



Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

No. 228 June 18, 2018

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

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

Investment facilitation: moving beyond investment promotion*

by

Felipe Hees and Pedro Barreto da Rocha Paranhos**

The [Joint Ministerial Statement on Investment Facilitation for Development](#),¹ co-sponsored by 70 WTO members during the Buenos Aires Ministerial Conference in December 2017, shows that investment facilitation has emerged as an issue of interest to a significant number of developed and developing countries.

The informal dialogue organized by the Friends of Investment Facilitation for Development² in the run-up to the WTO Ministerial was extremely valuable, as it made clear that a strict focus on “facilitation”, leaving aside contentious topics like market access, investment protection and investor-state dispute settlement, is an important condition for discussions of the matter to progress multilaterally.³

Despite the growing convergence regarding the scope of the discussions on investment facilitation, there is at least one issue that requires clarification, namely the distinction between a multilateral approach to investment facilitation and the issue of investment promotion.

Investment promotion and facilitation lie on a continuum. The basic role of investment promotion through investment promotion agencies (IPAs) lies on one end, promotion, although it might include aspects of facilitation. “Promotion” is based on disseminating information about comparative advantages and investment opportunities, in order to render one country more attractive for international investors when compared with other countries. “Facilitation” aims at establishing common procedures for all WTO members. Therefore, it would complement IPAs’ work from the other end of the continuum.

When promoting a country as a FDI destination, IPAs generally rely on investment portals or equivalent tools to help investors understand and navigate the institutional and regulatory intricacies of host countries. This “facilitating” role is certainly important and useful. However, there are other investment-facilitating aspects to be considered as well.

Even if they enjoy an official status, IPAs are not necessarily full-fledged government bodies. They may have a limited role in establishing procedures affecting investment, potentially limiting their ability to address regulatory issues that may hinder investment.

Explaining and clarifying the regulatory framework to potential investors is not tantamount to improving it. Enhancing the regulatory and institutional environment (cutting red tape, eliminating useless procedures, avoiding overlapping requirements)—the “facilitating effort” of countries—invariably requires complicated inter-agency efforts that are heavily influenced by distinct bureaucratic cultures and legal competences. It also depends on rule-making beyond the scope of competence of IPAs.

It is undisputable that the investment environment of each country is unique, as it is a web of central, regional and local government institutions and policies. By focusing on procedures, and not on any policy deemed “right” regardless of the peculiarities of each country, a multilateral framework on investment facilitation would help address concerns that are common to most countries in their quest to implement and maintain a friendlier environment for investors.

Procedural inefficiencies represent a cost. Moreover, a “facilitated” institutional and regulatory environment benefits not only foreign investors, but also the governments of host countries, especially if based on a multilaterally agreed framework. It might include elements like national focal points and single electronic windows, for instance.

National focal points would assist investors in overcoming practical difficulties in their interactions with distinct agencies and enable contact with relevant authorities, with the ultimate goal of ameliorating the business environment and fostering a sustainable partnership between investors and host countries.

Single electronic windows are important tools to simplify authorization procedures and increase the level of transparency of information affecting investments. They are not necessarily the same as the investment portals of IPAs. Yet, investment portals can be adapted to deliver single-electronic-window functions as well, e.g., by allowing the completion of all administrative procedures related to making an investment, the paying of all associated taxes and fees and the uploading of all documents required by different agencies.

The enhanced coordination among different agencies in host countries can result in important improvements in the procedures associated with incoming FDI flows. Equally relevant for both investors and governments of host countries is the permanent channel of communication designed to address complaints or grievances before they turn into disputes.

Since the implementation of regulatory and institutional improvements can be challenging, multilateral rules can act as an important catalyst for internal changes. A multilateral legal framework on investment facilitation that includes adequate provisions on technical assistance and addresses other development concerns can be a game changer in any country. By helping facilitate investment in areas for which IPAs normally do not have the competence to do so, a multilateral framework on investment facilitation can become both a powerful complement to their work and a valuable

instrument to improve the FDI environment. It can establish a common set of procedures that levels the playing field regarding FDI attraction.⁴

* **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.**

** Felipe Hees (felipe.hees@itamaraty.gov.br) and Pedro Barreto da Rocha Paranhos (pedro.paranhos@itamaraty.gov.br) are Diplomats, Ministry of Foreign Affairs of Brazil. The opinions expressed in this *Perspective* are the authors' and do not necessarily reflect the views of the Brazilian government. The authors are grateful to Ulrika Cederskog Sundling, Fabien Gehl and an anonymous peer reviewer for their helpful peer reviews.

¹ WT/MIN(17)/59.

² Argentina, Brazil, Chile, China, Colombia, Guatemala, Hong Kong (China), Kazakhstan, Liberia, Mexico, Mauritania, Nigeria, Pakistan, Qatar, Republic of Korea, The Gambia, and Uruguay.

³ Felipe Hees and Pedro Mendonça Cavalcante, "Focusing on investment facilitation – is it that difficult?" *Columbia FDI Perspectives*, No. 202, June 19, 2017.

⁴ An example of a possible framework on investment facilitation has been put forward by Brazil for the consideration of WTO members (JOB/GC/169).

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: "Felipe Hees and Pedro Barreto da Rocha Paranhos, 'Investment facilitation: moving beyond investment promotion,' Columbia FDI Perspectives, No. 228, June 18, 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. 227, Rob van Tulder and Jan Anton van Zanten, "MNEs and the Sustainable Development Goals: what do first steps reveal?" June 4, 2018.
- No. 226, Khalil Hamdani, "Investment facilitation at the WTO is not investment *redux*," May 21, 2018.
- 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.

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