Investment Insights

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TOWARDS AN INTERNATIONAL FRAMEWORK FOR INVESTMENT FACILITATION

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Investment is central to growth and sustainable development. Under the right conditions, international investment can enhance the host economy's productive capacity and growth potential, drive job creation and improvements in living standards, allow the transfer of technology and know-how, and spur domestic investment, including through the creation of local supplier linkages. Establishing a business abroad allows firms to access resources and specialise or fragment production according to comparative advantages of different investment locations, thereby lowering production costs and expanding potential markets for products and services. Foreign investment can also lead to adverse effects, especially if responsible business conduct practices are not observed. To reap the greatest benefits that inward foreign investment potentially offers, governments seek to promote and facilitate inward investments that they expect will benefit their economy, focusing increasingly on sustainable and responsible investments.

Investment facilitation stands increasingly high in the global economic agenda. Little conceptual research has been undertaken on the topic, however, this paper makes an attempt to remedy this gap. It proposes a structured approach to investment facilitation and aims to initiate a discussion on the development of an international framework to facilitate investment in support of sustainable and inclusive growth.

Section A in this paper sets out the broader policy context and discusses the definition of investment facilitation, comparing perspectives of international organisations. It argues that investment facilitation should be understood as a combination of tools, policies and processes that foster a transparent, predictable and efficient regulatory and administrative framework for investment that maximises the benefits to the host economy. Section B explores potential elements to be considered at the global level to support the development of an international framework for investment facilitation. It concludes by suggesting some key elements to be considered and further developed, notably on:

- the building blocks of an international framework for investment facilitation;
- how such a framework could be used in the context of current international fora; and
- the role the OECD could or should play in supporting and implementing such a framework.

A. Understanding and defining investment facilitation

Investment facilitation in a broader policy context

Investment facilitation needs to be understood in a broader policy context – as one element, among many others, affecting the investment climate. The heterogeneity of investors, the diversity of factors which drive investment decisions and the multiple policy objectives pursued by governments all call for a whole-of-government perspective so as to increase policy coherence. This policy coherence applies to each component of the investment climate, including investment facilitation. This is reflected in the OECD Policy Framework for Investment (PFI), which aims to support governments to create an enabling environment for investment and enhance its development benefits to society.

The need to put investment facilitation at the heart of a broader policy agenda has also featured prominently in the G20 agenda, especially since the establishment of the Trade and Investment Working Group under the Chinese presidency in 2016. G20 Trade Ministers endorsed G20 Guiding Principles for Global Investment Policymaking in mid-2016 to foster an open, transparent and conductive global policy environment for investment (G20, 2016a). These principles are closely aligned with the PFI and highlight, among others, the key role played by investment facilitation.[1] G20 Leaders' followed up in early September 2016 when they committed "to enhance an open world economy by working towards trade and investment facilitation and liberalization" (G20, 2016b, p.6), focusing notably on high-quality and responsible investment.

The PFI promotes transparency and appropriate roles and responsibilities for governments, business, civil society and others with a stake in promoting development and poverty reduction and builds on shared values of democratic society and respect for human rights. Since its development in 2006, the PFI has been used worldwide for over close to 30 country-level OECD Investment Policy Reviews, but also sub-national level applications, numerous regional investment programmes and dialogues, and within regional economic communities (such as the Association of South East Asian Nations and the Southern African Development Community), as well as in the context of the G20. These various applications of the PFI have all addressed investment facilitation in a tailored and in-depth manner, and have allowed the OECD Secretariat to develop expertise and an in-house repository of good practices in this field.

Transparency, predictability and efficiency are underlying principles of a good investment climate, especially from an investment facilitation perspective, but sustainability and inclusiveness are equally important. This is well reflected in the PFI and in the OECD Investment Policy Reviews. A conducive policy framework for investment includes expectations that investors observe applicable instruments for corporate governance, such as the G20/OECD Principles of Corporate Governance, and responsible business conduct (RBC), such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights, and enables them to do so.

RBC principles and standards set out an expectation that all businesses avoid and address negative impacts of their operations, while contributing to sustainable development of the countries in which they operate. While it is the role of businesses to act responsibly and integrate environmental and social issues within their core activities, governments have a duty to protect the public interest from potential negative impacts of business activities and a role in providing an enabling framework for RBC – and this should be reflected in their investment facilitation efforts. While investment facilitation measures should be non-discriminatory by nature,

[1] The *G20 Guiding Principles for Global Investment Policymaking*, endorsed in July 2016, came about as the result of careful negotiation supported by the OECD and other international organisations.

providing an enabling framework for RBC will help governments to keep and attract high quality and responsible investors, minimise the risks of potential adverse impacts of investments on society, and ensure broader value creation and sustainable development.

Scope and purpose of investment facilitation

Investment facilitation can be associated with – or potentially derives from – trade facilitation, which first became a topic at the World Trade Organization (WTO) at the 1996 Ministerial Conference in Singapore. While there is little or no confusion about the nature of trade facilitation (i.e. streamlining and simplifying international trade procedures), investment facilitation is a broader notion, not always clearly defined and sometimes confused with the narrower concept of investment promotion. Part of the reason for this confusion is that investment promotion agencies (IPAs) have been established in almost all countries with the mandate to both promote and facilitate investment. Although differences exist across countries, IPAs usually perform a broad range of activities that can be categorised into five key functions (OECD, 2015a; 2015b):

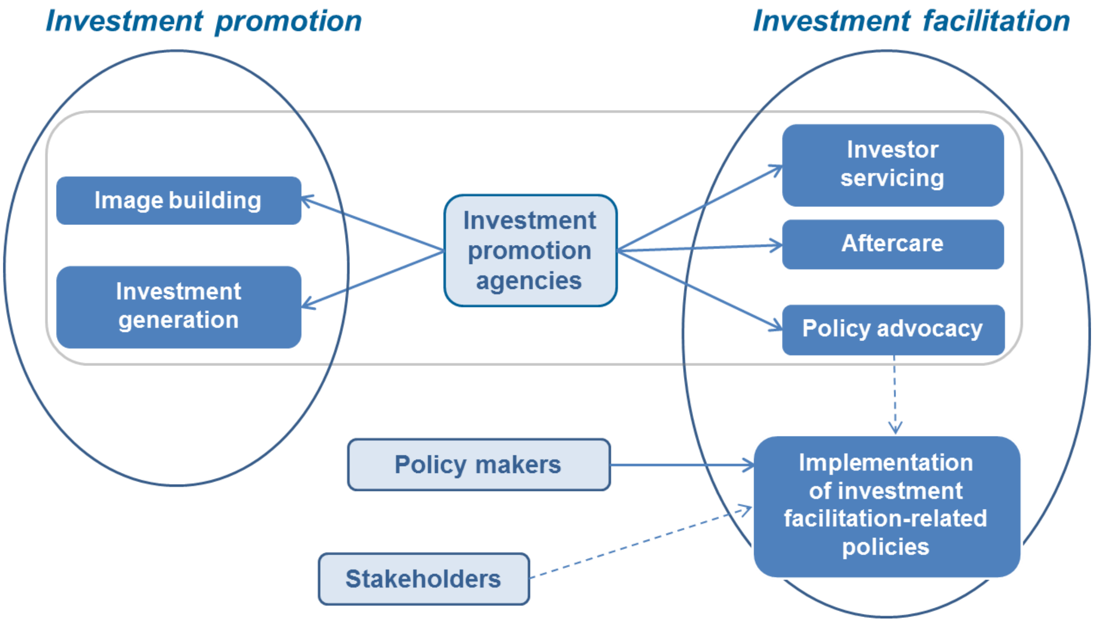
1. *Image building*, which consists in fostering the positive image of the host country and branding it as a profitable investment destination;
2. *Investment generation* that deals with direct marketing techniques targeting specific industries, activities, companies and markets;
3. *Investor servicing* to provide support to prospective investors in order to facilitate their establishment phase;
4. *Aftercare*, which aims to retain established companies and encourage reinvestments by assisting investors in the challenges they face after their establishment; and
5. *Policy advocacy* by identifying bottlenecks in the investment climate and providing recommendations to the government to address them.

The OECD distinguishes between investment promotion and facilitation. As pointed out in the PFI, "promoting and facilitating investment are two very different types of activities" (OECD, 2015a, p.39). The former is about marketing a country or a region as an investment destination, while the latter aims to make it easy for investors to establish, operate and expand their existing investments. Amongst the five IPA functions presented above, the first two relate to promotion while the latter three deal with facilitation.

The OECD's perspective is that, even though many IPAs are key investment facilitation players, this issue goes beyond the work of IPAs and involves a whole-of-government approach. While promotion is rather about attracting potential investors that have not yet selected an investment destination, investment facilitation starts at the pre-establishment phase, when an investor shows interest in a location, and touches upon the policy framework. The ultimate purpose of investment facilitation is to encourage new investments and reinvestments by providing investors with a transparent, predictable and efficient regulatory and administrative framework for investment while ensuring the benefits of investment are maximised. It aims to use different mechanisms (explained further below) to reduce or eliminate potential and existing obstacles faced by companies in the host country when they decide to invest, including the lack of clarity on the legislation and administrative procedures, the cost of doing business (in terms of time and resources), the lack of capacities of the civil service, and the risk of corruption when interacting with government officials. The scope of investment promotion and facilitation is summarised in Figure 1.

Investment facilitation also encompasses investment retention, as keeping existing investors satisfied is as important as attracting new ones and equally depends on the quality, transparency, consistency and predictability of the investment policy framework. Investments from existing companies, both in the form of reinvested earnings or new investments, often account for a significant share of a given country's total foreign direct investment inflows. The same policies, institutions and mechanisms that will facilitate new investments will also help retaining existing investors or encourage their expansion. Investment retention is not about adopting distorting policies to incentivise investors to stay in the host country; it is about continuously ensuring that investors operate in a stable and friendly business environment.

Figure 1. Scope of investment promotion and facilitation



Other international organisations have adopted somewhat different approaches but there is some trend towards convergence to a view similar to that of the OECD. The World Bank considers investment facilitation as a sub-function of investment promotion. It refers to investment facilitation as "the most basic and cost effective activity supporting foreign investment promotion"[2] – facilitation being thus considered as a sub-function of investment promotion. It is described as the support provided by the host country – usually the IPA – to prospective investors during the investors' location selection and decision-making processes.

Similarly, UNCTAD initially defined investment facilitation as one of the core functions conducted by IPAs, dealing with their role at facilitating the establishment of new investors. Along this line, UNCTAD's business facilitation programme focuses on the use of the web to facilitate business creation (i.e. e-Regulations, e-Simplifications and e-Registrations).

UNCTAD's 2016 World Investment Report adopts a wider definition of investment facilitation, stipulating that "transparency, investor services, simplicity and efficiency of procedures, coordination and cooperation, and capacity building are among the important principles" (UNCTAD, 2016, p.117). UNCTAD suggests that investment facilitation interacts at all stages of investment, from the pre-establishment phase, through investment installation, to services throughout the lifespan of an investment project. This encompasses a broader definition of investment facilitation, closer to the OECD approach.

[2] www.wbginvestmentclimate.org/advisory-services/investment-generation/investment-policy-and-promotion/investor-facilitation.cfm.

Key components of investment facilitation

Investment facilitation is a combination of different mechanisms, all of which are reflected in the PFI and regularly feature in the OECD Investment Policy Reviews. Key components of investment facilitation are summarised in Box 1 below and include:

- **Tools** and services provided by the host government to help investors navigate through the various regulations and procedures when investing;
- **Policies** to improve the transparency, predictability and effectiveness of the regulatory framework for investment, and ensure sustainable and responsible business practices; and
- **Processes** to make these tools and policies useful and impactful.

Box 1. Elements of a national investment facilitation framework

Investment facilitation involves a whole-of-government approach to encourage responsible and sustainable investments by providing new and existing investors with a transparent, predictable and efficient regulatory and administrative framework for investment. It combines tools, policies and processes that should be adopted by host countries to reduce or eliminate potential and existing obstacles faced by investors once they have decided to invest, and maximise the positive contributions of investment to the economy. They can include the following:

Tools to help investors navigate through the various regulations and procedures when investing, such as:

- one-stop shop (if appropriate) or single window for incoming investors
- online business registration system
- information portal on legal and administrative procedures to start and operate a business
- client service charters for all authorities dealing with investors
- systematic aftercare services to existing investors, with a focus on those with strong RBC records

Policies to improve the transparency, predictability and effectiveness of the investment environment, such as:

- sound and consistent legal framework for investment
- regulatory measures to simplify/streamline administrative procedures
- good governance laws and mechanisms
- policies to provide an enabling environment for investors to act responsibly and sustainably

Processes to make these tools and policies useful and impactful, such as:

- public-private dialogue
- inter-agency co-ordination
- capacity building for IPAs and other public officials
- monitoring and evaluation of existing tools, mechanisms and policies

The first component of investment facilitation relates to specific tools, mechanisms and services that host authorities can provide to investors to help them navigate through the existing regulations and administrative obstacles. They can include the establishment of one-stop shops or single windows within the IPA to centralise all administrative procedures under the same roof; online registration systems to allow investors register their business online; e-portals to disseminate regulatory material and inform them on required procedures; and client service charters detailing all fees and deadlines to be granted a licence (to avoid unpredictability and discretionary decisions). Facilitation services should not be limited to new investors. Facilitating the expansion of existing investors by helping them out with the challenges they face in the operation of their business is at least as important as facilitating new investments. Aftercare services for investors are vital, especially in retaining investors, just as aftersales functions within a private company aim to sustain customer loyalty. Aftercare measures are multiple but a useful measure is to set up an ombudsman or mediator as a focal point within government to prevent and/or resolve any potential dispute and facilitate the communication with other relevant agencies. Aftercare initiatives should focus on those investors that have a high developmental impact and strong RBC records. Establishing a mechanism of "regulatory coherence" at the national level is also an important tool that goes beyond investment facilitation but contributes to it.

Going beyond these specific tools, investment facilitation also involves the improvement of the business environment through policy reform. Getting policy frameworks right is the rationale underpinning both the new G20 Guiding Principles for Global Investment Policymaking and the existing OECD Policy Framework for Investment. They both take a comprehensive, whole-of-government approach to investment climate reform. Adopting sound laws and regulations can make the investment policy framework more transparent and predictable and hence reduce uncertainty for investors by limiting the scope for discretionary decisions and corrupt practices by public officials. Policies should provide an enabling environment for investors to act responsibly and sustainably and level the playing field for all investors to facilitate investments in emerging sectors, such as green industries. Policy reform can also improve the efficiency of the existing investment framework, issuing modern laws and codified regulation, improving institutional mechanisms, and making it less burdensome and onerous to invest by imposing shorter deadlines, eliminating unnecessary procedures and simplifying the remaining ones. Several countries have put in place ambitious 'regulatory guillotines' and administrative simplification programmes to improve the business environment and facilitate investment. IPAs also have a key role to play in this regard, as advocating for policy reforms is a powerful technique to promote, facilitate and retain international investments. Experience worldwide suggests that successful IPAs are strong policy advocates.

Finally, investment facilitation tools and policies are supported by institutional processes. A systematic public-private dialogue is an example of a key process for host governments to receive feedback from the private sector on existing legal and administrative bottlenecks faced by investors when investing or reinvesting. It can help the authorities provide the most appropriate mechanisms and policies in response to the concerns raised by the private sector. In turn, efficient public-private dialogue can also allow the government to explain reforms to businesses, which can ultimately also facilitate new investments. Another important process is inter-agency co-ordination. Long and burdensome procedures are often explained by an uncoordinated institutional framework, where different government agencies, or different levels of government, are involved in the approval and granting of business licences but work in silos and hence provide conflicting messages and treatments. The IPA can play a central role of co-ordination and liaison with other relevant government entities but efficient collaboration mechanisms can also be set up at the policy level. A sound legal framework for investment also needs strong and efficient institutions with competent staff. Often, laws and regulations are incorrectly and inconsistently applied due to the lack of adequate capacities of public officials in charge of administrating and approving business licences. Capacity building of the civil service and the IPAs is thus a key process supporting investment facilitation. Lastly, regular monitoring and evaluation is also necessary to ensure that investment facilitation tools and policies are useful, up-to-date and respond to investors' needs.

B. From a national to an international framework

These tools, policies and processes presented above form the basis of a national framework for investment facilitation with transparency, predictability and efficiency as underlying principles, and sustainable development and RBC as ultimate goals. These measures should be non-discriminatory by nature but ultimately aiming at promoting RBC and fostering sustainable development. They are uncontroversial, under the responsibility of host countries and can be implemented unilaterally by all countries, provided that the resources and political will are there.

One could suggest that action at the national level is not sufficient to ensure a global system facilitating increased flows of international investment. The global economy is increasingly characterised by the emergence of regional and global value chains and cross-border fragmentation of production. Investment and trade are interlinked and are important engines of global growth and development. Policy tools, including those relating to trade and investment facilitation, need to reflect this new economic paradigm, which increasingly influences national economic development strategies. There are a variety of different motives for investment, which is one means through which global firms organise their operations. Investment facilitation can ensure that countries benefit not only from investment, but from the whole value chains, by contributing to a sound regulatory environment and favourable economic conditions.

In this context, unilateral measures can only partly influence trade and investment. Facilitating the global flow of trade and investment could go beyond measures that can be unilaterally adopted and potentially be supplemented by international standards or commitments – whether bilateral, plurilateral or multilateral.

Investment facilitation in investment treaties

Several provisions in investment treaties are fostering investment facilitation efforts by State parties to the treaty, as for example provisions on transparency. Treaty provisions on exchange of information and transparency aim to make publicly available all non-confidential information related to investment and commercial activities. Transparency obligations differ in scope with regard to what should be made public (i.e. laws, regulations, investment opportunities, etc.). They are also determined by the voluntary or mandatory character of the provision, with some treaties providing for soft transparency and others for legally binding transparency obligations. While standard transparency provisions require State parties to publish laws and regulations, a distinction may be made between laws that address the country’s general legal framework and those addressing the specific legal framework for investment.

Beside transparency, investment facilitation provisions also include, in some cases, procedural matters pertaining to the improvement of the business environment. Efforts to include investment facilitation provisions in investment treaties is not a new phenomenon, as one can find such provisions even in so-called first generation treaties signed in the 1990s. The scope of these provisions remains, however, limited as compared to the wide spectrum of investment facilitation measures presented in Section A. of this paper.

In recent years, Brazil’s move in signing new Agreements on Cooperation and Facilitation of Investment represents the most innovative and comprehensive approach to the inclusion of investment facilitation provisions in investment treaties. These agreements focus on investment facilitation and risk mitigation and include, among others, provisions dealing with transparency, the exchange of information and the establishment of an ombudsman as a focal point within government for all investors. Recognising the need to render the establishment of investors less cumbersome, they also attempt to address more ground-level matters, such as visa proceedings as well as technical and environmental licenses and certifications.

Towards a multilateral approach

The WTO Trade Facilitation Agreement has recently entered into force to reduce total trade costs by streamlining the flow of trade across borders (WTO, 2015). It sets forth a series of measures for expediting the movement, release and clearance of goods. It has a technical, hence limited scope, but also includes measures for effective co-operation between customs and other relevant trade authorities as well as provisions for technical assistance and capacity building.

In a world of global value chains, one could envisage that the investment equivalent of the Trade Facilitation Agreement – an international framework for investment facilitation – could be complementary to make the global economy work for growth and sustainable development. If such an option is worth being explored, different routes could lead to its development, depending on the political will to increase collaboration and reinforce the global agenda:

- A first option would consist in defining **national principles and actions** for investment facilitation (such as the framework presented in Box 1) to be adopted by host countries on a voluntary basis.
- A second option would be to **adopt principles, policies and actions at the global level** – either in a "soft" way as OECD principles or in a "hard" way under the form of an agreement under the WTO – where every host country would commit to put them in place, although with a certain degree of flexibility.
- A third and more ambitious one would be to **supplement host countries' commitments by additional ones to be taken by home countries** – and potentially other parties (e.g. the private sector, civil society).

International organisations and academia have come up with propositions of international frameworks for investment facilitation. UNCTAD's Global Action Menu for Investment Facilitation attempts to provide guidelines for host countries to facilitate investment. It includes "actions that countries can choose to implement unilaterally, and options that can guide international collaboration or that can be incorporated in international investment agreements" (UNCTAD, 2016). The action menu is a combination of general principles and proposed actions where the policy angle is not very strong and where overall objectives, short- and long-term measures as well as supporting mechanisms tend to be mixed. The emphasis is put on developing countries and its global/multilateral aspects relate to technical assistance and international collaboration. The title – "action menu" – recognises that none of these measures are legally binding but lists a number of actions in a rather prescriptive manner. It is more about potential mechanisms and principles for host countries than an international framework with commitments.

Karl Sauvant and Khalil Hamdani's *International Support Programme for Sustainable Investment Facilitation* (2015) – a paper prepared in the context of the E15 Initiative[3] – proposes a more ambitious and comprehensive framework for investment facilitation with global principles and commitments. It proposes an international agreement with commitments to be taken on by host countries, but also by home countries and multinational enterprises. These commitments mostly relate to transparency, information disclosure and responsible business conduct – in addition to specific measures to be taken by IPAs. In terms of governance,

[3] The E15Initiative Task Force on Investment Policy was established to convene experts and institutions to generate strategic analysis and recommendations for government, business and civil society geared towards strengthening the global trade and investment system for sustainable development. It is jointly implemented by the International Centre for Trade and Sustainable Development and the World Economic Forum.

the paper proposes that the *International Support Programme for Sustainable Investment Facilitation* could complement various efforts to facilitate trade, particularly the Trade Facilitation Agreement and the WTO-led Aid-for-Trade Initiative which seeks to mobilise resources to support developing countries address their trade-related obstacles. The authors argue that in the context of global value chains, trade and investment are part of the same equation and, as such, their proposed programme could complement these two WTO mechanisms by expanding them to cover investment as well. Finally, their programme also includes elements that could be incorporated into investment treaties.

Sauvant and Hamdani's proposed programme is a valuable initiative and probably the most elaborate approach towards a global investment facilitation framework to date. It does not come with an extensive list of concrete measures but suggests the adoption of international commitments and lays the basis of what could be its governance structure. It focuses, however, on developing countries, particularly least developed countries. It could be argued that, while developing countries have greater investment needs, an international framework should be applicable to all countries. International investment matters to all economies and if responsibilities and guidelines are given to both home and host countries under the same framework it could benefit both developing and developed countries.

The way forward

If the development of an international framework for investment facilitation goes ahead, it should take a wide perspective and be designed for all interested countries. The responsibilities of host countries – the tools, policies and processes presented in Section A. of this paper – would be supplemented by measures by home countries, notably in terms of transparency, exchange of information on investment opportunities and investment guarantee programmes. These outward investment facilitation measures could also incorporate systematic RBC standards for companies operating abroad. Other stakeholders would also be involved: while the private sector could take on commitments in terms of integrating RBC practices in their business activities, international organisations such as the OECD could play a monitoring role in the implementation of such a framework.

This international framework for investment facilitation would consist of common principles, actions and measures – and could usefully complement the PFI. While the latter is an instrument supporting governments assessing and reforming their broader investment climate, the former would be exclusively focused on investment facilitation and include measures for both host and home countries. While focusing on overall principles rather than on a long and prescriptive list of actions, the proposed framework would go beyond a purely advisory policy menu and involve some sort of commitments by countries to adopt measures. It would frame a clear, comprehensive and well-structured approach to addressing investment facilitation needs at the international level.

This international framework for investment facilitation could be developed initially as global principles. This would provide a strong message and concrete guidance to the international investment policy community. In time, they could be implemented under the WTO to complement the Trade Facilitation Agreement, potentially under a comparable scheme and structure. In this case, a specific programme could be in place to support developing countries to comply with their commitments – a similar approach to the WTO Trade Facilitation Agreement Facility. Potential elements of what could form the basis of an international framework for investment facilitation are summarised in Box 2.

Box 2. Potential elements of an international framework for investment facilitation

Common principles

- transparency
- predictability
- efficiency

Responsibilities / commitments

- host countries: inward investment facilitation measures (*tools, policies and processes*)
- home countries: outward investment facilitation measures
- private sector: responsible business conduct
- international organisations (OECD and others): monitoring and evidence-based research

Governance / implementation

- "Investment Facilitation Principles" by the OECD and other international organisations (*short term*)
- "Investment Facilitation Agreement" under the WTO (*long term*)
- specific support programme for developing countries

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