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**Research Report**

## CSR in an Investment Facilitation Framework for Development: From a "race to the bottom" to a "march to the top"

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### **CSR in an Investment Facilitation Framework for Development:**

#### **From a “race to the bottom” to a “march to the top”**

by

Rafael Ramos Codeço and Ana Rachel Freitas da Silva\*

International investment policymaking has increasingly paid attention to FDI facilitation. The apex of this effort are the [negotiations](#) of an Investment Facilitation Framework for Development (IFF4D) at the WTO. The initiative already has over 100 supporting members. From the world’s top 15 economies, only the US and India have not joined yet. The mandate to discuss investment facilitation expressly directs members to negotiate a framework that is supportive of development.

Potentially, all FDI can lead to sustainable development. To realize this potential, investment regimes need clear regulations, institutions implementing them and coordination among governments at all levels.<sup>1</sup> Most importantly, corporate social responsibility (CSR) provisions in an eventual IFF4D would help reach this objective. They would orient WTO members and investors toward achieving the highest level of sustainable development possible, by adopting responsible practices related to, among others, development, the environment, human rights, and labor.

While the discussion on the positive impacts of FDI can become highly subjective, it can hardly be disputed that investment prone to tax avoidance, depleting natural resources, damaging the environment, and lowering labor standards runs against sustainable development goals. Instead, a framework that facilitates attracting and retaining FDI capable of contributing to sustainable development as much as possible would be more aligned with the WTO’s IFF4D mandate.

WTO members can and should benefit from the initiatives of the international organizations that have developed CSR standards, such as the [United Nations Guiding Principles on Business and Human Rights](#), the [ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy](#) and the [OECD Guidelines for Multinational Enterprises](#).<sup>2</sup> Moreover, discussions on an international business and human rights treaty have been taking place at the UN Human Rights Council since 2014. However, these international commitments are not binding; and whether the UN Human Rights Council’s initiative

will succeed remains to be seen. The absence of binding international commitments in this area<sup>3</sup> underlines the need of the IFF4D to deal with businesses' conduct. Every effort should be made by negotiators to find common ground to translate this objective into a meaningful set of rules.

Accordingly, developing countries, as net recipients of FDI, should form a group to support hard CSR commitments in the IFF4D, although—admittedly—different views regarding specific CSR elements make a joint approach difficult. One example concerns CSR-related commitments for the protection of labor rights, in respect of which developing countries perform quite diversely.<sup>4</sup> Low labor standards are not only the result of political orientations, but also of structural conditions in global markets: due to competitiveness pressures, many developing countries seeking to attract FDI face significant challenges to promote higher labor-rights standards.<sup>5</sup> The same dynamic could affect other CSR principles, as some countries might be more inclined to join the race to the bottom rather than to promote more socially responsible practices in a race to the top.

Popular provisions on CSR range from simply affirming the importance of internationally agreed-upon CSR instruments, to encouraging signatories to promote CSR standards, to stipulating a mix of voluntary and compulsory actions based on expressly enumerated CSR activities that governments should promote. Any of these alternatives would underline the importance of CSR, re-assert the WTO's focus on sustainable development and could have a positive effect on nudging investors toward sustainable FDI. However, the explicit mention of a series of CSR commitments and a listing of the responsible business conduct that WTO members should promote in accordance with their domestic law are preferable. Such an approach would reinforce CSR obligations to a greater extent than merely affirming their importance or encouraging the adoption of CSR standards.

Adopting specific and mandatory commitments on governments would establish a “CSR floor” for WTO members. This would alleviate the fear of some developing countries of receiving less FDI if they unilaterally required the observance of high CSR standards. Hence, pursuing this approach in the negotiations at the WTO—which already involve nearly two-thirds of its members—calls for cooperation rather than competition among members. Developing countries—and others!—should take this unique opportunity to pursue the highest possible CSR standards, thereby shifting the FDI regime from a “race to the bottom” to a “march to the top”.

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<sup>1</sup> [Karl P. Sauvant, “We need an international support programme for sustainable investment facilitation,” \*Columbia FDI Perspectives\*, no. 151 \(July 6, 2015\).](#)

<sup>2</sup> [Karl P. Sauvant, Evan Gabor, “Facilitating sustainable FDI for sustainable development in a WTO Investment Facilitation Framework: Four concrete proposals,” \*Journal of World Trade\*, vol. 55 \(2021\), pp. 261-286.](#)

<sup>3</sup> Binding commitments on CSR are rarely found in IIAs. One notable exception is article 34 of the 2018 ECOWAS Common Investment Code ([ECOWIC](#)).

<sup>4</sup> [ITUC, \*ITUC Global Rights Index 2019\* \(Brussels: International Trade Union Confederation, 2019\).](#)

<sup>5</sup> Robert G. Blanton and Dursun Peksen, “Economic liberalisation, market institutions and labour rights,” *European Journal of Political Research*, vol. 55(3) (2016), pp. 474-491.

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