

## **Report on the 2<sup>nd</sup> virtual meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development**

**4 May 2020**

The 2<sup>nd</sup> virtual meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development took place on 4 May 2020 at 15:00 to 16:30 CET. The meeting had 22 participants, including the project support team and speakers.

The meeting was chaired by Mr. Axel Berger (Senior Researcher at the German Development Institute / Deutsches Institut für Entwicklungspolitik, DIE), who opened the meeting by introducing the Expert Network which is part of a joint project on Investment Facilitation for Development by the International Trade Centre (ITC) and DIE.

The meeting was structured under the following guiding questions:

- What are the lessons learnt from the negotiation and implementation of the Trade Facilitation Agreement (TFA) for the negotiation of a multilateral framework on investment facilitation for development in the WTO?
- What can we learn from the development dimension (including Special and Differential Treatment (SDT) and the Authorized Operator provisions) of the TFA for a multilateral framework on investment facilitation for development?

After the introduction, Mr. Bernhard Hoekman, European University Institute (EUI), and Ms. Dolores Halloran, WTO Secretariat, provided inputs addressing the aforementioned questions. This was followed by a discussion among members of the Expert Network.

The submission of the EU to the WTO (INF-IFD-RD46 – EU) was also circulated as a background document, as were the summary of the 1<sup>st</sup> meeting of the Expert Network held on 20 March 2020 and the summary of the Streamlined Text of the WTO Structured Discussions on Investment Facilitation for Development. The discussion was held under the Chatham House Rules to enable frank and open exchange.

### **Discussion highlights**

- I. What are the lessons learnt from the negotiation and implementation of the Trade Facilitation Agreement (TFA) for the negotiation of a multilateral framework on investment facilitation for development in the World Trade Organization (WTO)?**

### **I. 1 The TFA represents a distinct model of WTO agreements.**

To set the stage for comparing the WTO TFA with a potential multilateral framework on investment facilitation for development, it is essential to review what distinguishes the WTO TFA from its WTO siblings. The TFA stands out from other WTO agreements because it a) does **not address issues of market access**; rather, it focusses on the simplification and harmonisation of border procedures, b) has an innovative model of SDT that **involves technical assistance and capacity building to address implementation gaps**; and c) **minimises recourse to formal dispute settlement**.

### **I. 2 The TFA provides an innovative model of SDT**

**Instead of the standard WTO approach of transition periods and reduced commitments**, the TFA is divided into measures that economies can notify individually under categories A, B or C. The categories have the following implications: a) measures notified under A are to be implemented upon ratification of the agreement; b) measures notified under B should be implemented within an extended implementation period; and c) measures notified under C should be implemented within an extended implementation period and after technical assistance and capacity building have been provided fully to the implementing country.

### **I. 3 The TFA focuses on “*facilitation*” of trade policy**

One of the major characteristics that sets the TFA apart from other WTO agreements is that it addresses the transparency, streamlining and simplification of processes. In other words, the agreement is concerned with **facilitating existing trade policies** that economies have **without having implications for market access or the liberalisation of market regulations**. Similarly, investment facilitation aims at simplifying and speeding-up the procedures for FDI without affecting the substance of domestic policies or access of foreign investors to markets.

### **I. 4 The minimal role of dispute settlement in the TFA could be considered for investment facilitation**

There is much less emphasis on formal dispute settlement in the WTO TFA than in other WTO agreements. For example, under the TFA, if a WTO Member has not implemented a measure within the predetermined timeframe, this **WTO Member is requested to report any problems that are causing the lack of implementation and disseminate this information to other economies**. Such problems may include insufficient resources or implementation times. In such cases, a group of experts would be assigned to evaluate the claim and ascertain whether the WTO Member has not designated a sufficient time or received sufficient technical assistance and capacity building to implement the measure at hand. Adopting a similar approach for a multilateral framework on investment facilitation for development could increase the likelihood of reaching consensus and soothe apprehensions by developing and least developed countries.

### **I. 5 The subject and objective of the TFA had to be specified early**

There was some resistance among developing countries about having further WTO commitments. This created a strong demand to limit the scope of the TFA to the specific subject of alleviating procedural and administrative burdens for traders, particularly SMEs, in order to expedite the movement of goods. To reach consensus, proponents had to increase interest by narrowing the focus of the agreement until they reached the final scope, which addresses friction associated with trading across borders. Another issue that had to be identified clearly was **the role of the WTO in trade facilitation, especially in comparison to the roles played by other international organisations**, such as the World Customs Organization.

### **I. 6 Negotiators had to be realistic about the legal nature of the TFA**

Negotiators had to be realistic about eventually having a mix of binding and non-binding provisions. **Developed countries were proponents of a ‘rules-based agreement’, whereas developing countries preferred a ‘recommendations-based agreement’**. This was partly because negotiators from developing countries were concerned about the measurement of compliance against which they would be monitored, and whether this would result in dispute settlement proceedings, especially when it comes to more costly and complex measures.

There were ongoing discussions on the nature of modalities. Developed countries were interested in open-ended modalities that could be detailed later, whereas developing countries were interested in detailed modalities from the beginning, particularly around concerns of levels of commitments as well as technical assistance and capacity building. This acceptance of a mix of binding and the non-binding provisions allowed negotiators to successfully bridge the different interests of developed and developing countries and facilitate the negotiations of the TFA.

### **I. 7 Facilitation of trade had consensus from the beginning**

As opposed to other WTO negotiations on issues like tariffs and subsidies that are often controversial, in trade facilitation, governments were actually in favour of the reforms presented by the TFA. However, the key barrier was the lack of resources and capacity to implement trade facilitation measures. **This is reaffirmed by one of the phenomena that are only observed in the TFA, in which governments will often do TFA+ reforms**, i.e., governments would implement beyond the minimum obligations of the agreement because they viewed this implementation to be in their own interest. A similar dynamic may be possible in a multilateral framework on investment facilitation for development, if developed countries would be prepared to provide additional support through technical assistance and capacity building.

### **I. 8 The TFA applies to all WTO members, while a framework on investment facilitation for development could be a plurilateral agreement**

The TFA was negotiated in a different political environment, where the notion of a plurilateral agreement was not as prevalent as it is now. **Therefore, it is conceivable that a framework on investment facilitation for development could be supported by a sub-group of WTO Members only, and would therefore be concluded as a plurilateral agreement.** The framework, therefore, should also consider the governance model of a plurilateral agreement and how that could be incorporated into the WTO framework. Such a model should address, for example, issues relating to the management of the relationship with non-members of the plurilateral agreement.

### **I. 9 The TFA and the potential multilateral framework on investment facilitation for development would have different scopes**

As part of the Annex1A *Multilateral Agreements on Trade in Goods* of the Marrakesh Agreement, the TFA **deals exclusively with goods.** If a multilateral framework on investment facilitation for development were concluded as a stand-alone agreement, the framework would not be sector-specific. Care would therefore have to be taken that the framework does not conflict with the GATS, as certain forms of investment are covered in the **3<sup>rd</sup> mode of supply of the GATS, which relates to commercial presence.** A multilateral framework on investment facilitation for development would also potentially be relevant to the **4<sup>th</sup> mode of supply of the GATS, i.e., the movement of natural persons,** which (as far as key personnel is concerned) is important for FDI operations.

### **I. 10 National Trade Facilitation Committees played a key coordination role at the country level**

Insofar as the multilateral framework on investment facilitation for development would follow the approach of the TFA, there is an important role for a WTO Investment Facilitation Committee. However, the TFA also required national trade facilitation committees that deal with coordination at the country level. **This model could be adopted in a multilateral framework on investment facilitation for development, to build a connection between implementation at the country level and the WTO Investment Facilitation Committee on the agreement level.** Such national committees are particularly needed, as investment facilitation addresses many behind-the-border issues that often fall under the responsibility of sub-national actors. A national committee could also help in identifying implementation problems and establishing efficient coordination with donors.

## **II. What can we learn from the development dimension (including SDT) and the Authorised Economic Operator provisions) of the TFA for a multilateral framework on investment facilitation for development?**

### **II. 1 The TFA experience in the measure of the authorised economic operator**

The authorised economic operator provision is a national arrangement implemented by national customs authorities. While the implementation of this provision has not been analysed comprehensively, it seems that it works well on a country-by-country basis, but its success is

conditional on the specific country-level circumstances. There have been no implications of the authorised economic operator for the most-favoured-nation component of the GATT. This is probably because providing traders with the status of an authorised economic operator is contingent on domestic regulations; thus, the provision on authorised economic operators would not constitute discrimination if applied consistently.

## **II. 2 Unlike the TFA, the ongoing negotiations on a multilateral agreement on investment facilitation for development include an explicit development dimension**

This is one of the main issues that are new in the negotiations on a framework on investment facilitation for development in comparison with the TFA. For example, the proposals submitted to the WTO include **provisions directly addressing development, be it through technical assistance to support implementation or through corporate social responsibility (CSR)**. The TFA addresses development in its SDT model as well, by addressing the needs of small and medium-size enterprises (SMEs) and landlocked countries in some of its provisions. Yet, the TFA does not include explicit mention of CSR.

The TFA was successful in securing development assistance largely because it **was linked to a broader Aid-for-Trade initiative**, which was set in place to help developing countries benefit from trade agreements. Thus far, this is not the case for a future multilateral framework on investment facilitation for development, which means that securing development assistance for technical assistance and capacity building may require a hard link between implementation and technical assistance funding. One possibility to support the implementation of a future multilateral framework on investment facilitation for development is to expand the Aid-for-Trade initiative to investment.

## **II. 3 The match between supply and demand of technical assistance and capacity building**

The negotiation of the TFA were also connected to the willingness of countries to fund technical assistance and capacity building. Since the TFA is a binding multilateral agreement, developing and developed countries were careful about the commitments they were willing to undertake. In contrast, an agreement on investment facilitation for development that is concluded on a plurilateral basis would so far imply voluntary membership. **Hence, the willingness to fund technical assistance and capacity building may not have as much of an influence on the dynamics of the negotiations.**

It is worth noting that there was a real match between demand and supply for technical assistance and capacity building in the TFA. This raises the question of whether there is a similar match for investment facilitation for development, especially when taking into consideration the current international environment.

## Annex: Attendance of the 2<sup>nd</sup> meeting of the Expert Network on a Multilateral Framework on Investment Facilitation for Development

First name	Last name	Affiliation
Rudolf	Adlung	Independent Trade Policy Analyst, Former Counsellor, WTO Trade in Services Division
Robert	Basedow	London School of Economics and Political Science (LSE)
Axel	Berger	German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE)
Ayelet	Berman	National University of Singapore (NUS)
Julia	Calvert	University of Edinburgh
Benjamin	Czapnik	Pacific Islands Forum Secretariat
Pablo Agustín	Escobar-Ullauri	Permanent Mission of Ecuador to the WTO
Mohamad	Fakhreddin	International Trade Centre (ITC)
Yuka	Fukunaga	Wasada University
Geoffrey	Gertz	Brookings Institute
Anabel	Gonzalez	Peterson Institute for International Economics (PIIE)
Khalil	Hamdani	Graduate Institute of Development Studies at the Lahore School of Economics
Bernhard	Hoekman	European University Institute (EUI)
Federico	Ortino	University College London (UCL)
Christian	Pitschas	Gesellschaft für Internationale Zusammenarbeit (GIZ)
Rodrigo	Polanco	World Trade Institute (WTI)
Michelle	Ratton Sanchez Badin	Getulio Vargas Foundation
Karl P.	Sauvant	Columbia Center on Sustainable Investment (CCSI)
Stephan	Schill	University of Amsterdam
Matthew	Stephenson	World Economic Forum (WEF)
Quan	Zhao	International Trade Centre (ITC)
<b>Speakers</b>		
Dolores	Halloran	World Trade Organization (WTO)
Bernhard	Hoekman	European University Institute (EUI)

## Agenda and bios:



Dear Expert Network members,

This is to remind you of the upcoming virtual meeting of the Expert Network on Monday, 4 of May at **15:00pm to 16:30pm CEST** (09:00am to 10:30am EDT and 20:00 to 21:30pm CST). We would appreciate if you are able to participate. **Please register [here](#).**

The second meeting will discuss the lessons learnt from the Trade Facilitation Agreement (TFA) for a multilateral framework on investment facilitation for development. The following questions should guide our discussion:

- *What are the lessons learnt from the negotiation and implementation of the TFA for the negotiation of a multilateral framework on investment facilitation for development in the World Trade Organization (WTO)?*
- *What can we learn from the development dimension (including Special and Differential Treatment and the Authorized Operator provision) of the TFA for a multilateral framework on investment facilitation for development?*

After an introduction to the project and the Expert Network, we will have two inputs by Bernhard Hoekman, European University Institute (EUI), and Dolores Halloran, WTO Secretariat. The discussion will be held under Chatham House Rule to enable frank and open exchange. The main results of the discussion will be summarized in a short report which will be fed into the WTO process on investment facilitation.

Please note that we will send you an “Inventory of Concrete Measures to Facilitate the Flow of Sustainable FDI” that is being developed in the context of our project in a separate email along with further material on the current discussion on a multilateral framework on investment facilitation for development.

To join the meeting, kindly click on the link below shortly before 15:00pm CET on 4 May 2020 and follow the instructions. If you are not able to connect online, you could connect using the dial-up options provided at the end of this email.

[Join Zoom Meeting](#)

Meeting ID: 942 7405 7492

If you would like to send written questions or comments during the meeting, please feel free to type them in the chat window on the middle-bottom pane of the Zoom window. Thank you in advance for participating in the Expert Network and sharing your expert insights.

With best regards,

Rajesh Aggarwal, Chief Trade Facilitation and Policy for Business, ITC  
Axel Berger, Senior Researcher, DIE  
Karl P. Sauvart, Resident Senior Fellow, Columbia University, CCSI

## **Bios**

### **Axel Berger**

Axel Berger is a Senior Researcher at the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE). He works on the design, effects and diffusion patterns of international trade and investment agreements, with a focus on emerging markets and developing countries. Other areas of current research include the effects of an international investment facilitation framework, the impact of free trade agreements on upgrading within global value chains and the role of the G20 in global governance. He teaches international political economy at the University of Bonn and regularly advises developing countries, development agencies and international organisations on trade and investment matters.

### **Dolores Halloran**

Dolores Halloran is an Economic Affairs Officer at the WTO, where she has worked since 2003. Before that, she worked as an Economic Affairs Officer at the GATT from 1988 to 1995. In the intervening period she worked on a Government Taskforce to promote the economic and social development of the West of Ireland. During her GATT and WTO years, Dolores has worked in the areas of Regional Trade Agreements, Trade and Development, Market Access, and Technical Assistance. She spent a number of years working on the development and organization of the WTO Regional Trade Policy courses. She has also delivered numerous WTO workshops and courses. Since 2013, Dolores has worked on Trade Facilitation, including during the final stages of the TFA negotiations, as well as the establishment of the Preparatory Committee on Trade Facilitation. She has been deputy Secretary to the Committee on Trade Facilitation since 2014 and since 2019 is the Acting Secretary of the Committee. Since 2014, Dolores has been working as the Secretary of the WTO Committee on Customs Valuation. Dolores completed her economic studies at the National University of Ireland, Galway.

### **Bernard Hoekman**

Bernard Hoekman is Professor and Director, Global Economics at the Robert Schuman Centre for Advanced Studies, European University Institute in Florence, Italy where he also serves as the Dean for External Relations. Previous positions include Director of the International Trade Department (2008-13) and Research Manager in the Development Research Group (2001-08) at the World Bank. A CEPR Research Fellow, he holds a Ph.D. in economics from the University of Michigan (Ann Arbor, MI).

## Background literature:

- (a) **Submission of the EU to the WTO (INF-IFD-RD46 – EU).** This submission is a communication of a proposal for WTO disciplines and commitments relating to investment facilitation for development. The communication was submitted in February 2020.
- (b) **Summary of the Expert Network meeting, 20 March.** This document summarises the proceedings of the last meeting of the Expert Network on a Multilateral Framework of Investment Facilitation for Development. It lists the points in the discussion that could be integrated into concrete measures of investment facilitation for development.
- a) **A summary of the Streamlined Text of the WTO Structured Discussions on Investment Facilitation for Development.** This is a summary of the framework being considered in the WTO Structured Discussions on Investment Facilitation for Development.