

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

April 2022

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Written by Rashmi Jose and Andreas Oeschger

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1.0 Introduction

The proponents of the Joint Statement Initiative (JSI) on Investment Facilitation for Development (IFD) have emphasized 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 [World Trade Organization] Members attract, expand, and retain foreign direct investment flows and to achieve sustainable development goals” (WTO, 2021b). 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 this brief 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. The issues covered are special and differential treatment (S&DT), including notification and implementation, the investment facilitation (IF) 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 reflected either in the negotiating text or in the Annex.

This brief will review whether and how the policy positions of members regarding these issues have been reflected in the negotiating text. It will also examine 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.

2.0 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 countries and LDC members 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, to access to technical assistance and capacity building, to longer grace periods or exemption from the implementation of select rules (International Institute of Sustainable Development, 2021).

The negotiation of the Trade Facilitation Agreement (TFA) prompted significant changes in how S&DT was treated at the WTO. Under the TFA, rather than committing to uniform exemptions or standard implementation periods, developing 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. Finally, for the provisions that 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 extensions or to shift the classification of provisions between categories 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,² members are discussing a range of TFA-like S&DT provisions, which are summarized in Table 1.

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

² The “Easter Text” refers to the sixth version of *WTO Structured Discussions on Investment Facilitation for Development: Consolidated Document by the Coordinator* (WTO, 2022c).

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 Understanding 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, 2022c.

The efforts to replicate the TFA’s S&DT approach within the 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 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 emerges, 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 General Agreement on Tariffs and Trade (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, IF measures cover a broader range of activities that includes the entire life cycle of an investment, from its establishment and acquisition through to its expansion, operation, management, maintenance, and sale or other means of disposal. The expanded scope also affects a broadened range of sectors, including services and non-services sectors (WTO, 2022c). And finally, not only would it cover measures applied at the border, but it may be applicable behind-the-border and to how the measures 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 the TFA. Not only will the analysis be significantly more substantial, but it also has yet to be fully clarified, given the various features of the scope and coverage, including key definitions³ 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 more manageable number of government and private sector stakeholders were consulted for the assessments. Examples of stakeholders that were consulted include 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 (WTO, 2015).

Since the draft IFD Agreement would cover the entire life cycle of an investment in the services and non-services sectors, the number of agencies at different levels of government—from federal to subnational—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 types

³ Some of these definitions include investment, investment activities, investor, and authorization, among others.

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 give 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 in two phases. The first phase, which had been initiated roughly 5 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 in updating their assessment results, with the objectives of supporting members in preparing their S&DT category-related notifications and determining their technical assistance needs (WTO, 2022b). The number of members that leveraged the support to conduct the needs assessments was substantial. Between 2007 and 2017, 94 needs assessments were conducted, and between 2013 and 2014, another 90 assessments were conducted (WTO, 2015).

In essence, the TFA, despite being less complex and involving fewer stakeholders, benefited 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, 2022a). This means that should members decide to notify the designation of the categorization of the provisions prior to the finalization of the negotiations, then the timeline to conduct the needs assessments under the IFD process would be limited to a little more than 8 months compared to the 5 years under the TFA process. Groups of developing country 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 finalizing 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 pertain to provisions that are considered to have been largely “stabilized” (i.e., provisions on which there is a 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 finalized before the conclusion of the negotiations. Rather, the members would adopt some provisions regarding notification to inform how they will designate the categorization 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 finalization 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. Doing so 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 standardized process, a few templates and guides were created to support such a process. When developing these new guides and templates, members will have to consider to what extent the templates and guides that were developed under the TFA are well-suited to 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 into the TFA, as explained above.

Members recognize the need to discuss such challenges and therefore participated in a dedicated session on Investment Facilitation Needs Assessment, which was held on February 14, 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 organizations and that 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, other S&DT elements 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 for the implementation of the IFD framework for LDCs. Some members have submitted written communications emphasizing that given that 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.

3.0 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 IF 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, 2021a).

Given that the main purpose of traditional investments is to optimize financial outcomes, they may not necessarily lead to optimal purpose-related outcomes of maximizing environmental, social, and governance-related achievements. Consequently, some proponents are advocating for the inclusion of more specific provisions that aim to maximize 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, which purposefully maximize the sustainable development impact of the investment.

While several types of sustainable investment provisions have been recommended, this brief will focus on the specific proposals of Responsible Business Conduct (RBC), 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, we ask what challenges might prevent negotiators from integrating some of the ideas or from raising the ambition level.

3.1 RBC

RBC provisions focus on encouraging companies to promote more purpose-driven private sector behaviours by encouraging such actors to adhere to internationally recognized 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 that 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, four provisions have been “stabilized” (i.e., broadly supported). The first is a best-endeavour provision that advocates that members 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 recognizes 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 report to the Committee on Investment Facilitation (WTO, 2022c).

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 publicizing standards that are already widely available online. Furthermore, the existing formulation was deemed to provide sufficient flexibility for members to promote the uptake of RBC standards (WTO, 2021c). Another suggestion that 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 United Nations Guiding Principles on Business and Human Rights and the International Labour Organization’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, which had been included in a footnote (WTO, 2021d). Other provisions that had been considered (but not included) encouraged more specific business conduct objectives, including those on developing quality employment, facilitating green investments, and promoting equal access for men and women.

Members have debated certain challenges, notably on implementation, in more depth. Some members 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 those of shareholders (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 maximize the development impact within the local context—that is, for the local communities the investors or enterprises operate in—then there is a need to better understand the specific sustainable development concerns and needs 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 & Mann, 2017). Members may therefore have to consider whether there is a need for provisions that not only motivate 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 with 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 intergovernmental organizations. Examples of recommendations include encouraging investors and enterprises to widely publicize the international instruments that they pledge to comply with; providing clear guidance on corporate social responsibility and responsible conduct to outward investors; providing support to investment authorities to better identify, track, and measure sustainable investments that comply with RBC; and more efficiently linking the provision of facilitation support to the compliance of RBC (Berger & Sauvart, 2021). Such recommendations have so far not been specifically incorporated into the current text.

3.2 Measures Against Corruption

The other type of article that is included in Section VI on Sustainable Investment is Measures Against Corruption. This article focuses on ensuring that members implement measures that can tackle corruption-related activities that may fall within the scope of the IFD framework. Three provisions are largely stabilized in the current version of the Easter Text. The first is a provision that requires host states, in accordance with their legal systems and internationally agreed standards and commitments, to implement measures that prevent and fight corruption that falls 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 recognizing central principles, such as accountability, transparency, and integrity, which should be required when developing anti-corruption policies. The third provision requires members to exchange information and findings on best practices, via the Committee on Investment Facilitation, regarding their experience of implementing the first two provisions (WTO, 2022c).

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 that clarified how those provisions applied within the scope relevant to IF 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 that the matter of anti-corruption was already addressed at great length through other international instruments, such as the UNCAC, it would therefore be more appropriate to include a simpler 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 emphasized 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 to the intergovernmental standards of the Financial Action Task Force (Berger & Sauvart, 2021).

3.3 Domestic Supplier Database

The article on the Domestic Supplier Database recommends the establishment of databases that include 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 micro, small, and medium-sized enterprises) easily available to investors and enterprises. The implementation of such a database is at the discretion of the member, in that it can be set up and managed by either 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 it should use, and the idea 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, 2022c).

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 useful instruments 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. These elements included the possibility of highlighting local production and services capacity through company factsheets, that the database information be provided through a single portal, and that the database be linked to aftercare services for investors (WTO, 2020a).

When developing the article, members emphasized 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 proposed that the article on the 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 programs to make a new article on the Establishment of Supplier-Development Programs and Domestic Supplier Databases. The member recommending the merge argued that the two types of supplier-related programs are complementary efforts, which are critical not only for facilitating foreign

investments but also for optimizing the development impact of such investments. Establishing the two activities together 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 a supplier development program. 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 to be discussed, with the first encouraging members to implement a supplier development program that would strengthen the capabilities of domestic suppliers so that they can be more competitive and better matched with investors and enterprises. The second provision describes the features such programs should exhibit, including undertaking matching services, facilitating improvement plans and access to financial instruments and advisory support, and being designed in close collaboration with domestic and foreign investors, among other features. The third and fourth provisions focus on the need and the timeline for technical assistance for developing and maintaining the supplier development programs.

Experts and intergovernmental organization 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 matching the more sustainability-oriented investors and enterprises with domestic firms that operate according to sustainability principles (Berger & Sauvart, 2021). Some of these additional features were not ultimately included in the Easter Text.

3.4 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 were submitted through written communications but have not been included in the Easter Text. One idea was the creation of a special category of “Recognized Sustainable Investor,” which would provide more facilitation benefits and services to sustainability-oriented investors that are recognized under the sustainable investor category. Another idea was to designate an RBC 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.

4.0 Home State Measures

There is a growing discussion that, in addition to host states (i.e., the state in which an investment is made) having a role to play when it comes to IF, home states (i.e., the state or territory from which the investor originates) might also play a role. Not only for IF in general, but in particular because of sustainable development aspects. 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 state measures or obligations.

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 investment promotion agencies, trade promotion agencies, export credit agencies, development finance institutions, and so on). As such, existing home state measures are presently a “patchwork” of facilitation measures (see Table 2). Especially for foreign investors and small and medium-sized enterprises, it might not always be clear which support measures from which institutions are available to whom. Thus, investment flows could 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, similar to how host countries are enhancing transparency for their inbound FDI facilitation measures, home states could also increase the transparency of their own measures to facilitate OFDI, as this might likewise provide valuable information for investors (Berger & Sauvart, 2021).

Table 2. An illustrative inventory of home state measures

Information and other support services
1. Information support
2. Investment missions
3. Matchmaking services
a. Organization of contacts with government officials and entrepreneurs in host countries
b. Maintaining business matchmaking databases
4. Educational services: seminars, webinars, and conferences on OFDI-related topics
Financial measures
1. Grants
a. For feasibility studies, market research, and other pre-investment activities
b. For costs of setting up overseas offices
c. For training and human capital development

2. Loans
a. Concessional loans
b. Non-concessional loans
c. Structured financing options
d. Currency options
e. Syndication, public–private/public–public risk-sharing arrangements
f. Development financing
3. Financial guarantees
4. Equity participation
Fiscal measures
1. Tax exemptions
a. Exemption from corporate income tax on certain incomes
i. Tax exemption for foreign spin-offs' income
ii. Tax exemption for start-up expenses of foreign operations
b. Tax deductions for qualifying expenditures
2. Corporate tax rate relief for enterprises in particular sectors of the economy
3. Tax deferral for qualifying income earned overseas
4. Tax credits for certain expenditures
5. Allowances for qualifying activities
Investment insurance

Source: *Sauvant et al., 2014.*

Home state measures also retain the potential to contribute to sustainable development objectives, especially if one considers the fundamental capacity asymmetries between developed and developing countries. Many developing countries, especially LDCs, are often not well positioned to demand that their international investors contribute as much to the sustainable development of the host states' economies as they would wish. In contrast, home states are usually better positioned to do so, especially if they offer support measures to their investors. Linking IF measures in home countries to incentives for sustainable investments—for example, by making investment support dependant on firms' due diligence to meet their RBC policies or certain specific sustainability conditions, such as a positive impact on the host state's environment—would be a tangible way to generate more sustainable FDI flows. One existing example 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 sustainable development goals could also provide some balance in the commitments between host and home countries included in the IFD framework, which might be of political importance as a trade-off in negotiations and, in general, to provide a sense of shared responsibility. The latter is crucial for sustaining an active dialogue between and involvement of both host and home state governments and is highly significant for effective long-term capacity building (Berger & Sauvart, 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 date, specific provisions on home state obligations have not yet been included in the revised Easter Text but are merely positioned as a placeholder under Section IV *ter*. 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 recognizes the role of home states in facilitating OFDI that contributes to sustainable development. The second is a best-endeavour provision that encourages members to adopt or maintain measures to facilitate FDI through legal frameworks, investment guarantees and insurance, technical assistance, information provision, support services, and 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 each investor’s history of RBC and sustainable investing. Lastly, the fifth provision provides for members to be able to share experiences and information on policies and practices to facilitate OFDI for sustainable development in the Committee on Investment Facilitation (WTO, 2022c).

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 IF. 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. Members who raised such concerns argued 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 in 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 third parties (Sauvant et al., 2014). This is especially apparent in the second provision, which aims to encourage members to adopt or maintain specific home state measures, where sustainability is not mentioned.

5.0 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 aspects include challenges and open questions related to S&DT, including the IF needs assessment; specific proposals for promoting more sustainable investments such as RBC, measures against corruption, and the domestic supplier database; and home state measures.

Given the importance of the needs assessment tool in helping developing countries and LDCs self-designate their S&DT categorization, negotiators are at present seeking to resolve a number of challenges. These challenges include 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-à-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 members would have additional time to carry out the needs assessments without the time pressure of having to do so prior to the finalization of the negotiations.

Other development-related aspects being 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 investment flows into the host state. Concerns relating to these provisions often focus on challenges and issues relating to implementation. The article on the 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 that this article be linked to another recommendation, that of supplier development programs. By promoting these complementary programs, 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.

Members currently await discussion on the shape and potential role of home state measures. The current proposal aims to increase the 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 subject to further clarification.

Given that the main goal of 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, while keeping the possible sensitivities of developing country and LDC members in mind.

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