

Hamdani, Khalil

Research Report

Investment facilitation at the WTO is not investment redux

Columbia FDI Perspectives, No. 226

Provided in Cooperation with:

Columbia Center on Sustainable Investment (CCSI) - A joint center of Columbia Law School and the Earth Institute, Columbia University

Suggested Citation: Hamdani, Khalil (2018) : Investment facilitation at the WTO is not investment redux, Columbia FDI Perspectives, No. 226, Columbia University, Columbia Center on Sustainable Investment (CCSI), New York, NY

This Version is available at:

<https://hdl.handle.net/10419/254060>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

No. 226 May 21, 2018

Editor-in-Chief: Karl P. Sauvant (Karl.Sauvant@law.columbia.edu)

Managing Editor: Marion A. Creach (marion.creach@sciencespo.fr)

Investment facilitation at the WTO is not investment *redux**

by

Khalil Hamdani**

A unified investment framework has eluded the international community for decades, including at the WTO twenty years ago (as part of the 1996 Singapore Issues). Yet, 71 developing and developed countries—over a third of the WTO members—started structured discussions in March 2018 to establish a multilateral framework on investment facilitation. Why does investment warrant a fresh approach at the WTO?

To begin with, investment facilitation concerns the application of investment policy. It is not about the right to regulate or to formulate investment law. It is not about investment protection, policy liberalization or even investment promotion. Rather, it is a downstream activity that involves engagement with investors and other stakeholders in the application of policies in practice. Such interaction improves the efficiency and efficacy of the overall investment process.

Investment facilitation improves the efficiency of policies by shaping them in an accessible and transparent manner, applying them in a predictable and consistent fashion and having simplified administrative procedures. Such efficiencies made up less than 10% of the investment measures recorded by United Nations Conference on Trade and Development in 2010-2017. Countries that are liberalizing policies are overlooking the application of those policy changes in practice. For example, when India opened up its economy in 1991, investment approvals tripled, but only 20% of approved investments were realized. By 1998, annual approvals reached US\$11 billion, but the rate of realization remained low at 34%. A Foreign Investment Implementation Authority was established in 1999, and in 2002, a Parliamentary Standing Committee recommended practical measures to address bottlenecks.¹ By 2004, the realization rate had risen to 205%, a figure presumably explained by the fact that many investments no longer required approval. There was an overall improvement in the investment environment.

Investment facilitation also improves the efficacy of policies, in two ways. First, downstream engagement with investors identifies opportunities for sequential and new investment and thereby underpins investor retention. Such interaction was a key feature of the smart industrial policies of the Asian tigers. Second, downstream engagement with investors and other stakeholders provides tacit feedback to upstream policymakers on potential partnerships to enhance the impacts of existing investment.

Investment partnerships are important for advancing the Sustainable Development Goals. Their implementation requires massive investment in areas usually allotted to the public sector. It also needs to feature sustainability: innovative technologies with a wide reach and a small environmental footprint. Suitable policy frameworks will need discovery and definition, with the involvement of stakeholders—business and civic, domestic and foreign—and the support of the international community.² Successful discovery requires dynamic feedback from downstream engagement with stakeholders to upstream policymakers. Investment facilitation provides such interaction, creating constructive multi-stakeholder relationships that nurture new roles for investment to play.

Investment, of course, is critical for trade. Preferential trading schemes attracted investment to Africa for the export of garments. Facilitation of investment in broader activities would diversify production, increase value addition, alleviate the saturated market for apparel exports, and take fuller advantage of existing preferences. Thus, investment facilitation is a natural complement to trade facilitation. It is even a necessary complement if developing countries are to benefit from the full potential of the Trade Facilitation Agreement. However, the capacities of countries vary greatly. The investment facilitation efforts of the least developed countries require capacity building and related international support.

In summary, facilitation of investment, including investment in services, is relevant for discussion at the WTO for five reasons. First, investment is an issue of empirical relevance to multilateral trade. Second, an investment facilitation agreement at the WTO is not investment agreement *redux*; it focuses on practical matters and avoids investment issues that have proved contentious in past discussions. The sovereign right to regulate is acknowledged at the outset. The discussion shifts the investment debate from being all about “protection” to focus more on “facilitation” said WTO Director-General Roberto Azevêdo.³ Third, investment facilitation is an issue on which developing countries are among the *demandeurs*. It is not, as before, a bargaining chip to be played by one side for concessions by the other side on negotiations in other areas.

Fourth, discussions of investment facilitation at the WTO would follow the successful model of trade facilitation, which was focused, open-ended, inclusive, and allowed for

individual country implementation capacity and relevant technical assistance. These elements are unique to the Trade Facilitation Agreement and absent from other WTO instruments (such as that for services). Structured discussion at the WTO in the model of trade facilitation would lead to the engagement of trading partners in capacity building of weaker members. In this respect, the structured discussions should aim at creating the counterpart to the Trade Facilitation Agreement, namely an investment facilitation agreement.

Fifth, discussions of investment facilitation at the WTO will engage investment stakeholders and make the multilateral trading system more central to sustainable development. In this regard, the proposed Committee on Investment Facilitation would provide a useful platform for the discovery and diffusion of best practice, and related stakeholder responsibilities, for sustainable investment facilitation.

*** The *Columbia FDI Perspectives* are a forum for public debate. The views expressed by the author(s) do not reflect the opinions of CCSI or Columbia University or our partners and supporters. *Columbia FDI Perspectives* (ISSN 2158-3579) is a peer-reviewed series.**

****** Khalil Hamdani (khalilhamdani@jhu.edu) is Visiting Professor, Graduate Institute of Development Studies, Lahore School of Economics. This *Perspective* elaborates the author's remarks at a dialogue with WTO delegates organized by the International Centre on Trade and Sustainable Development in Geneva on March 5, 2018. The author is grateful to Douglas van der Berghe, Reji Joseph and Stephen Thomsen for their helpful peer reviews.

¹ For details about the investment facilitation measures and data, see New Delhi Foreign Service Institute, *Reports on Investment Approvals and FDI in India* (New Delhi: Academic Foundation, 2003).

² Karl P. Sauvant and Khalil Hamdani, "An International Support Programme for Sustainable Investment Facilitation," *E15 Task Force on Investment Policy Think Piece* (ICTSD, World Economic Forum, 2015).

³ [Roberto Azevêdo, Address to the Informal Dialogue on Investment Facilitation for Development of the WTO, Apr. 23, 2018.](#)

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: "Khalil Hamdani, "Investment facilitation at the WTO in not investment redux," Columbia FDI Perspectives, No. 226, May 21, 2018. Reprinted with permission from the Columbia Center on Sustainable Investment (www.ccsi.columbia.edu). " A copy should kindly be sent to the Columbia Center on Sustainable Investment at ccsi@law.columbia.edu.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Marion A. Creach, marion.creach@sciencespo.fr.

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at <http://www.ccsi.columbia.edu>.

Most recent *Columbia FDI Perspectives*

- No. 225, Michael J. Enright, “To succeed in China, focus on interests rather than rules,” May 7, 2018.
- No. 224, Axel Berger, “What’s next for the investment facilitation agenda?,” April 23, 2018.
- No. 223, David Chriki, “Investment arbitration liability insurance: a possible solution for concerns of a regulatory chill?,” April 9, 2018.
- No. 222, Makane Moïse Mbengue, “Facilitating investment for sustainable development: it matters for Africa,” March 26, 2018.
- No. 221, Karl P. Sauvant and Howard Mann, “Sustainable FDI for sustainable development,” March 12, 2018.

All previous *FDI Perspectives* are available at <http://ccsi.columbia.edu/publications/columbia-fdi-perspectives/>.