International Trade Alert

Akin Gump
STRAUSS HAUER & FELD LLP

Investment Facilitation – A WTO Negotiation that Can Yield Positive Returns for Investors

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Key Points

- Ninety-eight (98) member states of the WTO are negotiating an international agreement on investment facilitation, which would be the first of its kind. Once concluded, it is expected that the agreement will expand investment flows by making it easier for investors to establish investments and conduct their day-to-day business in host states.
- Investment facilitation refers broadly to policies and actions aimed at reducing obstacles to FDI through improvements in transparency and information available to investors, more efficient and effective administrative procedures for establishing and expanding investments, and enhanced predictability and stability of the policy environment for investors. Key issues currently under discussion include authorization procedures for foreign investment; international transfers of capital, profits, royalties, etc.; temporary entry of foreign investors; the scope of national security exceptions; and the application of corporate social responsibility obligations to foreign investors.
- The WTO investment facilitation negotiations have been gaining momentum since they started in 2017. Participating WTO members are expected to intensify their discussions on the subject in Geneva, with a view to concluding an agreement by the next Ministerial Conference of the WTO in 2021.

Background

Investment facilitation is among the new generation issues being discussed at the World Trade Organization (WTO), alongside issues such as electronic commerce and digital trade. The concept of "investment facilitation" refers to governmental policies and actions aimed at making it easier for investors to establish and expand their investments and to conduct their day-to-day business. According to the International Chamber of Commerce (ICC), investment facilitation seeks to address the "bottlenecks, inefficiencies and uncertainties that … arise from unnecessary red tape, bureaucratic overlap or out-of-date procedures which can become costly impediments to investment."[1]

Contact Information

If you have any questions concerning this alert, please contact:

Davina Garrod
Partner
Davina.garrod@akingump.com
London
+44 20.7661.5480

Alan Yanovich
Partner
ayanovich@akingump.com
Geneva
+41 22.888.2034

Christian C. Davis
Partner
chdavis@akingump.com
Washington, D.C.
+1 202.887.4529

Claude Chase
Associate
cchase@akingump.com
Geneva
+41 22.888.2052

Katherine P. Padgett
Counsel
kpadgett@akingump.com
Washington, D.C.
+1 202.887.4079

The discussions at the WTO began in December 2017 among 70 WTO members, accounting for approximately 72 percent of trade and 66 percent of inward foreign direct investment (FDI). The initiative has been gaining momentum since 2017. The WTO has 164 members and, to date, 98 WTO members have joined in the negotiations.[2] Any agreement ultimately concluded can therefore be expected to be broad in geographic scope, with countries around the world assuming binding commitments to make the establishment and expansion of investments in their territories easier.

The 98 WTO members currently participating in the discussions are: Argentina; Australia; Barbados; Benin; Brazil; Burundi; Cabo Verde; Cambodia; Canada; Central African Republic; Chad; Chile; China; Colombia; Congo; Costa Rica; Djibouti; Dominica; Dominican Republic; Ecuador; European Union; Gabon; The Gambia; Ghana; Grenada; Guatemala; Guinea; Guinea-Bissau; Honduras; Hong Kong, China; Iceland; Japan; Kazakhstan; the Republic of Korea; the State of Kuwait; Kyrgyz Republic; Lao People's Democratic Republic; Liberia; Macao, China; Mauritania; Mexico; Mongolia; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; North Macedonia; Norway; Pakistan; Panama; Paraguay; Qatar; Russian Federation; the Kingdom of Saudi Arabia; Seychelles; Sierra Leone; Singapore; Suriname; Switzerland; Tajikistan; Togo; Turkey; United Arab Emirates; United Kingdom; Uruguay; Vanuatu; Yemen; Zambia; and Zimbabwe. The United States is not currently participating in the negotiations. The likely outcome is a plurilateral agreement in which the advantages of the agreement are made available only to foreign investors that are nationals of the participating countries.

The Core Issues Being Discussed

The discussions seek to develop a framework for facilitating FDI that would:

- **Improve the transparency and predictability of governmental measures affecting the admission and establishment of FDI in host states**. This would be accomplished by, for example, requiring participating members to publish and notify all relevant regulations and procedures in a timely manner and provide investors with an opportunity to comment. Such requirements could include the obligation to publish all investment admission requirements, time limits for government decisions on the admission of proposed investments and the obligation to provide independent review of admission determinations.
- **Streamline and speed up all administrative procedures and requirements affecting the establishment and expansion of investments in participating WTO members**. This would be achieved by, for example, requiring participating WTO members to reduce and simplify procedures and documentation for establishing companies, including through the use of electronic platforms for submitting forms and applications, and for electronic payments. Some participating members are also proposing obligations to facilitate the temporary entry and stay of foreign investors and to ensure foreign investors' right to freely transfer investment-related funds into and out of a participating country, including any initial capital, profits, and proceeds from the eventual sale of the investment.
- **Enhance domestic coordination within the territories of participating members to facilitate investment flows**. This would be achieved by, for example, requiring participating members to set up specific institutions that would be tasked

with responding to enquiries from investors, assisting investors in obtaining information from government agencies and addressing complaints and grievances of investors. The objective here is for each participating member to have a "one stop" shop dedicated to assisting investors and facilitating investments.

Next Steps

Participating WTO members are expected to engage in intense discussions on the subject in Geneva, with a view to concluding an agreement by the next Ministerial Conference of the WTO in 2021. The additional time resulting from the postponement of the Ministerial Conference to 2021 provides participating WTO members with more time to iron out remaining areas of disagreement. This should make the conclusion of the agreement at the Ministerial Conference in 2021 more likely.

Investors still have an opportunity to help shape the outcome of this agreement and to ensure that it addresses any administrative barriers that they are facing when trying to invest in the participating countries.

1. ICC (2019), Investment Facilitation for Development.

2. Counting the 27 member states of the European Union.

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