Potential Investment Facilitation Agreement:

Possible Scenarios and Their Impact on Countries' Regulations

Axel Berger (German Development Institute)

Ali Dadkhah (Cuiriak Consulting)

Zoryana Olekseyuk (German Development Institute)

Preliminary draft

April 14, 2019

Abstract

Investment facilitation covers a wide range of areas, all with the ultimate focus on allowing investment to flow efficiently and for the greatest benefit. International discussions on investment facilitation have been very dynamic. Since the idea of an investment facilitation agreement (IFA) was proposed by a group of experts in 2015, it was pursued in the G20 and discussed among the World Trade Organization (WTO) members. In this study we map the legal commitments in potential IFAs onto an index that measures investment facilitation developed by the German Development Institute (DIE), namely Investment Facilitation Index (IFI). Hereby, we create different scenarios for the potential multilateral investment facilitation framework. We start with a lower bound IFA, which includes investment facilitation commitments covered by different free trade agreements (e.g., CETA, CPTPP, NAFTA), and proceed with an ambitious IFA, which covers investment facilitation measures mentioned in all available proposals submitted to the WTO. Moreover, we also take into account a broader set of countries expanding the current list of 69 participants of the Structured Discussions at the WTO with India and the USA. This analysis contributes to the very scarce research on investment facilitation and informs policymakers about potential changes in countries' rules and regulations due to the multilateral IFA currently discussed among the WTO members. The results illustrate which commitments represent a common ground and can be easily negotiated given currently implemented measures by a large number of participating countries. Moreover, we demonstrate which IFA framework is the most beneficial for participants due to the highest reform potential. In addition, we investigate the differences in reform burden and expected improvements for different country groups, e.g., developed vs. developing countries.

Keywords: World Trade Organization (WTO), Structured Discussions, Investment Facilitation Index

JEL codes: F13, F15, F21, G28

Investment facilitation covers a wide range of areas, all with the ultimate focus on allowing investment to flow efficiently and for the greatest benefit. Transparency, simplicity and predictability are among its most important principles. Investors look for an investment environment that is stable, and that offers international best practice standards of protection.

A sound investment facilitation strategy ensures that all investment applications are dealt expeditiously, fairly and equitably. Investment facilitation also requires creating and maintaining transparent and sound administrative procedures that apply for the lifetime of the investment, including effective deterrents to corrupt practices. Finally, investment facilitation is enhanced by the availability of quality physical infrastructure, high-standard business services, talented and flexible labour forces, and the sound protection of property rights.

International discussions on investment facilitation have been very dynamic. Since the idea of an investment facilitation agreement (IFA) was proposed by a group of experts in 2015, it was pursued in the G20 (see G20, 2016) and discussed among the World Trade Organization (WTO) members.[1] To this date, there have been six proposed texts on investment facilitation in the WTO:

- Russia (30 March 2017)[2]
- MIKTA (4 April 2017)[3]
- China (21 April 2017)[4]
- FIFD (21 April 2017)[5]
- Argentina and Brazil (April 24 2017)[6]
- Brazil (1 February 2018)[7]

Brazil's first proposal of December 13, 2017 was endorsed in the Joint Ministerial Statement on Investment Facilitation for Development in Buenos Aires that called for the start of "structured discussions with the aim of developing a multilateral framework on investment facilitation". Subsequently, Brazil circulated a draft for a possible WTO agreement.

These ongoing proposals illustrate the need of sophisticated research in quantifying the impact of such agreements on countries' rules and regulations as well as the economic implication of the multilateral deal. In this project, we map the legal commitments in IFAs onto an index that measures investment facilitation developed by the German Development Institute (DIE), namely Investment Facilitation Index (IFI).[8]

In terms of our approach, we first create a template based on the above proposed IFAs. In developing the template, each relevant article of the potential agreements is mapped to a measure in the IFI. Once the template has been developed, we will apply the template to each country covered by the IFI. This way we can calculate an IFI policy shock based on the proposed texts. In

[1] See Berger, Gsell and Olekseyuk (2019) for more details.
[2] See WTO (2017a).
[3] WTO (2017b).
[4] WTO (2017c).
[5] WTO (2017d).
[6] WTO (2017e).
[7] WTO (2018f).
[8] See Berger, Dadkhah and Olekseyuk (2019).

addition to developing policy shocks for the proposed texts of the IFAs, this assignment will include an evaluation of the impact of the relevant investment facilitation measures of some of the most recent Free Trade Agreements (FTAs) on countries' investment regime.

In developing the policy shock, if the IFAs or FTAs change the answer to the measure in the IFI, the contribution of that measure, which is based on its index weight, will be added to that country's total score. We will then recalculate the IFI's new score for the given country. The percentage change between the countries' score before and after the agreements is taken as the degree of reduction of the existing barriers to FDI and represents an improvement of countries' investment regime. The percentage change can be used for further empirical analysis of economic effects of different IFA frameworks.

Based on the proposed IFAs and recent FTAs, we develop the five following scenarios for the potential IFA framework:

1. *Lower bound IFA*: Investment facilitation measures are already to some extent included in different deep and comprehensive free trade agreements (e.g., CETA, CPTPP, NAFTA) negotiated by countries participating in the Structured Discussions. For the lower-bound scenario, we assume that investment facilitation commitments covered by these regional treaties are multilateralized.
2. *Middle range IFA*: Policy shock is based on the Structured Discussions on Investment Facilitation proposed by Brazil dated February 1, 2018.
3. *Ambitious IFA*: Given all submitted proposals so far, we assume that commitments under the IFA include all mentioned investment facilitation measures, which strongly increases the coverage of measures included in the IFI and reflects a much deeper reform potential.
4. *IFA including USA and India*, which extends the number of participating countries from 69 to 71. Given that India is rethinking its opposition against multilateral talks on investment facilitation, we include this country into the group of potential members.[9] To illustrate the potential gains of the US as a major investor worldwide, we investigate the possible IFA impact on this country as well.
5. *Composite IFA*: This scenario provides a policy shock for a combined IFA and FTA. In this scenario the assumption is that the IFA has been implemented and an FTA with investment facilitation measures has been negotiated after.

This analysis contributes to the very scarce research on investment facilitation and informs policymakers, based on academic research with appropriately developed methodology and data, about potential changes in countries' rules and regulations due to the multilateral IFA currently discussed among the WTO members. The results illustrate which commitments represent a common ground and can be easily negotiated given currently implemented measures by a large number of participating countries. Moreover, we demonstrate which IFA framework is the most beneficial for all participants due to the highest reform potential. In addition, we investigate the differences in reform burden and expected improvements for different country groups, e.g., developed vs. developing countries. Therefore, estimates based on the aforementioned indicators

[9] According to Livemint (2018).

provide a basis for governments to prioritise investment facilitation actions and mobilise technical assistance and capacity-building efforts for developing countries in a more targeted way.

References

Berger, A., Dadkhah, A., Olekseyuk, Z. (2019): Investment Facilitation Index: The First Step to Quantify Investment Facilitation, DIE Discussion Paper, forthcoming.

Berger, A., Gsell, S., Olekseyuk, Z. (2019): Investment Facilitation for Development: A New Route to Global Investment Governance, DIE Briefing Paper 5/2019, available at https://www.die-gdi.de/briefing-paper/article/investment-facilitation-for-development-a-new-route-to-global-investment-governance/

G20 (2016): G20 guiding principles for global investment policymaking. Retrieved from http://investmentpolicyhub.unctad.org/Upload/Documents/Annex%20III%20G20%20Guiding%20Principles%20for%20Global%20Investment%20Policymaking.pdf

Livemint (2018): WTO: India May Drop Opposition to Investment Facilitation Treaty, February 21, 2018, available at https://www.livemint.com/Politics/rlXUVoVh7lRUypYqfHZlxJ/WTO-India-may-drop-opposition-to-investment-facilitation-tr.html

WTO (2017a): Russia: Proposed Multilateral Disciplines for Investment Facilitation (JOB/GC/120), March 31, 2017.

WTO (2017b): Mexico, Indonesia, Korea, Turkey and Australia (MIKTA): Reflections on Investment Workshop (JOB/GC/121), April 6, 2017.

WTO (2017c): China: Possible Elements for Investment Facilitation (JOB/GC/123), April 26, 2017.

WTO (2017d): Friends of Investment Facilitation for Development (FIFD): Proposal for a WTO Informal Dialogue on Investment Facilitation for Development (JOB/GC/122), April 26, 2017.

WTO (2017e): Argentina & Brazil: Possible Elements of a WTO Instrument on Investment Facilitation (JOB/GC/124), April 26, 2017.

WTO (2018f): Brazil: Proposal for an Investment Facilitation Agreement (JOB/GC/169), February 1, 2018.