Investment facilitation and the AfCFTA Protocol on Investment

Burdensome regulations, complex administrative procedures, inadequate and inefficient services and corruption unduly delay the entry, establishment and expansion of investments in Africa. They contribute to high costs of doing business in Africa and adversely affect Africa's capacity to attract and retain investment.

Investment facilitation measures can assist African countries by expediting and reducing timelines for investment approval processes, improving ease of doing business and doing away with non-value adding procedures. Investment facilitation has become increasingly important as an instrument to create a better investment climate and attract investments that can, in turn, contribute to growth, development and poverty reduction in the host economies.

Investment facilitation is a crucial element in a broader investment governance context. It covers a combination of tools, policies and processes that foster a transparent, predictable, and efficient regulatory and administrative framework that allow investment to flow efficiently and that maximises the benefits to the host economy. Investment facilitation is one of the many services the one-stop investment centers and investment promotion agencies provide to facilitate and expedite the entry, establishment and expansion of investments into the host economy.

What are the benefits of investment facilitation? Investment facilitation is not only about expediting investment approvals, reducing legal and regulatory barriers and complicated administrative procedures. It is also a key instrument to support sustainable development outcomes (e.g., environmental protection, domestic socio-economic development, industrial development, employment creation, skills training etc.). The recognition of the inter-connection between investment facilitation and development has informed discussions on investment facilitation for development at the WTO, UNCTAD and OECD, among others.

Furthermore, investment facilitation measures create an enabling environment and encouraging investment from both local and foreign investors. These measures are important to support domestic investment development through creating a level playing field for (local and foreign) investors.

How have African countries dealt with investment facilitation? Investment facilitation has received minimal attention in existing treaties that are investment-protection centric. The treaties have excluded investment facilitation provisions or included investment facilitation in preambles and objectives, only occasionally in the substantive provisions.[1] Others have dealt with investment facilitation under investment promotion.

In most instances, investment facilitation has been dealt with under national laws or policies. National measures are important. Investment facilitation measures in the AfCFTA framework would enhance and complement what countries are already doing at the national levels.

Why should investment facilitation be included in the AfCFTA Protocol on Investment? Investment facilitation is crucial for development and should not be isolated from the broader investment policy or law. It should be part of the AfCFTA Protocol on Investment Protocol, along with investment promotion, facilitation, protection and regulation. This would help provide a comprehensive and coherent governance framework within the AfCFTA.

Investment facilitation measures in the AfCFTA Protocol on Investment could change the narrative of investment facilitation for the African countries. It would be a new approach to upscale Africa's capacity to attract foreign direct investment for inclusive growth and development. Both host and home governments play a critical role in facilitating investments for development. While host governments can screen, shape, and regulate inward investment for development, home governments can regulate, facilitate and subsidise outward investment for development.

Investment facilitation in the AfCFTA would enhance international cooperation and coordination among governments and stakeholders with respect to facilitating investments.

The recent statistics show that inward foreign direct investment to Africa declined in 2020 because of the coronavirus (COVID-19) pandemic. Investment facilitation should therefore be at the center of the recovery effort of African countries from the negative impact of the coronavirus pandemic.

[1] See https://www.tralac.org/publications/article/15140-investment-facilitation-in-africa-s-investment-agreements.html

How should investment facilitation measures be included in the AfCFTA Protocol on Investment? Investment facilitation is a complex process. There is no one size fits all approach. It is a very context-specific process. In the AfCFTA Investment Protocol context, investment facilitation could focus on improving transparency and predictability, simplifying and expediting investment approval processes, domestic coordination and regulatory coherence, and supporting sustainable development and capacity building.

Cooperation measures may be important in improving coherence and coordination between the State Parties. But clear and rules-based commitments are critical in advancing broader investment governance objectives.

In addition, African governments[2] and investment policy makers should pay attention to the ongoing investment facilitation negotiations at the WTO, learn from agreed measures,[3] and ensure that the negotiations complement and strengthen African countries' domestic and regional initiatives to facilitate investment for sustainable development.

Lastly, a holistic approach towards investment facilitation is also necessary – combining support to investment promotion agencies, inclusive public-private dialogue processes, promoting investment climate and business environment reforms (e.g., amendments of legislation, use of digital technology for the submission of permit applications, or electronic licensing systems). It should also include assisting the AfCFTA State Parties to anchor their domestic reforms in the context of agreed international commitments.

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[2] Over 20 countries have already joined in the on-going discussions at the WTO and have demonstrated their support to the investment facilitation framework for development.

[3] Measures agreed measures at the WTO including transparency of investment measures, streamlining and speeding up administrative procedures, focal/enquiry point/investment facilitator types of mechanisms], domestic regulatory coherence and cross-border cooperation, and institutional arrangements and final provisions.