

Report on the 4th webinar on a Multilateral Framework on Investment Facilitation for Development

28 May 2020

The 4th webinar on a multilateral framework on investment facilitation for development took place on 28 May 2020 between 15:00 to 16:00 CET and hosted, at its peak, around 500 participants. The aim of the webinar was to address the issue of how such an international framework could be integrated into the WTO system and how it relates to other agreements. The webinar was chaired by Mr. **Axel Berger** (Senior Researcher, DIE).

Proceedings of the meeting

Ms. **Marion Jansen**, Director of the Division for Market Development, International Trade Centre (ITC), opened the webinar. She explained that this discussion was part of a webinar series on a multilateral framework on investment facilitation for development, itself part of the Investment Facilitation for Development project implemented by ITC and the German Development Institute/Deutsches Institut für Entwicklungspolitik (DIE).

The webinar benefitted from inputs by Ambassador **Mathias Francke** of Chile, Coordinator of the Structured Discussions on Investment Facilitation for Development; Mr. **Rolf Adlung**, independent trade policy analyst, former Counsellor, Trade in Services Division at the WTO; and Ms. **Sherry Stephenson**, Member PECC Services Network, Independent Consultant.

The main outcomes of the discussions

I. How to integrate an international framework on investment facilitation for development into the WTO rulebook?

Globally, it is no longer appropriate to divide the economy in silos where trade in goods, trade in services and investment are regarded separately. The WTO offers a framework to discuss these issues coherently. Negotiating disciplines on investment facilitation for development within the WTO would ensure a high level of consistency across sectors and Members. This includes SME-related provisions that could be an integral part of an Investment Facilitation Framework for Development (IFF4D), as they are in the Trade Facilitation Agreement (TFA). Moreover, the WTO Secretariat has significant experience and capacity to provide technical assistance and capacity building for developing countries.

There are essentially two options to deal with an IFF4D. It could be applied either on a plurilateral basis, binding only on the signatories, or horizontally across all WTO Members. In any case, the negotiations would be governed by the Marrakesh Agreement Establishing the World Trade Organization, in particular Articles IX and X, as well as paragraph 34 of the Nairobi Ministerial

Declaration.¹ As envisaged in the Joint Ministerial Statement on Investment Facilitation, issues concerning market access, investment protection and Investor-State Dispute Settlement will not be addressed.

Concerning the structure of a future agreement, there are essentially two options.

The first option entails the creation of an IFF that consists of two largely independent sections. One section would deal with services (GATS-based), building mainly on enhanced GATS commitments with an administrative and procedural focus. The second section would then cover all other sectors. Concerning the former section, the main instruments to consider are commitments under GATS Article XVIII, i.e., the so-called Additional Commitments on issues not falling under Articles XVI and XVII (market access and national treatment). An accord should be achievable among interested Members, at least in the form of an MFN-based open plurilateral agreement, since the underlying legal structure - in form of the GATS - already exists. An important challenge would remain, however: the creation, as far as possible, of a counterpart for non-service sectors. In the current political environment, it is difficult to conceive of a consensus-based modification of the WTO Agreement that would extend investment-related disciplines to all sectors.

The second option would consist of the creation of a comprehensive agreement on investment facilitation that is equally applicable across all sectors. In turn, this might require profound structural and definitional adjustments of the services-related parts. Recent preferential trade agreements might serve as a model.

II. What are the potential overlaps with, and inconsistencies between, an international framework on investment facilitation for development and existing WTO agreements (e.g., GATS)?

One of the primary differences between the GATS and the proposed IFF4D are the respective approaches to special and differential treatment. The GATS implies that less developed countries, reflecting their individual economic conditions, may undertake fewer commitments on market access and national treatment and attach more limitations than economically advanced countries. Yet, the obligations that are triggered by the existence of such commitments (these obligations are mostly of a regulatory and administrative nature), as well as any horizontally applicable obligations, such as the creation of enquiry points, remain essentially the same for all Members. In contrast, under the proposed IFF4D, special and differential treatment would consist, inter alia, of LDCs and other developing countries being entitled to self-designate the implementation needs in terms of time and technical assistance and capacity building for most treaty obligations; similar to the innovative approach adopted in the TFA. And these include certain regulatory and other requirements all Members are expected to meet from day one under the GATS. Moreover, certain GATS provisions appear to re-appear in a watered-down version in the draft discussed so far.

¹ Nairobi Ministerial Declaration (2015), WT/MIN(15)/DEC. “*While we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members.*”

III. What are the interrelations between the negotiations on investment facilitation for development and domestic regulation disciplines?

Domestic regulations, as covered by the GATS, essentially consist of measures that affect services trade, but do not limit market access and national treatment in the sense of Articles XVI and XVII. The respective disciplines are contained in GATS Article VI. However, since certain provisions exist in rudimentary form only, an outstanding mandate provides for further negotiations on qualification requirements and procedures, licensing requirements and technical standards. The respective negotiations commenced after the WTO came into force in 1995. In the absence of tangible progress, a subset of WTO Members sought to move ahead in the form of a plurilateral undertaking under a Joint Ministerial Statement on Services Domestic Regulation of December 2017. In 2019, this plurilateral effort resulted in a draft Reference Paper (WT/MIN(17)/7/Rev.2). The Paper focuses mainly on procedural/administrative matters, including transparency-related obligations, governing the supply of a service rather than on the substantive requirements to be met.

The domestic regulation disciplines under negotiation almost inevitably overlap with those arising under the proposed IFF4D, and the same is true for the participating Members. Yet, there are almost twice as many delegations, more than 100, involved in the negotiations on investment facilitation than those negotiating a reference paper with regulatory disciplines. Thus far, it appears that there have not been joint meetings between the two groups of WTO Members, and hence it is not clear if there has been interaction or coordination between the respective participants.

Both negotiations aim at establishing disciplines that make services trade more transparent, streamlined and predictable. The issues discussed include publication and availability of information, enquiry points / contact points, opportunity for comments on submissions, timeframes and the processing of applications for licenses, fees and charges, authorisation procedures, acceptance of electronic applications, periodic review / examination, open and transparent processes, and impartiality and independence. Nonetheless, it is not yet clear if the language and scope of the measures being proposed for the same issue are coherent and compatible in both negotiations. In fact, it appears that there may be contradictory or incompatible elements in the current two drafts. For example, timeframes for the consideration of applications for investment approvals differ between both texts.

Moreover, there is redundancy in the draft texts, concerning, for example, the establishment of two different sets of enquiry points, which may be expected to cover the same measures at the national level. Redundancy could also be caused by two different mechanisms for the implementation of similar measures.

IV. A recommendation moving forward

As indicated in the first section above, challenges exist regarding negotiating a framework on investment facilitation for development that is (i) compatible with existing WTO agreements (especially in terms of various consistency issues) and (ii) acceptable to all WTO Members at least in the form of an open plurilateral agreement. What appears important in current circumstances, therefore, is an intensive exchange of information between the two groups of negotiators, with a view towards exploring the full range of the issues involved and, hopefully, developing a common approach towards successful outcomes.

Annex I: Invitation, agenda and speakers

Invitation: Webinar on integrating an international framework on investment facilitation for development into the WTO, 28 May, 15:00-16:00 CET

Dear colleague,

On behalf of the International Trade Centre (ITC) and the German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE), we cordially invite you to a webinar on:

Integrating an international framework on investment facilitation for development into the WTO

Thursday, 28 May 2020, 15:00-16:00 Central European Time (CET)

This is the fourth of a webinar series on investment facilitation for development, organised jointly by ITC and DIE.

To register in the event and receive the password for the Zoom meeting please click here.

Negotiations on an international framework on investment facilitation for development will start in the World Trade Organization (WTO) among 101 WTO members as soon as circumstances permit. How such an international framework could be integrated into the WTO system and how it relates to other agreements is open for discussion.

The webinar will be conducted in an interactive manner and allow for questions by participants. After an introduction briefing the webinar participants on the state of play of the investment facilitation negotiations, key issues will be discussed, including:

- How to integrate an international framework on investment facilitation for development into the WTO rulebook?
- What are potential overlaps with, and inconsistencies between, an international framework on investment facilitation for development and existing WTO agreements (e.g. GATS)?
- What are the interrelations between the negotiations on investment facilitation for development and domestic regulation disciplines?

The webinar will have the following agenda and speakers:

Introduction: Marion Jansen, Director and Chief Economist, ITC

Moderator: Axel Berger, Senior Researcher, DIE

The panel:

- Ambassador Mathias Francke of Chile, Coordinator of the Structured Discussions on Investment Facilitation for Development
- Rolf Adlung, independent trade policy analyst, former Counsellor, Trade in Services Division at the WTO
- Sherry Stephenson, Member PECC Services Network, Independent Consultant

This webinar is held in the framework of a joint ITC/DIE project on Investment Facilitation for Development. It will discuss a number of issues that need to be considered during the negotiations concerning how such a framework should be implemented to meet its objective.

To join the meeting, kindly click on the link below shortly before **15:00 am CET on 28 of May** and follow the instructions. **You will receive the password on Tuesday 27 May 2020.** 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

If you would like to send written questions or comments during the meeting, please feel free to type them in the chat window by clicking on the “chat” button on the middle-bottom pane of the Zoom window.

We look forward to welcoming you to the webinar!

With kind regards,

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

Bios:

Rudolf Adlung

Rudolf Adlung currently works as an independent trade policy analyst. After graduating from Basel University (MA and PhD in economics), he gained his first professional experience at the Kiel Institute for the World Economy (IfW) and, from 1980, the German Ministry of Economics. In 1990, he joined the then GATT Secretariat. After several years in the Trade Policies Review Division, he served, until retirement in 2014, as senior economist in the Trade in Services Division. His recent publications deal with RTAs in services, the applicability of GATS to services exports, the interaction between investment treaties and the GATS, the risks and opportunities of open plurilateral trade agreements, and BREXIT from trade-in-services perspective.

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.

Mathias Francke

Mathias Francke is the 2019 APEC SOM Chair. Previously, he was Director General for Multilateral Economic Affairs, Director for Bilateral Economic Affairs, Chief of Cabinet and senior advisor at the Chilean Vice Minister of Trade. As a Foreign Service officer since 1989, he has been posted to the Chilean Embassy to the UK as Deputy Head of Mission (2014 to 2018), the Permanent Mission of Chile to the WTO (2000 to 2005 and as Deputy Head of Mission from 2006 to 2010) and the Trade Office of the Chilean Embassy to the USA (1992 to 1996). Mr. Francke is a lawyer from the Catholic University of Chile and has a graduate degree from the School of Foreign Service at Georgetown University.

Marion Jansen

Marion Jansen is Director of the Division for Market Development and Chief Economist at the International Trade Centre (ITC) in Geneva. She oversees ITC's work on export strategy and trade facilitation and ITC's contributions to G20 processes. Ms Jansen previously held senior positions in the WTO and the International Labour Office. She has published widely on international trade and global economic governance, notably co-editing the volumes "[Internationalization of Financial Services](#)" and "[The Use of Economics in International Trade and Investment Disputes](#)". Ms Jansen holds a PhD in economics from the Universitat Pompeu Fabra (Spain) and has lectured in multiple academic institutions, including the University of Geneva and the World Trade Institute (Bern). A German national, she grew up in the Netherlands. Next to German and Dutch, she speaks English, French, Italian, and Spanish.

Sherry M. Stephenson

Sherry M. Stephenson was a Senior Fellow with the International Centre for Trade and Sustainable Development (ICTSD) in Geneva from 2013 to 2018, where she developed and executed a work program on services, covering multilateral, plurilateral and regional services issues. Prior to the ICTSD, she worked with the Organization of American States (OAS) in Washington DC, where she guided the organization during the Free Trade Area of the Americas (FTAA) negotiations (1995-2004). Before the OAS, Ms. Stephenson was an Advisor to the Ministry of Trade in Indonesia where she assisted the Government in developing its final offer for the Uruguay Round. Previously, she has worked with the OECD, GATT and UNCTAD Secretariats. Ms. Stephenson has published three books and numerous articles. She was a member of the World Economic Forum's Global Trade Agenda Council and contributed to its annual reports of 2011, 2012, 2013, and 2014. She is currently a member of the PECC Services Task Force as well as the T20 Trade Investment and Globalization Task Force, and has contributed to its Policy Briefs on Services.