ICTSD
International Centre for Trade
and Sustainable Development

WORLD ECONOMIC FORUM
COMMITTED TO IMPROVING THE STATE OF THE WORLD

The E15 Initiative

STRENGTHENING THE GLOBAL TRADE AND INVESTMENT SYSTEM FOR SUSTAINABLE DEVELOPMENT

What Can an Investment Facilitation Agreement at the WTO Do for Sustainable Development?

Ada Bogliolo Piancastelli de Siqueira

June 2018

E15 Investment Theme

Think Piece

ACKNOWLEDGEMENTS

Published by

International Centre for Trade and Sustainable Development (ICTSD)
7 Chemin de Balexert, 1219 Geneva, Switzerland
Tel: +41 22 917 8492 – E-mail: ictsd@ictsd.ch – Website: www.ictsd.org
Publisher and Chief Executive: Ricardo Meléndez-Ortiz

World Economic Forum
91-93 route de la Capite, 1223 Cologny/Geneva, Switzerland
Tel: +41 22 869 1212 – E-mail: contact@weforum.org – Website: www.weforum.org
Co-Publisher and Managing Director: Richard Samans

Acknowlegements

This paper has been produced under the E15Initiative (E15). Implemented jointly by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15 was established to convene world-class experts and institutions to generate strategic analysis and recommendations for government, business, and civil society geared towards strengthening the global trade and investment system for sustainable development.

For more information on the E15, please visit www.e15initiative.org/

Ada Bogliolo Piancastelli de Siqueira is a Bridges graduate fellow at ICTSD, SJD/PhD candidate at Georgetown University Law Center, and a fellow at the Institute of International Economic Law (IIEL), Washington, DC.

This paper was prepared by Ada Bogliolo Piancastelli de Siqueira with the assistance of Sofia Baliño, Rashmi Jose, and Fabrice Lehmann at ICTSD. The author would like to thank them for their comments on earlier versions of this piece.

Citation: de Siqueira, Ada Bogliolo Piancastelli. 2018. *What Can an Investment Facilitation Agreement at the WTO Do for Sustainable Development?* E15Initiative. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum. www.e15initiative.org/

ISSN 2313-3805

ABSTRACT

This think piece looks at the institutional correlation between investment facilitation measures proposed by World Trade Organization (WTO) members and the Sustainable Development Goals (SDGs). It argues that the two frameworks are mutually reinforcing not due to the links between trade and investment or the need for non-public financing for sustainable development in developing countries. Rather, it claims that the institutional preoccupation at the heart of investment facilitation measures is in itself conducive to reaching many of the goals outlined in the 2030 Agenda for Sustainable Development. The piece suggests that an investment facilitation deal that allows room for institutional flexibility and experimentation in members' domestic structures initiates a process of streamlining and coordinating national and regional agencies and institutions in accordance with specific country goals and developmental priorities.

CONTENTS

ABBREVIATIONS

CSR	corporate social responsibility
FDI	foreign direct investment
FIFD	Friends of Investment Facilitation for Development
GDP	gross domestic product
HLPF	High-Level Political Forum
ICT	information and communications technology
IF	investment facilitation
ISDS	investor-state dispute settlement
MIKTA	Mexico, Indonesia, Republic of Korea, Turkey, and Australia
NPF	national focal point
OECD	Organisation for Economic Co-operation and Development
SDG	Sustainable Development Goal
SEW	single electronic window
SMEs	small and medium-sized enterprises
TFA	Trade Facilitation Agreement
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
WTO	World Trade Organization

FIGURES, TABLES, AND BOXES

INTRODUCTION

The role of an investment facilitation (IF) agreement is very different from that of a trade agreement: IF has a purpose that goes beyond increasing trade or financial flows. Instead, it focuses on improving countries' key institutional determinants for attracting investment, such as transparency, the efficiency of administrative procedures, predictability, and stability of the policy environment. In this sense, IF measures create an institutional space for coordination between stakeholder interests and countries' domestic development policies and priorities for targeted sectors.

The task of improving countries' institutional capacities for investment is vital for sustainable development. Creating a clear, secure, and mediated environment for investors, governments, and civil society would ensure not only a higher quantity of investment, but also, perhaps more importantly, investment that is in line with countries' policy goals.

Since 2015, the multilateral trading system has felt growing pressure to discuss a possible IF deal.[1] Time and again, World Trade Organization (WTO) members have asserted that trade and investment need to walk hand in hand to foster global development and inclusive growth.[2] In March 2017, the Russian Federation submitted items to be discussed within the broader discipline of IF.[3] In April 2017, the Friends of Investment Facilitation for Development (FIFD) launched an open-ended, informal dialogue on investment facilitation for development,[4] while China,[5] Brazil, and Argentina[6] circulated suggestions of possible IF elements. The Abuja Statement[7] dated November 2017 reaffirmed the importance of deepening Africa's integration through both trade and investment facilitation for development (ICTSD 2017). Finally, in February 2018, Brazil circulated a tentative draft agreement for IF[8] at the WTO (ICTSD 2018).

The push for an IF deal has intensified over the past two years, coinciding with a period of growing trade tensions and uncertainty regarding the future of the trading regime. Investment agreements, IF, and investment promotion, therefore, offer a new venue for international action while nationalism continues to fuel protective tendencies and shake the basis of the trading system.

This think piece offers a brief overview of the potential of investment facilitation measures to foster country-specific institutional arrangements to promote stakeholder coordination to achieve members' Sustainable Development Goals (SDGs). By investigating the common elements present in the range of IF proposals submitted by WTO members and how they relate to some of the institutional improvement goals set by the SDGs,[9] we ask how these proposed IF measures can in themselves contribute to sustainable development. Also, what challenges might developing countries encounter when implementing them?

CAN INVESTMENT FACILITATION BE A TOOL TO PROMOTE SUSTAINABLE DEVELOPMENT?

The United Nations (UN) 2030 Agenda for Sustainable Development provides extra momentum for a discussion on IF. The UN Conference on Trade and Development (UNCTAD) and the Organisation for Economic Co-operation and Development (OECD) claim that there is a current annual investment gap of US$2.5 trillion that needs to be covered by non-public sources of funding for developing countries to achieve the SDGs by 2030 (UNCTAD 2014; OECD 2018). The potential for smarter, more efficient, and less bureaucratic investments would enable countries to cover that gap, directing economic activity to specific sectors and increasing productivity.

1 See initiatives by the Friends of Investment Facilitation for Development (FIFD), consisting of 11 WTO members (Argentina; Brazil; Chile; China; China, Hong Kong Special Administrative Region; Colombia; Kazakhstan; Republic of Korea; Mexico; Nigeria; and Pakistan) and the MIKTA group (Mexico, Indonesia, Republic of Korea, Turkey, and Australia). Also, in 2016, in its role in the presidency of the G20, China established a new Working Group on Trade and Investment and non-binding guiding principles for IF negotiations, endorsed by all G20 leaders at the Hangzhou Summit. See also: MIKTA Investment Workshop Reflections, communication circulated at the request of the delegations of Mexico, Indonesia, Republic of Korea, Turkey and Australia (MIKTA). JOB/GC/121. World Trade Organization. 6 April 2017.

2 Proposal for a WTO Informal Dialogue on Investment Facilitation for Development, Joint Communication from the Friends of Investment Facilitation for Development, circulated at the request of the Delegations of Argentina; Brazil; China; China, Hong Kong Special Administrative Region; Colombia; Mexico; Nigeria; and Pakistan (Friends of Investment Facilitation for Development – FIFD). JOB/GC/122. World Trade Organization. 21 April 2017.

3 Communication from the Russian Federation, Investment Policy Discussion Group, JOB/GC/120. World Trade Organization. 30 March 2017.

4 Supra note, n. 4.

5 Possible Elements of Investment Facilitation, Communication from China, JOB/GC/123. World Trade Organization. 26 April 2017.

6 Possible Elements of a WTO Instrument on Investment Facilitation, Communication from Argentina and Brazil, JOB/GC/124. World Trade Organization. 24 April 2017.

7 The Abuja Statement, Deepening Africa's Integration in the Global Economy Through Trade and Investment Facilitation for Development. WT/MIN(17)/4 WT/GC/186. 7 November 2017. Buenos Aires Ministerial Conference, Eleventh Session Buenos Aires, 10–13 December 2017.

8 Communication from Brazil, Structured Discussions on Investment Facilitation. JOB/GC/169. World Trade Organization. 31 January 2018.

9 I have selected some of the more institutional SDGs, mostly based on their specific targets, to make a parallel to the IF proposals. This is an open and very debatable list at this stage.

Nonetheless, the argument for more economic growth to achieve the SDGs has faced scrutiny over the past few years. A more recent study by the UN concluded that global material resource use is not likely to reach sustainable levels even with substantial investment in technological efficiency and innovation (Bringezu et al. 2017). These investigations suggest absolute decoupling of growth in gross domestic product (GDP) from material use is not possible on a global scale. Thus, the focus on developing green growth, as the decoupling of GDP from material resource use, is a notion that has been put in check by a number of recent studies (Hickel 2018; O'Neill et al. 2018; and Dittrich et al. 2012). What is needed, instead, is to reshape the institutional and cultural practices of markets and domestic institutions that have created and encouraged this level of unsustainable consumption.

In the same direction, O'Neill et al. (2018) found that no country meets the basic needs of its citizens at a globally sustainable level of resource use. Thus, a more effective reading of the SDGs would lie in constructing social, cultural, and institutional spheres that work to detach the notion of SDGs from economic growth. Refocused goals should aim at achieving "sufficiency" in resource consumption, improving physical and social provisioning systems, and decreasing consumption and production towards more equitable human well-being.

For this reason, by changing the focus from the gap in IF to an improvement in the quality of institutions, it is possible to trace a clear correlation between IF proposals and the promotion of sustainable development. Crucially, it is possible to determine this correlation while decoupling GDP growth from material resource use and the attainment of some key SDGs. Thus, the 2015 SDGs can also make a timid but essential shift to understand sustainable development through the intrinsic value of inclusive institutions, regulatory frameworks, and norms that organise human life and society.

While the 2030 Agenda does not attempt to prescribe clear institutional models, it outlines principles that institutions should strive to achieve, according to their possibilities and flexibilities. Principles such as "effectiveness, inclusiveness, and accountability" (SDG 16), "responsive, inclusive, participatory and representative decision-making at all levels" (target 16.7), and "policy coherence" (target 17.14) permeate most of the object-specific goals and directly and indirectly contribute to the overarching objectives set out in the 2030 Agenda (Rodrik, Subramanian, and Trebbi 2004).

The goal of this approach is to understand how some of the literature on economic development and industrial policies aligns with the institutional ideas proposed by WTO members in their IF communications. In this sense, while the SDGs seek to contribute to creating institutional arrangements based on pillars of transparency, shared knowledge, and coordination, they do so in a manner that allows solutions to be tailored to domestic institutional realities.

Further, the focus on institutional experimentation and interaction both domestic and international can work towards concerted visions of developmental policies that will build a lasting coalition and reorganise domestic bureaucracy, practices, and communication in a permanent way.

Understanding the correlation of the WTO IF process with the SDGs also contributes to the ongoing UN process in its mission to follow up the SDG Agenda at the global level through the UN High-level Political Forum (HLPF) on sustainable development. In 2018 and 2019, the review of SDGs to "transform […] towards sustainable and resilient societies" (SDGs 10, 13, 16, and 17) and to "empower [...] people and ensuring inclusiveness and equality" (SDGs 4, 8, and 10) relate to many of the same institutional improvements sought by the IF proposals. This brief piece contributes to the UN review of such goals in light of investment for development.

In looking at the SDGs through this perspective, we conclude that there are significant proposals in the documents presented by FIFD, the Mexico, Indonesia, Republic of Korea, Turkey, Australia (MIKTA) grouping; the Russian Federation, Argentina, China, and Brazil that can be implemented in a way to improve social, cultural, and institutional environments as desired by each member. Specifically, we look at how the standard proposals of (i) national focal points (NFPs); (ii) a single electronic window (SEW); and (iii) transparency and corporate social responsibility (CSR) can contribute towards achieving some of the SDGs.

INVESTMENT FACILITATION PROPOSALS

NATIONAL FOCAL POINTS

National focal points were initially discussed in the context of IF by the Chinese, Russian, and Argentine and Brazilian proposals.[10] The documents suggested the establishment of one or more one-stop mechanisms to clarify the roles and responsibilities of different levels of government and various agencies whenever more than one public entity is involved in the investment-screening process.

The notion of NFPs shares basic similarities with the enquiry points established by Article 1 of the Trade Facilitation Agreement (TFA). The enquiry points envisioned for trade facilitation are one-stop mechanisms to "answer reasonable inquiries of governments, traders, and other interested parties." Along the same lines, in Article 23.2, the TFA determined: "Members should maintain a national committee on trade

10 | See supra notes 3, 5, and 6.

facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement."

The idea of NFPs, therefore, combines the concepts structured in the TFA, proposing that members rethink their current institutional governances for investment to create an NFP to act both as an enquiry point and as a national committee for investment matters. In short, an NFP would provide investors with all relevant information regarding laws, agencies, public policies, and statistics for investments. NFPs would also orient investors on how to navigate domestic bureaucracy and help prevent grievances and misunderstandings to avoid disputes with the member states. Much like the enquiry points outlined in the TFA, NFPs would cooperate with each other with respect to the exchange of information, data, capacity building, procedural requirements, and technical assistance.

NFPs can be carved out, shaped, or adapted from existing institutions in countries' domestic systems. As such, they would not require institutional or regulatory transplants of best practices but would organically develop from countries' national institutional environments and public policies. This is crucial to understanding NFPS: they should be conceived in a way that respects members' domestic institutional structures as well as public interest policies, reaffirming the right of members to regulate so as to achieve legitimate public policy objectives.

Importantly, the idea of NFPs takes a preventive approach to investment regulation. It distances itself from the traditional adversarial model of an investment agreement, based on investor-state dispute settlement (ISDS) clauses, arbitration, and dispute resolution to focus on preventive collaboration through NFPs. This approach, as presented in the Argentina and Brazil proposal,[11] is a simplified version of the provisions found in Brazil's Cooperation and Facilitation Investment Agreements.[12] The conciliatory nature of the NFPs would seek to align incoming investments to members' priorities by facilitating coordination and information exchange among national institutions and agencies.

The implementation of effective NFPs can institutionally contribute to a number of the SDG targets. An NFP firmly articulated with domestic institutions and operating in tandem with members' policy goals could ensure that investments would respond more efficiently to countries' needs. For instance, SDG Goal 9 is designed to encourage building "resilient infrastructure, promote sustainable industrialisation and foster innovation." In developing countries, investment aligned with developmental interests would likely also support SDG 9 targets 9.3 and 9.B by increasing access of small-scale industrial and other enterprises to financial services, affordable credit, technology development, research and innovation, industrial diversification, and insertion in global markets and value chains.

The proposal would also facilitate domestic coordination between stakeholders from the public and private sectors, thereby helping to achieve SDG target 17.17, which aims at enhancing public, public–private, and civil society partnerships. Further, requiring coordination between NFPs in different countries and regions would help further progress towards goals under SDG 16 towards justice and stable institutions. For instance, targets 16.5, 16.6, and 16.7 encourage countries to reduce corruption and bribery, develop accountable and transparent institutions at all levels, and ensure responsive, inclusive, participatory, and representative decision-making at all levels.

Encouraging international cooperation among NFPs may be a useful step to strengthen national institutions and capacity building in developing countries, looking into target 16 A. Directly related to sustainable development policies, an NFP would be yet another entity with the responsibility of screening, articulating, and enforcing such policy through non-discriminatory laws and policies as per target 16.

SINGLE ELECTRONIC WINDOWS AND ELECTRONIC GOVERNANCE

The idea of a SEW and the consolidation of electronic governance for investors can also be traced back from the early discussions on trade facilitation. Though initially discussed in a limited scope as an informational portal, this measure became one of the most ambitious goals of the TFA, and some members have been working on its implementation since the 1990s.

As described in the TFA, members are expected to establish a single window for traders to submit and access documentation, data, and requirements and to follow all steps of the importation or exportation processes. To the best of their abilities, members are expected to use information technology to support these multiple functions of the single window (see TFA Article 10). The ultimate objective is to build an electronic data centre, including all the information exchanged by traders, government departments, entities, bodies, financing institutions, and civil society groups.

This major transition requires significant investments in machinery, personal training, management, and maintenance. The obstacles are plenty, and countries have been in the process of implementing this SEW since the Agreement was approved in 2014.

Following the United Nations Economic Commission for Europe (UNECE) release of the Recommendation and Guidelines on Establishing a Single Window to Enhance the Efficient Exchange of Information Between Trade and Government (UN/CEFACT 2005), 20 countries have been studied in the period 2007–2012 for information on implementation and operation of these mechanisms.[13] Both developing and developed countries

11 See supra note 6.

12 See Henrique Vieira Martins 2017.

13 See also UNECE (n.d.).

compose the group of case studies. Despite the costs, countries are at different levels of implementation, with Senegal and Rwanda being exceptionally successful having engaged in this effort since the mid-1980s. GAINDE 2000, a Senegalese company established under a public–private partnership implemented the Single Window (ORBUS) in Senegal in 2004 (UNECE 2016). In 2009, GAINDE intensified its efforts to move towards paperless trade, legal digital signatures, and electronic interconnectivity among domestic and international stakeholders in a supply chain.

As in the case of trade facilitation, the SEW for IF can develop into an ambitious project that goes beyond an informational portal. Though many of the IF functions can be combined with the TFA mechanism, there are areas where their roles and attributions are not in a perfect overlap. Public and private entities, financial institutions, and civil society groups significantly vary when it comes to squaring investors' needs with host countries' domestic developmental programmes.

For instance, a SEW would require members to adopt electronic documents, signatures, and processes according to countries' possibilities. Not unlike the trade-focused single windows, IF SEW models would vary according to specific national and regional conditions, financing, and compulsory or voluntary systems and requirements. Similarly, they involve other information and communications technology (ICT) processes and techniques, different data and standards, and specific information systems for informational exchange.

A SEW for IF would require a different statement of the project's scope, goals, and objectives, reassigning roles and responsibilities to a wide range of participants, coordination with stakeholders, a redefinition of deliverables, and a timeframe and milestones for completion according to each country's economic status. As such, a SEW for IF remains a challenge at the forefront of e-government initiatives.

The SEW project and the institution of electronic governance are essential to achieving the SDGs. First, as claimed by UNCTAD and OECD, foreign direct investment (FDI) and remittances currently outpace traditional official development assistance from public sources. These additional means to finance the sustainable development agenda can be boosted by a coordinated electronic process that allows for the participation of a more comprehensive number of investors, stakeholders, and players.

Second, the implementation of such measures would promote a two-way transparency mechanism. Just as the SEW could attract sustainable FDI within the framework of a country's long-term development strategy, it could also work as a transparency focal point for multinational enterprises' governance strategies, goals, and investments (Sauvant and Mann 2017). Multinational enterprises could equally publicise comprehensive information on their CSR practices, investment objectives and results, and relationship to members' developmental priorities.

Besides a positive effect on many of the 17 SDGs, the implementation of a SEW can have a direct impact on SDG 8, 9, 16, and 17. Under SDG 8, to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all," SEWs and electronic governance processes can push for a more efficient system for investments to foster capital inflow to specific areas in need of technological

TABLE 1:

Sustainable Development Goals and targets related to national focal points

SDG 9: Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation	**SDG 9.3:** Increase the access of small-scale industrial and other enterprises into value chains and markets
	SDG 9.A: Facilitate development in developing countries through enhanced financial, technological and technical support
	SDG 9.B: Support domestic technology development, research and innovation in developing countries
	SDG 9.C: Significantly increase access to information and communications technology
SDG 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels	**SDG 16.5:** Reduce corruption and bribery in all their forms
	SDG 16.6: Develop effective, accountable and transparent institutions at all levels
	SDG 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels
	SDG 16.B: Promote and enforce non-discriminatory laws and policies for sustainable development
SDG 17: Strengthen the means of implementation and revitalise the global partnership for sustainable development	**SDG 17.17:** Encourage and promote effective public, public–private and civil society partnerships, building on the experience and resourcing strategies of partnerships

Source: Author

upgrading (target 8.2) and promote development-oriented policies that support access to financial services and encourage job creation, entrepreneurship, and creativity and innovation sectors (target 8.3).

The digitalisation of governance through a SEW could also facilitate the control of incoming products with specific standards for the environment, health, and sanitary and phytosanitary measures. This is in line with SDG target 8.4, which is geared towards improving global resource efficiency in consumption and production and promoting sustainable consumption and production domestically. An electronic governance system tracing investment projects, goals, implementation, and compliance would simplify procedures and strengthen controls on investors. Importantly, an improved and more efficient system for traceability of investments, commitments, and objectives would have a positive impact on public policy and development goals.

Targets under SDG 9 to "build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation" would also be directly affected by the implementation of such IF measures. For instance, in the long run, such measures can operate to support sustainable and resilient infrastructure; inclusive industrialisation; greater access and financing conditions for small-scale enterprises; increased support for domestic technology development, research, and innovation, industrial diversification and higher value-added production, and higher access to information and communications technology.

These mechanisms are also directly linked to SDGs 16 and 17 to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" to "strengthen the means of implementation and revitalise the global partnership for sustainable development."

By facilitating private–public partnerships, identifying opportunities for inserting the country in global value chains, and promoting backward and forward linkages between foreign investors and domestic firms, the implementation of a SEW would not only improve the regulatory framework for investment but also support the coherence of the investment and trade regulatory framework.

TRANSPARENCY, PUBLIC PROCEDURES, AND CORPORATE SOCIAL RESPONSIBILITY

Decreasing tension between institutions, strengthening them, and making them more inclusive is an important step to transform power relations and address social, political, and economic disparities (Unsworth 2010). Improvements to the general regulatory environment of members, and procedures for investment applications, appeals, and review processes would help to harmonise, publicise, and increase informational access to all stakeholders. Many of the measures suggested by members in this direction would be vital to democratising access to information on investment across the board and lead to possibly more coordinated and targeted plans of action.

On transparency, the publication of any development policies and measures affecting investors should enhance impartiality, non-discrimination, and transparency. The idea is that there

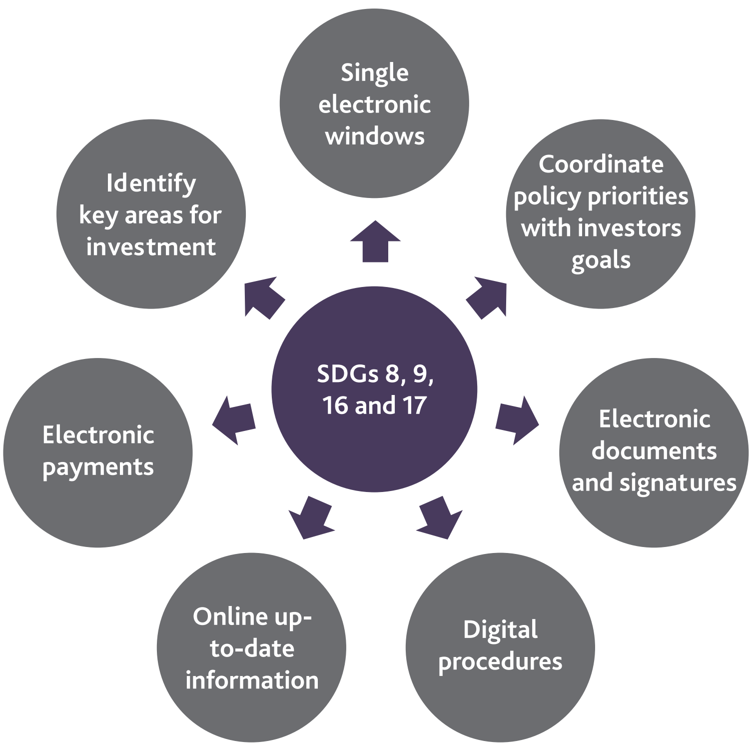

FIGURE 1:

Single electronic windows, electronic governance, and Sustainable Development Goals

Source: Author

exists a vast array of actions each country can take within its domestic structures that would concur with policy coordination and good governance.

Likewise, members can operate to improve their domestic structures to ensure that all criteria for the admission, establishment, acquisition, and expansion of investments are publicised and in accordance with their national policies. Other proposals, such as transparent timeframes, reasonable application fees, and the right to an administrative appeal, would ensure that investors and stakeholders have fair access to this information in a timely fashion.

In a general manner, as per SDG targets 1.A and 1.B, these provisions may operate to foster the mobilisation of resources from diversified sources to provide cooperation and

TABLE 2:

Transparency, streamlining procedures, and contributions to Sustainable Development Goals

	SDG 2	SDG 8	SDG 9	SDG 11	SDG 12	SDG 13	SDG 16	SDG 17
	End hunger, achieve food security and improved nutrition and promote sustainable agriculture (Targets 2.A, 2.B, 2.C)	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (Targets 8.2, 8.3, 8.4)	Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation (Targets 9.1, 9.2, 9.3, 9.4, 9.5, 9.A, 9.B, 9.C)	Make cities and human settlements inclusive, safe, resilient and sustainable (Targets 11.A, 11.B, 11.C)	Ensure sustainable consumption and production patterns (all targets)	Take urgent action to combat climate change and its impacts (Targets 13.A, 13.B)	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (all targets)	Strengthen the means of implementation and rivatalise the global partnership for sustainable development
Procedures (Article 10 and 11)								
Obligation to keep any investment criteria transparent and objective		✓	✓				✓	✓
Obligation to ensure that competent authorities are involved in the process, timeframe, publicisation of any established criteria		✓	✓				✓	✓
Obligation to ensure that application fees charged by the competent authority are reasonable, transparent and do not in themselves restrict the investment		✓	✓				✓	✓
Ensure that investors have a right to an administrative appeal or judicial appeal of decisions		✓	✓				✓	✓

Source: Author

predictability for development and poverty-reducing policies in developing and least-developed countries. Target 1.B may also be touched upon to the extent that a sound regulatory environment is crucial to creating sound policy frameworks that will respond to social demands and support investment for poverty eradication actions.

Further, these proposals relate to SDG 9 in its targets 9.A, 9.B, and 9.C insofar as they attempt to increase investment geared to promote sustainable and resilient infrastructure for development, technology development, research, innovation, and access to ICT. Finally, implementation of the transparency and regulatory environment proposals may contribute to the achievement of SDG targets 16.5, 16.6, and 16.7 to reduce corruption and bribery while developing effective, accountable, and transparent institutions at all levels. Similarly, target 16.7's goal of ensuring responsive, inclusive, participatory, and representative decision-making at all levels is also strengthened with respect to investment-related institutions.

In this sense, the procedural aspects of investment admission, establishment, acquisition, and expansion are central to achieving more public awareness, efficient domestic institutions, and a streamlined process for investments. Through these goals, the 2030 Agenda does not prescribe institutional models for the national level, but outlines principles that institutions should strive to achieve, such as "effectiveness, inclusiveness, and accountability."

A great part of the framework envisioned for an IF agreement is directed towards promoting active engagement between the public and private sectors. In orchestrating this synergy, the SDGs attempt to lead companies and industry to engage in responsible business practices, such as those promoted by the United Nations Global Compact.[14] The importance of doing so lies in developing country-specific models to facilitate the planning, implementation, and reporting of initiatives in sustainable development, with particular attention to the needs of developing countries, including for capacity building (United Nations 2012). With this purpose in mind, Sauvant and Hamdani clarify that regulatory exceptions for investment should not come at the cost of domestic long-term objectives; rather, governments and industry should work jointly to foster linkages with small and medium-sized enterprises (SMEs) and encourage broader corporate social responsibility in national investment policies (Sauvant and Hamdani 2015).

Many of the IF proposals incorporate these notions to tie investors and their investments to standards of CSR and domestically established development goals. In fact, preoccupation with respecting member priorities, policies, and domestic goals were enshrined in much of the proposed language through the repeated use of expressions, such as "in accordance with the laws adopted by the host Member," "in accordance with Members' international commitments," "in accordance with the national policies of Members," "consistent with the international obligations and commitments of the host Member," "as established in the law of the host Member," and "respecting local political processes and activities."

The CSR proposals have focused on getting investors and their investments to comply with voluntary principles and standards of CSR adopted by members related to the environment, human and labour rights, engagement with the local community, capacitation of local workers, and the formation of human capital. According to their varying degrees of "legalisation," from the traditional state-centred and sanction-based "hard" laws to purely voluntary (or "soft") standards, investors are incentivised to adhere to members' regulatory preferences as members are encouraged to make their preferences publicised, transparent, and accessible to stakeholders (Abbott et al. 2000).

Ideally, the effective implementation of the provisions on CSR would contribute to SDG 1, 9, and 12. In a broad sense, SDG target 1.3 aims to implement appropriate social protection systems and achieve substantial coverage of the poor and the vulnerable by 2030. Target 1.A would also be affected by ensuring mobilisation of resources from a variety of sources, including through enhanced development cooperation to implement programmes and policies to end poverty. By directing corporate activity to work in tandem with state goals and institutions towards these goals, current IF suggestions for CSR would contribute to establishing lasting mechanisms between the public and private sector in the direction of SDG 1.

SDG Goal 9 and its associated targets might also be reached through some of these provisions. Namely, the objective of target 9.1 is to develop sustainable infrastructure to support economic development and human well-being, with a focus on affordable and equitable access. Target 9.A seeks to facilitate infrastructure development in developing countries through enhanced financial, technological, and technical support to African countries, least-developed countries, landlocked developing countries, and small island developing states, and target 9.B supports domestic technology development, research, and innovation in developing countries. The objective of achieving sustainable management and efficient use of natural resources in SDG 12 would also be aided through effective synchronised action by the private sector. Targets 12.2, 12.6, and 12.7 work to encourage companies to adopt sustainable practices and integrate sustainability information into their reporting cycles and to promote public procurement practices that are sustainable, under national policies and priorities. Targets 12.A and 12.B work towards the similar purpose of strengthening developing countries' scientific and technological capacity towards more sustainable patterns of consumption, production, and tourism.

14 See https://www.unglobalcompact.org/

TABLE 3:

Transparency, streamlining procedures, and contributions to Sustainable Development Goals

	SDG 2	SDG 8	SDG 9	SDG 11	SDG 12	SDG 13	SDG 16	SDG 17
	End hunger, achieve food security and improved nutrition and promote sustainable agriculture (Targets 2.A, 2.B, 2.C)	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (Targets 8.2, 8.3, 8.4)	Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation (Targets 9.1, 9.2, 9.3, 9.4, 9.5, 9.A, 9.B, 9.C)	Make cities and human settlements inclusive, safe, resilient and sustainable (Targets 11.A, 11.B, 11.C)	Ensure sustainable consumption and production patterns (all targets)	Take urgent action to combat climate change and its impacts (Targets 13.A, 13.B)	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (all targets)	Strengthen the means of implementation and rivatalise the global partnership for sustainable development
Corporate social responsibility								
Investors must achieve the highest possible level of contribution to sustainable development and adopt socially responsible practices	✓	✓	✓	✓	✓	✓	✓	✓
Promote the use of sustainable technologies	✓	✓	✓	✓	✓	✓	✓	✓
Respect human rights of those involved in the activities of the companies.	✓	✓	✓	✓			✓	✓
Stimulate local capacities through close cooperation with the local community	✓	✓	✓	✓	✓	✓	✓	✓
Respect principles of sound corporate governance, develop and apply good practices in corporate governance			✓		✓	✓	✓	✓
Endeavour to develop self-regulated practices that foster trust between enterprises and societies			✓	✓	✓	✓	✓	✓
Obligation to respect local political processes and activities		✓	✓	✓	✓	✓	✓	✓
Obligation to keep the national focal point informed about their internal corporate social responsibility policies and practices		✓	✓	✓		✓	✓	✓

Source: Author

BOX 1:
Summary of key findings on investment facilitation and sustainable development

Rethinking SDGs

- The UN 2030 Agenda and the SDGs have a structural role to play in providing a compass to guide the institutional and cultural practices of markets and domestic institutions that create and encourage unsustainable consumption.

- The SDGs would benefit from interpretations envisaging a decoupling of growth in GDP from material resource use.

- The SDGs offer an opportunity to rethink the role of institutions in linking strategic, development-oriented investment to long-term changes in consumption patterns.

National Focal Points

- NFPs should be thought of as organic mechanisms that can be adapted to fit countries' domestic institutions while concomitantly encouraging dynamism among different governmental bodies and agencies.

- NFPs can be a venue to strengthen two-way accountability, encouraging a culture of increased public informational exchange not only from government to investors, but also between private stakeholders and civil society actors.

- In the long term, NFPs may operate as a forum for dispute prevention as they operate to better inform stakeholders about the challenges, limits, and goals of investment projects.

Single Electronic Window and Electronic Governance

- Though currently focused on the creation of limited online portals for electronic governance, SEW implementation proposals should nonetheless focus on the significant requirements in domestic machinery, training, ICT processes and techniques, specific information systems for informational exchange, management, and maintenance.

- Planning, funding, and financing for such projects need to have clearly set goals, with challenges, timelines, and long-term funding set out, addressing each of these structural hurdles on a country-specific basis.

- Multinational enterprises might play a crucial role in operationalising SEWs: just as SEWs lower investment costs for investors, investors have a role to play in ensuring that SEWs are optimised to their potential effects in reaching private and public stakeholders. Likewise, SEWs can also be thought of as a mechanism equally useful to provide information on investors' CSR practices, investment objectives, and relationship to countries' developmental goals.

Transparency, Public Procedures, and Corporate Social Responsibility

- These proposals should be guided around the notion of countries' right to regulate and their institutional domestic organisation. Proposals should reinforce the notion that countries can take a broad range of measures within their given domestic structures that foster institutional cultural change in their practice of linking investment projects to development priorities.

CHALLENGES AHEAD AND PATHS FOR DEVELOPING COUNTRIES

Since the TFA entered into force on 22 February 2017, WTO members have started to work on its domestic implementation. While some of the TFA measures are telling regarding what lies ahead for possible IF measures, there is a need to take a step back and return to basics when thinking about IF.

There are initial hurdles that still need to be overcome for an investment deal to progress at the WTO. The repeated efforts to push the IF agenda at the WTO have raised political concerns leaving some members uneasy (Suneja 2017). A good number of developing countries contest the discussion of IF within the mandate of the Doha Development Round along with other Singapore Issues. Their political priority remains on addressing agriculture and issues, such as harmonisation of rules of origin as the primary bottleneck for exporters from the least developed and developing countries. Others question whether there is sufficient economic basis to affirm that trade and investment are interlinked closely enough to justify their negotiating within the same mandate.

Meanwhile, the extent to which IF provisions may touch more deeply upon countries' domestic regulatory preferences has also been the subject of scepticism regarding policy space in IF discussions. Although the latest meetings of the Working Group on Investment Facilitation at the WTO have registered unusually high attendance and interest from members, a multilateral deal would demand significant political capital to be approved.

Nevertheless, plurilateral and bilateral advances are being reached. For instance, developing countries have been especially progressive in promoting cooperation and IF in their bilateral agreements. In 2015, Brazil signed deals with Angola, Chile, Colombia, Malawi, Mexico, Mozambique, and Peru. There are ongoing negotiations with Morocco, South Africa, and Tunisia.

For its turn and, despite the reluctance to embrace multilateral IF discussions at the WTO, India has pushed for trade facilitation in services which might provide valuable insights insofar as it overlaps with investment issues in Services Mode 3.[15] Drawing a line between services and goods may also prove to be difficult with respect to the current proposals on the table.

Zooming out of negotiating politics at the WTO and into implementation experiences with the TFA, some possible challenges can be predicted when it comes to some of the IF provisions mentioned above. A measure such as a SEW has proven to be among the costliest of the 12 TFA measures (followed by the implementation of a risk-management system and the establishment and broader use of audit-based customs).

For developing countries, the implementation of a trade SEW has entailed significant start-up costs for the government agencies in the short term and the need for a reliable lead agency and domestic political will in the long term.

Recent UNCTAD studies show that Denmark, Estonia, New Zealand, Oman, and Switzerland already operate a fully working SEW for investment. An additional 27 WTO members (21 are developing countries) are in the process of doing so. Enthusiasts argue that establishing an IF SEW is "similar to a website in several ways" and that "157 WTO members have an official investment web portal" in place (Hees, Cavalcante, and Paranhos, 2018).

The implementation costs of such a measure are largely case-specific and dependent on the necessary national ICT infrastructure and the current readiness and usage of electronic governance. Though factors such as user training, additional staff and experts, cost of translations, and replacement of computers and software have the potential for positive institutional and cultural change, they also require the constant involvement of stakeholders and regular investment of financial and political capital over a significant number of years.

This institutional reorganisation could mostly corroborate towards more sustainable and inclusive investment, bringing to the table some natural benefits of healthy and socially connected domestic institutions for development.

Substantively modifying the modus operandi of domestic agencies to incorporate IF principles will also be a challenge for many developing countries. In many cases, members will need to engage in substantial undertakings to gather necessary data to establish and inform NFPs. The lack of reliable and precise data and the complexity of the underlying issues may prove to be hurdles that are hard to overcome in countries with a shortage of resources.

Further, the extent to which new legislation, institutions, or mere restructuring of existing institutions will be needed will be crucial in determining the feasibility for some

15 See: Communication from India, Concept Note for an Initiative on Trade Facilitation in Services. S/WPDR/W/55. Working Party on Domestic Regulation. World Trade Organization. 23 September 2016; Communication from India, Possible Elements of a Trade Facilitation in Services Agreement, Working Party on Domestic Regulation, S/WPDR/W/57. World Trade Organization. 14 November 2016; Communication from India, Council for Trade in Services Council for Trade in Services – Special Session Working Party on Domestic Regulation. S/C/W/372 TN/S/W/63 S/WPDR/W/58. World Trade Organization. 23 February 2017.

countries to readapt their domestic systems to operate as a coherent NFP for investment. Keeping such an updated, translated, and accessible public stock of information may prove to be burdensome until the practice becomes fully internalised as institutional culture changes and benefits start to be felt across the wide spectrum of stakeholders.

Finally, some of the member obligations and CSR provisions outlined above have the potential to change how business and state practices interact and operate within a set institutional framework, be it domestically, regionally, or internationally. Achieving this synergy for private–public cooperation through an NFP and a SEW can be a daunting managerial task, involving commitments from a diverse number of state authorities and stakeholders while managing their expectations in a changing complex regulatory framework.

SPECIAL AND DIFFERENTIAL TREATMENT AND INSTITUTIONAL LESSONS FROM THE TRADE FACILITATION AGREEMENT

Allowing for institutional flexibility and diversity in the TFA was a significant regulatory milestone. In this sense, the special and differential provisions of the TFA allowed, for the first time in the WTO, a self-determined period for implementation of targets and flexible requirements concerning how institutional targets ought to be implemented (McDougall 2017).

In this context, developing and least-developed countries adhered to differentiated timelines for implementation of TFA provisions according to their ability to establish the necessary measures after the entry into force of the Agreement. This shift in the regulatory approach of the WTO towards more leeway for institutional differentiation and time flexibility is in itself a step forward regarding aligning trade with developmental goals.

Much like the TFA, IF provisions will play a role similar to that of a compass, generally guiding the direction in which facilitation measures are conceived. Specific arrangements would ideally be left to conform to countries' domestic structures, while concomitantly being in coordination with other NFPs and regional articulation. The path forward lies in the lenient contours that allow countries to implement measures; obtain financial assistance and support; build technical capacity and expertise; and undertake the necessary electronic training and equipment purchasing to operate these measures in the long term. Importantly and beyond the practical aspects of implementing an agreement on trade (or investment) facilitation, these institutional changes imply a long process of trial and error through experimentation at the domestic and regional levels.

The flexible and diverse characteristics of these measures may also mean they are difficult to enforce on a multilateral basis. Besides requiring members to bring their domestic measures into conformity with the TFA (or a possible IF agreement), it may be difficult for a panel or Appellate Body to make a determination in cases of noncompliance. Hypothetically, in the case of trade facilitation, retaliation and negative trade effects seem challenging to quantify. In this sense, both trade and IF provisions can be seen to operate on a supra level, acting as almost "soft trade law" under the premise that members will be guided by WTO directives while they experiment with different arrangements that respond to their policy priorities and stakeholders' interests.

In consonance with the specific target 10.A under SDG 10, the TFA implements the "principle of special and differential treatment for developing countries, in particular, least-developed countries, in accordance with World Trade Organization agreements." A possible deal on IF would work towards the same SDG target.

In addition to the flexible self-determined implementation schedule in the TFA, additional safety valves were set in case a member is unable to notify commitments or implement provisions by the deadlines. This measure, among other flexibilities throughout the TFA, set a path for a possible IF agreement. In line with the 2030 Agenda and the recommendations of specific development authors (Rodrik 2000; Chang 2011), to ensure that these agreements contribute to long-lasting cultural, institutional change in how investment-related agencies interact among themselves, their governments, and foreign actors, experimentation, room, and time for institutional diversity are needed.

CONCLUSION

The conversation about the relationship between an IF deal and sustainable development has mostly focused on the need to increase investment flows to close the financing gap needed to achieve most of the SDGs by 2030. Though that may indeed be an essential source of funding for the implementation of the SDGs, IF is about significantly more than that.

The institutional approach to SDGs has shown how some of the leading ideas brought forward for IF can also be understood as guidelines to be adopted when members think about their domestic institutions and processes. Just as a compass sets the general direction of an undertaking, the IF proposals established the principles of transparency, publicity, due process, inclusion, and electronic governance as the direction members' domestic structures, agencies, or bodies should look towards.

In this sense, the format in which the SDGs and the IF proposals have been framed so far allows for freedom in the way, time, and manner each country will incorporate these principles into its domestic structures. Though the goals of transparency, publicity, due process, inclusion, and electronic governance are the same across the board, the routes to achieving them are numerous.

The initiatives on IF, when looked at from the perspective of the SDGs, can allow for more country-specific experimentation than WTO agreements have historically allowed. This step would be key for the successful implementation of IF. Notably, it would be essential to ensure that these provisions work in tandem with developmental policies that are tailored to domestic institutional realities (Rodrik 2000). A development-friendly international trading regime enables countries to experiment with institutional arrangements and "leaves room for them to devise their own, possibly divergent, solutions to the developmental bottlenecks they face" (Rodrik 2000). The international economic regime, therefore, should promote institutional reform from the perspective of equitable economic growth as opposed to the perspective of integration (Rodrik 2001).

Further, such measures would promote cohesion within countries' domestic systems, ensuring policy directions trickle down to all levels of agencies and institutions. Chang (2011) explains that the feasibility of developmental policies across countries and sectors depends on the ability of the state to implement policies, neutralise capture by interest groups, get individuals to act in a concerted manner, and build nations and communities out of disparate groups, while maximising the role of information between states and the private sector.

Over and again, development literature has indicated that there is no one path towards sustainable development. The institutional interpretation of IF proposals here would allow for needed developmental leeway, especially considering some of the targets set by the UN 2030 Agenda for Sustainable Development.

REFERENCES

Abbott, Kenneth, Robert Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401-409.

Bringezu, Stefan, Anu Ramaswami, Heinz Schandl, Meaghan O'Brien, Rylie Pelton, Jean Acquatella, Elias T. Ayuk, et al. 2017. *Assessing Global Resource Use: A Systems Approach to Resource Efficiency and Pollution Reduction.* Nairobi: United Nations Environment Programme.

Chang, Ha-Joon. 2011. "Industrial Policy: Can We Go Beyond an Unproductive Confrontation?" *Annual World Bank Conference on Development Economics* 83-109.

Dittrich, Manika, Stefan Giljum, Stephan Lutter, and Christine Polzin. 2012. *Green Economies Around the World ? Implications of Resource use for Development and the Environment*. Vienna: Sustainable Europe Research Institute (SERI).

Hees, Felipe, Pedro Mendonça Cavalcante, and Pedro Paranhos. 2018. *Key Aspects for a Multilateral Outcome on Investment Facilitation: A Brazilian Perspective.* Geneva: International Centre for Trade and Sustainable Development (ICTSD). https://www.ictsd.org/opinion/key-aspects-for-a-multilateral-outcome-on-investment-facilitation-a-brazilian.

Henrique Vieira Martins, Jose. 2017. "Brazil's Cooperation and Facilitation Investment Agreements (CFIA) and Recent Developments." *Investment Treaty News*. 12 June. https://www.iisd.org/itn/2017/06/12/brazils-cooperation-facilitation-investment-agreements-cfia-recent-developments-jose-henrique-vieira-martins/.

Hickel, Jason. 2018. "Better Technology Isn't the Solution to Ecological Collapse." *Fast Company.* March 26. https://www.fastcompany.com/40548564/better-technology-isnt-the-solution-to-ecological-collapse.

ICTSD. 2017. "Abuja High-Level Forum Examines Link Between Investment Facilitation, Trade." *Bridges Weekly*. 9 November.

ICTSD. 2018. "Brazil Circulates Proposal for WTO Investment Facilitation Deal." *Bridges Weekly*. 8 February.

McDougall, Robert. 2017. *Evaluating the Implementation Obligations of the Trade.* Geneva: International Centre for Trade and Sustainable Development (ICTSD).

OECD. 2018. "Private Finance for Sustainable Development." Paris: Organisation for Economic Co-operation and Development (OECD). http://www.oecd.org/dac/financing-sustainable-development/development-finance-topics/private-finance-for-sustainable-development.htm.

O'Neill, Daniel W., Andrew L. Fanning, William F. Lamb, and Julia K. Steinberger. 2018. "A Good Life for All Within Planetary Boundaries." *Nature Sustainability* 1: 88-95.

Rodrik, Dani. 2000. "Institutions for High-Quality Growth: What They Are and How to Aquire them." *Studies in Comparative International Development* 35 (3): 3-31.

Rodrik, Dani. 2001. *The Global Governance of Trade As If Development Really Mattered.* Background Paper. New York: United Nations Development Programme.

Rodrik, Dani, Arvind Subramanian, and F. Trebbi. 2004. "Institutions Rule: The Primacy of Institutions Over Geography and Integration in Economic Development." *Journal of Economic Growth* 9 (2): 131-165.

Sauvant, Karl P., and Khalil Hamdani. 2015. *An International Support Programme for Sustainable Investment Facilitation E15Initiative*. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Sauvant, Karl P., and Howard Mann. 2017. *Towards an Indicative List of FDI Sustainability Characteristics*. Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum.

Suneja, Kirtika. 2017. "WTO: India Manages to Prevent New Deal on Ecomm, Investment Facilitation." *Economic Times.* 15 December. https://economictimes.indiatimes.com/news/economy/foreign-trade/wto-india-manages-to-prevent-new-deal-on-ecomm-investment-facilitation/articleshow/62075707.cms.

UN/CEFACT. 2005. *Recommendation and Guidelines on Establishing a Single Window to Enhance the Efficient Exchange of Information Between Trade and Government.* Recommendation No. 33. Geneva: United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT).

UNCTAD. 2014. *Developing Countries Face $2.5 Trillion Annual Investment Gap in Key Sustainable Development Sectors, UNCTAD report estimates.* Press Release. Geneva: United Nations Conference on Trade and Development (UNCTAD).

UNECE. 2016. *A Road Toward Paperless Trade: Senegal's Experience.* Geneva: United Nations Economic Commission for Europe (UNECE).

UNECE. n.d. "Single Window Repository." Geneva: United Nations Economic Commission for Europe (UNECE). https://www.unece.org/cefact/single_window/welcome.html.

United Nations. 2012. *Business and Industry Major Groups.* New York: United Nations.

United Nations Global Impact. n.d. "The Ten Principles of the UN Global Compact." United Nations Global Impact. https://www.unglobalcompact.org/what-is-gc/mission/principles.

Unsworth, Susan. 2010. *An Upside Down View of Governance.* Brighton, UK: Institute of Development Studies.

Implemented jointly by ICTSD and the World Economic Forum, the E15Initiative was established to convene world-class experts and institutions to generate strategic analysis and recommendations for government, business, and civil society geared towards strengthening the global trade and investment system for sustainable development.

ICTSD
International Centre for Trade and Sustainable Development

WORLD ECONOMIC FORUM
COMMITTED TO IMPROVING THE STATE OF THE WORLD