



ALMA MATER STUDIORUM  
UNIVERSITÀ DI BOLOGNA

# ***The WTO Investment Facilitation for Development Agreement (and the EU–Angola Sustainable Investment Facilitation Agreement)***

***The WTO as Major Driver of Sustainable Development  
and its Reform Process***

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# 1. The WTO and International Investment Law: A Quick Overview

- Modern international legal frameworks governing trade and investment **originated around the same period** (1947 for GATT and 1959 for the first BIT between West Germany and Pakistan), but **evolved in different ways** (legal sources, treaty structures, mechanisms for the settlement of disputes, and levels of centralisation).
- These divergences may explain why, despite the clear complementarities between trade and investment, **the WTO has not traditionally been regarded as the appropriate forum to develop international rules on foreign investment.**
- At the same time, **investment is not an entirely new issue** for the WTO (GATS, TRIMs, TRIPS).
- In 1996, at the First WTO Ministerial Conference in Singapore, members agreed to establish a **Working Group on Trade and Investment** (the group technically still exists, but strong opposition – particularly from developing countries – has caused it to lose momentum).
- Investment was initially included in the **Doha Round agenda** launched in 2001, but was later dropped.



## 2. New Momentum for Investment (Facilitation) at the WTO?

- At the 11th WTO Ministerial Conference in Buenos Aires in 2017, various countries launched so-called **Joint Statement Initiatives (JSIs)**, including one focused on **Investment Facilitation for Development**.
- In 2019, formal negotiations began on the ***Agreement on Investment Facilitation for Development (IFD Agreement)***. The text was officially finalised in February 2024 at the 13th WTO Ministerial Conference in Abu Dhabi.
- The initiative – now supported by over 120 WTO Members, including Chile, South Korea, China, the EU, Singapore, Canada, Saudi Arabia, Brazil, and Cameroon – formally requested the incorporation of the IFD Agreement into **Annex 4 of the Marrakesh Agreement** as a **Plurilateral Trade Agreement**.
- UNCTAD defines *investment facilitation* as ‘the set of policies and actions aimed at making it easier for investors to establish and expand their investments, as well as to conduct their day-to-day business in host countries.’ (2017 *Global Action Menu for Investment Facilitation*, 4).



### 3. The WTO IFD Agreement

- The **IFD Agreement** applies to **foreign direct investment (FDIs)** across all economic sectors (Articles 2(1) and 3(a) and 3(b)), and explicitly **excludes** provisions on market access, investment protection, and ISDS (Article 2(1), as well as on government procurement and certain subsidies (Article 2(5)).
- The agreement contains a **‘firewall provision’**, designed to insulate it from existing **IAs (Article 4)**.
- The only standard typically found in traditional IAs that appears in the IFD Agreement is the **Most-Favoured-Nation (MFN) treatment (Article 5)**, which applies to investors from other WTO Members that are parties to the agreement and to their investments.
- The key pillars of the IFD Agreement include: Commitments on **transparency (Section II)**; **Streamlining and speeding up** administrative procedures (Section III); Establishment of **focal points** and promotion of **regulatory coherence** and **cross-border cooperation (Section IV)**; **Special and differential treatment** for developing and least-developed countries (Section V); Provisions on **international cooperation, information exchange**, and sharing of **best practices (Section VII)**.
- Commitments on **sustainable investment (Section VI)** (participating WTO Members have agreed to encourage investors and enterprises to adopt **responsible business conduct** principles and standards (Article 37), and to take measures to **combat corruption (Article 38)**)



## 4. The Contested Incorporation of the IFD Agreement into the WTO's Legal Architecture and Other Initiatives

- **Formally opposed** – and thus effectively blocked – by some Members, most notably South Africa and India.
- **Reasons:** Investment facilitation lies outside the WTO's core mandate; they express concern over development priorities and the potential erosion of domestic policy space; they criticise the Joint Statement Initiative (JSI) format itself, arguing that it poses systemic risks for the WTO.
- As influential developing countries, India and South Africa retain strong negotiating capacity regardless of their formal participation and can **pursue high-stakes negotiating tactics**.
- While the establishment of a multilateral system for investment facilitation remains blocked at the WTO, significant developments have taken place in **regional** (*Intra-MERCOSUR Protocol on Investment Cooperation and Facilitation* (adopted in 2017, in force since 2019); *ASEAN Investment Facilitation Framework* (2021, not binding); *Protocol on Investment to the African Continental Free Trade Area (AfCFTA)* (finalised in 2023 and currently under legal review) and **bilateral** settings (especially *Brazil's Cooperation and Facilitation Investment Agreements* (CFIAs)).



## 5. The *EU–Angola Sustainable Investment Facilitation Agreement* (SIFA) (adopted 17 Novembre 2023, entered into force 1 September 2024)

- It is the first IIA concluded by the EU with an African country, and the first explicitly framed as a “sustainable investment facilitation agreement.”
- The EU-Angola SIFA also fits within the EU’s broader strategy to promote sustainable investment, diversify value chains, and advance trade in sustainable goods, particularly in support of the green and energy transition.
- Following the CJEU’s Opinion 2/15 on the EU-Singapore FTA, by focusing exclusively on investment facilitation, the EU-Angola SIFA allows the EU to bypass Member States’ ratification hurdles and operate entirely within the scope of its exclusive competence under the common commercial policy.



## 6. Key Provisions of the EU–Angola SIFA

- MFN clause (Article 4) + a safeguard clause (Article 4(3)) that prevents the importation of substantive or procedural protections – such as fair and equitable treatment or ISDS – from other treaties
- Set of procedural obligations aimed at enhancing transparency, predictability, and regulatory coherence: reasonable, objective, and impartial administration of general measures (Article 6); publication and public availability of relevant laws and regulations (Article 7); opportunities for stakeholder consultation (Articles 7-8); creation of public websites with legal information and contact points (Article 9); fair, impartial, and transparent authorisation procedures for investment (Articles 19 and 21); establishment of investment facilitation focal points to support and assist investors (Article 22).
- The EU-Angola SIFA establishes its own dispute settlement system (Chapter VI).
- The EU-Angola SIFA goes way further than the IFD Agreement when it comes to the promotion of sustainable investments:

**Article 1:** the objective of the SIFA is to «facilitat[e] the attraction, expansion and retention of foreign direct investment between the Parties *for the purposes of economic diversification and sustainable development*»;

**Article 33(1):** «*The Parties shall facilitate and encourage investment in sustainable production and consumption, in environmental goods and services, and investment of relevance for climate change mitigation and adaptation*»



## 7. Concluding Remarks

- A 2018 survey of nearly 3.000 IIAs revealed that only 35 included explicit provisions on investment facilitation (R Polanco Lazo, *Facilitation 2.0: Investment and Trade in the Digital Age*, International Centre for Trade and Sustainable Development, 2018, 35).
- In recent years, both states and international organisations have shown a growing interest in **developing deeper and more comprehensive legal norms** in this area.
- The **IFD Agreement**: a shift in the focus of international investment law from *liberalisation and protection* to **facilitation**.
- **Reasons for this shift?**

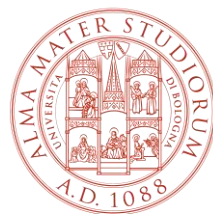
An attempt to **circumvent the current impasse** on ISDS reform and alternatives to ISDS.

An effort to more explicitly **align the flow of FDI with the objective of sustainable development**.

**Overall**, a movement away from a **decentralised, investor-driven governance model** toward one that is **more public, centralized, and state-oriented** in its approach to international investment governance.

The **EU-Angola SIFA** stands out as the **most advanced model currently in force** even if it will take several years to assess whether the EU-Angola SIFA successfully stimulates *sustainable* foreign investment.





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**Thank you for your attention!**