International Journal of Law And Criminology

VOLUME Vol.05 Issue05 2025
PAGE NO. 81-85
DOI 10.37547/ijlc/Volume05Issue05-12

Towards A Sustainable Investment Framework: Legal Tools for Effective Investment Facilitation

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Received: 31 March 2025; **Accepted:** 29 April 2025; **Published:** 31 May 2025

Abstract: This article explores the evolving concept of investment facilitation as a crucial legal and policy tool to support sustainable development. While investment promotion traditionally focuses on marketing a location as an attractive destination for foreign direct investment (FDI), investment facilitation seeks to reduce unnecessary regulatory and administrative barriers to ensure smooth entry, operation, and retention of investment. The study highlights how effective facilitation strategies must move beyond investor-centered approaches to align with environmental, social, and developmental goals. It examines national, regional, and international governance tools, with particular attention to Brazil's innovative model of Cooperation and Facilitation Investment Agreements (CFIAs), which emphasizes institutional support over investor–state dispute settlement. The article also analyzes ongoing WTO negotiations on a multilateral framework for investment facilitation and the tensions between soft law cooperation and binding obligations. By integrating legal, administrative, and policy perspectives, the paper provides a structured roadmap for policymakers to develop investment facilitation strategies that are transparent, inclusive, and tailored to advance sustainable development outcomes at all levels.

Keywords: Investment Facilitation, Investment facilitation for sustainable development, UNCTAD's Perspective, OECD Framework, Implementation Levels, Brazil's model, WTO Structured Discussions.

Introduction: Overall, Investment promotion is about promoting a country (or location within a country) as an investment destination. Investment facilitation focuses on minimizing unnecessary obstacles that investors might encounter when setting up, growing, or operating their businesses.

As this study suggests, Investment facilitation for sustainable development refers to a set of instruments, policies, and procedures designed to create a regulatory and administrative environment that supports investment aligned with, and not detrimental to, sustainable development goals. The effective implementation of each measure may vary depending on the context—it can be most appropriately applied at the national, regional, or global level, and may involve actors such as the investor's home country, the host country, individual investors, bilateral or multilateral partnerships, or international organizations. While many regulatory aspects of investment facilitation for sustainable development are most effectively addressed at the national level, regional and international collaboration can also play a crucial role in tackling broader governance challenges.

Furthermore, addressing collective action challenges is essential for advancing investment facilitation in support of sustainable development, though determining the most effective level of intervention and appropriate tools remains complex and uncertain. Policymakers should assess whether cooperative, non-binding ('soft') approaches or binding, rules-based ('hard') measures are better suited to resolving these issues.

This article provides Brazil's new model as an instance. This model marks a change in approach to international investment agreements, emphasizing enhanced coordination and dialogue to better facilitate investment between the treaty partners.

Also noteworthy is to mention that The WTO is currently developing an agreement on investment facilitation, but the final framework—including the extent of any binding obligations—remains undecided.

What are investment promotion and investment facilitation?

Investment plays a vital role in advancing sustainable development. When properly managed, foreign direct investment (FDI) can drive economic growth, raise living standards, generate employment, facilitate the transfer of technology and expertise, and enhance supply chains. However, these positive outcomes are not guaranteed—if poorly regulated, investment can lead to environmental damage, poor labor practices, tax avoidance, and other negative consequences.

To maximize the benefits of FDI, countries rely on investment promotion and facilitation. Though closely related and often handled together, these two concepts involve distinct functions. Investment promotion focuses on marketing a country—or a specific region within it—as an attractive destination for investors. Investment facilitation, on the other hand, involves removing or reducing unnecessary barriers that investors may face when setting up, expanding, or operating their businesses. These barriers may include complex regulations, unclear procedures, bureaucratic delays, difficulty accessing investment information, corruption, or inadequate infrastructure and services.

While investment promotion agencies in many countries are responsible for both attracting and supporting investors, effectively facilitating and retaining investment requires coordinated efforts across various areas of government and a comprehensive legal and policy framework.

What does investment facilitation for sustainable development mean?

Traditional views of investment facilitation—and even many current discussions, including those claiming to address sustainability—often prioritize the interests of investors. These approaches typically emphasize speeding up approval processes, eliminating regulatory obstacles, and ensuring legal and policy stability.

However, as highlighted in the UNCTAD Global Action Menu for Investment Facilitation (2016), investment facilitation should not be viewed in isolation from the broader development agenda. Truly effective facilitation strategies must help attract and direct investment toward sustainable development goals, such as strengthening productive capacities and building essential infrastructure. Investment facilitation should be fully integrated into the wider investment policy framework, with the aim of maximizing positive development outcomes while reducing any potential negative impacts.

The **Organisation for Economic Co-operation and Development (OECD)**, through its Policy Framework for Investment, also approaches investment facilitation as part of a broader policy strategy. According to Novik and de Crombrugghe (2018), governments should aim to create an investment-friendly environment that also enhances the developmental benefits for society as a whole.

Consequently, investment facilitation is no longer viewed solely from an investor-focused perspective. It now includes critical priorities such as environmental sustainability, local economic and social development (including support for women entrepreneurs), industrial advancement, employment and workforce training, protection of human rights, public health, climate action, and alignment with national and international development agendas.

In this light, investment facilitation for sustainable development refers to a mix of instruments, policies, and procedures that establish a regulatory and administrative framework enabling investment that promotes—and does not compromise—sustainable development goals.

However, there remains a lack of robust empirical evidence or global consensus on which specific tools and measures are most appropriate for facilitating such investment. Likewise, it is still uncertain at which level—national, regional, or international—these tools should be applied, and who should be responsible for their implementation: the home country of the investor, the host country, the investor themselves, bilateral or multilateral groupings, or international organizations (Novik and de Crombrugghe, 2018).

Governance and Tools at the National, Regional, and International Levels

Deciding how a country will permit, regulate, and manage investment involves complex considerations, requiring a careful balance of costs and benefits across various policy areas—such as environmental protection, public health, labor standards, competition, taxation, and sector-specific concerns. These can differ widely depending on the industry (e.g., finance, extractives, water and sanitation, healthcare, manufacturing, telecommunications, agriculture) and from one economy to another.

At the national level, issues such as how accessible and transparent investment regulations are, how administrative procedures are handled, and how investments can be linked to the broader economy are key. Many governments have also developed national development plans that can be furthered through effective investment facilitation, making national legal and regulatory systems central to achieving sustainable development goals (Brauch et al., 2019).

Regionally, governments have worked together on development goals that include investment facilitation. Regional bodies such as the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA) have developed model agreements and initiatives to guide investment flows within their regions, serving as important platforms to promote shared objectives and sustainable investment.

Beyond the policies of capital-importing countries or regions, home countries also play a significant role. They may regulate or support outward investment—through tools like political risk insurance, investment guarantees, or treaty protections. These practices vary by country and form part of the broader discussion on how and when capital should flow across borders.

Meanwhile, international standards around responsible business conduct and corporate human rights obligations are evolving rapidly. These trends are increasing expectations—and legal responsibilities—on companies to adhere to ethical and sustainable practices.

Consequently, there is also a growing need for international cooperation to better coordinate investment facilitation efforts, enable mutual learning, and tackle shared challenges more effectively (Novik and de Crombrugghe, 2018).

Using International Agreements to Advance and Facilitate Sustainable Investment

In today's interconnected world of global value chains and mobile capital, countries often encounter collective action challenges when it comes to facilitating investment that supports sustainable development. A key concern is the competition among nations to attract foreign direct investment (FDI), which can lead to a regulatory "race to the bottom"—weakening environmental, labor, and social standards. In such cases, investment facilitation might involve excessively simplifying or fast-tracking essential requirements—like environmental, social, or human rights impact assessments—in hopes of attracting FDI. However, research suggests that maintaining these standards leads to higher-quality and more sustainable long-term investments (Coleman et al., 2018).

Developing shared norms and international cooperation mechanisms could help reconcile the goals of investment facilitation with the imperatives of sustainable development. One major challenge lies in addressing transnational governance gaps, especially around the creation, enforcement, and oversight of rules that govern corporate behavior. Complex corporate structures can result in tax avoidance, social and environmental harm, and difficulties for home and host countries to monitor or regulate companies effectively. International collaboration and improved information-sharing—particularly concerning corporate ownership chains and investment flows—could enable more socially responsible regulation of global investments.

Furthermore, existing platforms for exchanging knowledge and best practices around sustainable investment remain underdeveloped. Investment promotion agencies and government bodies may benefit significantly from insights into the successes and setbacks of other countries. This could include learning how to implement:

- Tools such as one-stop shops, digital business registration platforms, and investor aftercare services;
- Policies focusing on transparency, anti-corruption, and good governance;
- Processes to make these tools and policies effective, like stakeholder dialogues, interagency coordination, and capacity-building initiatives (Novik and de Crombrugghe, 2018; Brauch et al., 2019).

As regional and international cooperation on investment facilitation grows, it will be essential for governments to consider whether sustainable development goals are best pursued through collaborative, non-binding ("soft") approaches, or through formal, commitment-based ("hard") mechanisms. Both strategies offer distinct benefits and limitations, which will be further explored in subsequent sections.

The Brazilian Model: Promoting Investment Through Cooperation and Facilitation Agreements

In 2014, Brazil introduced a new approach to international investment agreements that marked a significant departure from traditional models centered on investor protection and investor–state dispute settlement (ISDS). Notably, Brazil has never been a party to an investment treaty that includes ISDS provisions. Instead, the country developed a model that prioritizes cooperation and facilitation as tools for attracting and retaining foreign investment (Brauch, 2020). This new approach led to the conclusion of several Cooperation and Facilitation Investment Agreements (CFIAs).

The Brazilian model was developed through extensive consultations with both domestic stakeholders and foreign investors to better understand how international cooperation could support investment-related goals. These discussions helped identify practical steps to improve the investment climate, emphasizing support mechanisms over legalistic protections.

Key features of Brazil's CFIAs include:

- The designation of contact points and the establishment of national ombudsperson offices, which serve as centralized platforms for addressing investor concerns;
- Implementation of procedures to streamline visa issuance and other administrative requirements essential for facilitating investment;
- Although originally intended only for treaty partners, Brazil has extended access to these ombudsperson services to all foreign investors, regardless of their country of origin.

The Brazilian model reflects a paradigm shift in how investment treaties are conceptualized. Rather than relying on adversarial dispute mechanisms, it emphasizes preventing conflicts through dialogue, coordination, and institutional support. If disputes do arise and cannot be resolved through the facilitative mechanisms provided in the agreement, the model calls for state-to-state dispute settlement, avoiding private investor claims against host states.

Although still relatively recent, Brazil's approach offers a compelling example of how investment agreements can be designed to enhance investment governance, promote transparency, and align investment facilitation with development objectives—without relying on traditional ISDS systems.

World Trade Organization: Structured Discussions on Investment Facilitation

In December 2017, a group of 70 WTO Members issued a Joint Ministerial Statement on Investment Facilitation for Development, launching a process of structured discussions aimed at establishing a multilateral framework to facilitate investment. Importantly, the scope of these discussions excludes issues such as market access, investment protection, and investor–state dispute settlement (ISDS). As of now, 98 WTO Members are participating in the initiative.

While the discussions have progressed, no final consensus has yet been reached on what the future framework should look like—particularly whether it should contain binding rules or focus more on voluntary cooperation and soft commitments. Although the negotiation text is not publicly available, internal draft versions have been significantly developed and were expected to advance further or be finalized during 2020 (Baliño et al., 2020).

The current draft reportedly contains a blend of binding obligations and best-effort commitments, with special provisions for capacity-building and differential treatment for developing countries. Key issues addressed in the negotiations include:

- Non-discrimination and most-favoured-nation (MFN) treatment;
- Transparency and predictability in investment-related measures;
- Simplification of administrative procedures;
- Creation of contact points for investors;
- Regulatory coordination and coherence;
- Corporate social responsibility (CSR); and
- Anti-corruption measures (Baliño et al., 2020).

Despite the progress made, the inclusion of investment facilitation within the WTO framework has faced opposition. Some non-participating countries and critical observers have raised concerns, arguing that WTO negotiations often result in binding commitments, whereas investment facilitation may be more effective through flexible, cooperative approaches that emphasize capacity development. Furthermore, critics question whether the WTO has the appropriate mandate to address sustainable development concerns in the context of investment (Brauch, 2017; Mann and Brauch, 2018).

CONCLUSION

A Strategic Approach to Investment Facilitation for Sustainable Development

Governments aiming to facilitate investment in ways that support sustainable development must adopt a structured and reflective approach, starting with key guiding questions:

1. Clarify Objectives:

What are the relevant national, regional, and international sustainable development goals, including sub-national priorities?

2. Review Existing Frameworks:

What laws, policies, and agreements—at all levels—already govern these objectives?

3. Define Desired Investment Outcomes:

What kind of investment flows and impacts are needed to advance these development goals?

4. Identify Gaps:

Are there regulatory or procedural barriers impeding beneficial investment?

5. Allocate Responsibilities:

Should these gaps be addressed nationally, regionally, or internationally, and by which stakeholders?

6. Select Effective Tools:

Which policies, processes, or mechanisms can best remove those obstacles and promote desired investment?

7. Determine Nature of Measures:

Are voluntary (soft) or binding (hard) approaches more appropriate, and what are their relative advantages and risks?

8. Assess Capacity Needs:

What technical, financial, or institutional support would governments require to implement the reforms?

9. Evaluate Impacts:

What are the likely costs, benefits, and unintended consequences—both positive and negative—of pursuing these reforms?

By working through these questions, policymakers can design investment facilitation strategies that are context-sensitive, goal-oriented, and aligned with broader development agendas, ensuring that investment truly serves the public good.

REFERENCES

Baliño, S., Brauch, M. and Jose, R. (2020) 'Investment facilitation: history and the latest developments in the structured discussions'.

https://www.iisd.org/library/investment-facilitation

Brooke Skartveldt Guven, 'Briefing note: Investment Promotion and Facilitation for Sustainable Development', July 2020, Columbia Center on Sustainable Investment. https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/publications/Briefing-Note-Investment-Promotion-and-Facilitation-for-Sustainable Development.

Brauch, M. (2017) 'A risky tango? Investment facilitation and the WTO Ministerial Conference in Buenos Aires'. https://www.iisd.org/library/risky-tango-investment-facilitation-and-wto-ministerial-conference-buenos-aires

Brauch, M. (2020) 'The best of two worlds? The Brazil-India Investment Cooperation and Facilitation Treaty', Investment Treaty News 11(1).

Brauch, M., Mann, H. and Bernasconi-Osterwalder, N. (2019) 'SADC-IISD Investment Facilitation Workshop'. Report of meeting held 21–23 August 2018, Johannesburg, South Africa.

Coleman, J., Güven, B., Johnson, L. and Sachs, L. (2018) 'What do we mean by investment facilitation?' CCSI Blog. http://ccsi.columbia.edu/2018/02/22/what-do-we-mean-by-investment-facilitation/

Johnson, L., Sachs, L. and Lobel, N. (2019) 'Aligning international investment agreements with the Sustainable Development Goals',Columbia Journal of Transnational Law (58). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452070

Mann H. and Brauch, M. (2019) 'Investment facilitation for sustainable development: getting it right for developing countries', Columbia FDI Perspectives. http://ccsi.columbia.edu/files/2018/10/No-259-Mann-and-Brauch-FINAL.pdf

Novik, A. and de Crombrugghe, A. (2018) Towards an international framework for investment facilitation, Investment Insights, Paris: OECD

OECD – Organisation for Economic Co-operation and Development (2015) 'Policy framework for investment'. https://www.oecd.org/investment/pfi.htm

UNCTAD – United Nations Conference for Trade and Development (2016) Global action menu for investment facilitation, Geneva: UNCTAD