much as possible. In particular, multinational enterprises should be encouraged to engage in sustainable FDI, that is, commercially viable investment that makes a maximum contribution to the economic, social and environmental development of host countries and takes place in the context of fair governance mechanisms. In other words: sustainable FDI for sustainable development.

In this context, it needs to be recognized that many developing countries, and especially the least developed among them, will require technical assistance to carry out any commitments that might be enshrined in an Investment Facilitation Agreement.

Beyond what governments can do, one could also create opportunities for multinational enterprises to draw attention to their Corporate Social Responsibility practices.

In other words, structured discussions that are being carried out under the title "Investment Facilitation for Development" should pay full attention not only to the "investment facilitation" part of the title, but also to the "development" part of the title.

Ideally, therefore, an Investment Facilitation Agreement that helps to catalyze reforms at the national level aimed at facilitating the flow of sustainable investment; that contains commitments for both host and home countries; that encourages multinational enterprises to make their corporate social responsibility policies transparent; and that provides for technical assistance especially for the least developed countries would be a very desirable and balanced achievement.

Karl P Sauvant, PhD, is Resident Senior Fellow, Columbia Center on Sustainable Investment, Columbia University, New York.