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Implementation of the WTO Investment Facilitation for Development Agreement: Identification of Reform Needs and Development Policy Measures

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Summary

More than 110 Members of the World Trade Organization (WTO), many of them developing countries and least-developed countries (LDCs), are negotiating a plurilateral Agreement on Investment Facilitation for Development (IFD). In contract to existing bilateral investment treaties that establish sweeping rules on investment protection and liberalisation, the IFD Agreement aims at increasing the transparency, predictability and efficiency of investment frameworks as well as improving inter-governmental coordination and international cooperation on investment matters. In view of the fact that WTO Members aim at concluding the negotiations by mid-2023, discussions are under way on how the IFD Agreement can successfully be implemented in developing countries, and LDCs in particular. The IFD Agreement includes a comprehensive section on Special and Differential Treatment, which grants developing countries and LDCs longer timeframes as well as technical assistance and capacity development to support implementation. The Agreement also foresees so-called needs assessments at the country level to evaluate countries' readiness and support needs to implement the IFD Agreement. While such needs assessments have been extensively used in the context of the WTO Trade Facilitation Agreement (TFA), we lack insights into how such needs assessments can be operationalised in the context of investment facilitation and what kind of implementation challenges are prevalent, in particular in LDCs.

To assess implementation gaps, barriers to successful implementation as well as national and international support actions, we conducted pilot needs assessments covering a selected group of IFD Agreement measures with a broad range of stakeholders in three LDCs, namely Lao People's Democratic Republic (Lao PDR), Togo and Zambia.

Our pilots indicate that 13 selected provisions of the IFD Agreement have not been sufficiently implemented across the three LDCs. In particular, 64 per cent of analysed provisions have only partially been implement, while the rest have not been implemented at all. These findings underline that, in order to benefit from the IFD Agreement, LDCs need substantial implementation support from the international community.

The most striking, commonly identified barriers hindering the full implementation are lack of cooperation and coordination among investment-competent agencies, poor information management for investors as well as limited digitalisation and automatisation. To overcome these barriers, nationally identified actions may focus mainly on the creation of a single information portal for foreign investors and a single-window system to improve authorisation procedures, as well as a clarification of mandates and functions of relevant ministries and institutions. Our research also underlines the importance of a whole-of-government and multi-stakeholder approach. The establishment of a National Investment Facilitation Committee may prove to be an effective instrument to ensure coordination and communication between involved stakeholders.

International support should complement national actions with technical assistance and capacity development in investment-related topics, improving information and communication technology (ICT) infrastructures and digitalised processes, as well as fostering the international exchange of best practices.

Our pilot needs assessments emphasise that the WTO Secretariat and the negotiating Members should strengthen outreach activities to promote knowledge about the WTO IFD Agreement among national-level stakeholders. In general, our pilots underline that needs assessments are an important instrument for identifying persistent implementation gaps and tailoring technical assistance and capacity development to the demands of Members, especially LDCs.

Investment Facilitation for Development

Foreign direct investment (FDI) plays a crucial role in promoting economic development, as it brings capital, technology and know-how. To expand inward FDI, many countries have signed bilateral investment treaties, deregulated barriers for investment or granted tax incentives. This trend to liberalise regulatory frameworks for FDI has shown only limited success, as – even before the pandemic – inward FDI volumes have been declining (Evenett & Fritz, 2021). Against the background of widening financing gaps in order to achieve the 2030 Agenda for Sustainable Development, new and innovative approaches for attracting external development finance are being sought.

The relatively new concept of investment facilitation pursues a holistic approach to attract, retain and expand FDI, covering the whole investment cycle. It starts with the promotion and attraction of new investment ventures via more viable and easier access to information and efficient application processes. It also includes the retention and expansion of existing investments by means of greater transparency of new and changed legislation as well as focal point mechanisms that try to establish an active dialogue between investors and governments, helping to address potential grievances early on before they escalate into legal disputes. Furthermore, since investment facilitation mainly focusses on the process-related aspects of investment policy frameworks, it helps in preserving the domestic policy space, which is vital to help align FDI with sustainable development objectives.

The WTO IFD Agreement

Proponents of investment facilitation have repeatedly stressed the strong need for a multilateral framework to support reforms of national investment frameworks (Hees & Mendonça Cavalcante, 2017). Due to its rule-making and enforcing mandate as well as the existing experience of the TFA, the WTO has become one of the most important venues to negotiate international disciplines on investment facilitation. More than 110 countries, and especially developing countries and LDCs, are currently negotiating a plurilateral IFD Agreement, which is expected to be concluded in 2023 (Jose, 2023). The Agreement focusses on establishing international disciplines to improve the transparency and predictability of investment frameworks and international cooperation on investment matters. The IFD Agreement also foresees a comprehensive section on Special and Differential Treatment that combines longer transition periods, technical assistance and capacity development measures to support implementation in developing-country and LDC Members. Therefore, the Agreement has the potential to make huge progress towards more efficient, transparent and streamlined investment regimes across its signatories, thereby facilitating FDI flows, especially towards developing countries and LDCs, with the goal of promoting sustainable development. Moreover, it is projected to benefit participating Members and developing countries in particular (Balistreri & Olekseyuk, 2021).

However, to reap benefits and fully leverage the potential of the IFD Agreement’s support structure during the implementation phase, a structured process to assess the needs of developing-country and LDC Members is crucial. The WTO Secretariat, together with FDI-competent international organisations, is currently setting up a needs assessment process that helps Members to assess their implementation gaps and support needs.

Pilot needs assessments

To shed light on current implementation gaps, and thereby identify the obstacles to the successful implementation of the nascent IFD Agreement, we conducted (between February and April 2022) on-the-ground pilot needs assessments of selected core IFD provisions in three LDCs, namely Lao PDR, Togo and Zambia. These countries were selected from the sample of LDCs participating in the IFD negotiations based on their Investment Facilitation Index (IFI) score (Berger, Dadkhah, & Olekseyuk, 2021), which indicates the overall adoption levels of investment facilitation provisions. The three countries – scoring 0.53 (Togo), 0.75 (Lao PDR) and 0.94 (Zambia) out of a possible 2 – represent the overall spread of the LDC country group in the IFI.

Our pilot needs assessments were based on a select number of key provisions from the three main sections of a publicly available draft text of the IFD Agreement, the so-called Easter Text. The selection of provisions was informed by a survey of investor preferences conducted in the Latin American region (Reil et al., 2022). Investors emphasised especially the importance of available e-government services, online application processes as well as the necessary adjustments of laws and regulations. This selection of provisions was validated in a workshop involving international experts in the field of investment facilitation. The final selection of provisions included nine articles containing 13 sub-articles (Table 1), thereby covering three sections of the IFD Agreement: II. Transparency of Investment Measures, III. Streamlining and Speeding up Administrative Procedures and IV. Focal Points, Domestic Regulatory Coherence and Cross-Border Cooperation.

In the pilot needs assessments, we focussed on the following questions:

1. Which implementation gaps do the selected LDCs face?
2. What are the key barriers to full implementation?
3. What are the most important national actions to be taken?
4. And how can development cooperation technically and financially assist LDCs in building the necessary capacities to implement the IFD Agreement?

To answer these questions, we conducted in-person (Togo and Zambia) and virtual workshops (Lao PDR) using the focus group method with a broad spectrum of stakeholders from the (national and international) corporate sector, governmental agencies, civil society organisations, academia, foreign investment service providers and investment promotion agencies. This approach is closely aligned with the tried and tested TFA needs assessment process (World Trade Organization, 2014). The key recommendations on how to design and operationalise an effective needs assessment process for the IFD Agreement have been published elsewhere (Berger, Bolmer, & Olekseyuk, 2022).

Current implementation of analysed IFD provisions

Our results suggest that, across all three countries, none of the analysed sub-articles have been fully implemented, almost two-thirds (64 per cent) have been partially implemented and more than one-third have not been implemented at all (Figure 1). Comparing the implementation levels of the three countries, it becomes apparent that Zambia exhibits the highest implementation level with around 77 per cent of the articles having been partially implemented, followed by Togo with 62 per cent and Lao PDR with 54 per cent of the sub-articles having been partially implemented. These findings underline that the three LDCs face significant challenges in implementing a future IFD Agreement and may need substantial support from the international community for the successful implementation of the Agreement's provisions.

Zooming into the detailed results of situation analysis, we find that, despite the slight differences in implementation status of individual sub-articles, similar observations emerge across the studied LDCs for the three sections of the IFD Agreement.

Table 1: Selection of analysed articles from the IFD Agreement

Section	Sub-articles
II. Transparency of investment measures	**5.4 Publication and availability of measures and information** • Online publication of investment-related information and its regular update • Covered information includes laws and regulations, investable sectors, investment procedures (e.g. company establishment and business registration, payment of taxes, construction permits) and contact information of relevant competent authorities **6.1 Information to be made publicly available if an authorization is required for an investment** • Publish regularly updated online information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing required authorization • Such information includes investment-related requirements (e.g. technical regulations and standards), required forms, process steps, costs and estimated timeframe for processing, opportunities for public participation, procedures for appeal, review and monitoring, contact information of the relevant authorities **7.1 & 7.2 Single information portal** • Provide relevant information for investors through a single information portal • The single information portal includes relevant web links to electronic publications and is regularly updated
III. Streamlining and speeding up administrative procedures	**14.1 Authorisation procedures** • Streamlining and speeding up application processes involves e.g. acceptance of authenticated copies in place of original documents, provision of an indicative timeframe for processing of applications, verifying the completeness of all documents and ensuring the finalization of an application **15.1 Multiple applications** • Avoid that an applicant has to contact more than one competent authority for each application for authorization • Utilize a single-entry point/single information portal for investment applications for authorisation **17.1 Use of ICT/e-government** • Acceptance of online submissions for authorisation applications • Acceptance of electronic forms, documents and copies which are submitted in line with the application
IV. Focal points, domestic regulatory coherence and cross-border cooperation	**21.1 & 21.3 Focal points** • Establish focal points to respond to investors' enquiries regarding investment-related measures and to help investors in obtaining information from other competent authorities • Potential additional functions include resolving investors' problems or recommending measures to improve the investment environment **22.3 Domestic regulatory coherence** • Domestic regulatory coherence requires host states to ensure that competent authorities responsible for investment procedures cooperate with one another and coordinate their activities to facilitate investment **23.1 - 23.3 Domestic supplier databases** • Establishment and regular update of domestic supplier database(s) with the aim of providing information on possible relevant domestic suppliers • The main features of the database include online access, search by various keywords (e.g. sector/industry, product/service, location) and availability in one of the WTO languages

Source: Authors, based on the draft IFD Agreement (Easter Text) dated July 2021

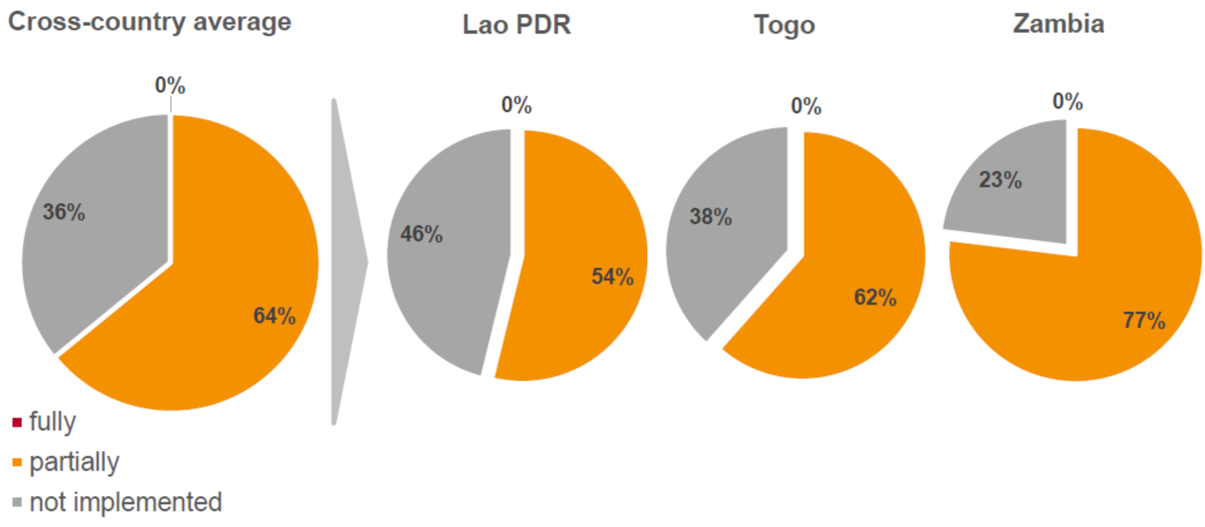
IFD Section II: Transparency of investment measures

Almost all analysed sub-articles of Section II of the IFD Agreement have been partially implemented across selected countries. Each of the three countries has an Investment Promotion Agency (IPA) with dedicated websites, which to some extent provide relevant information for investors. However, severe shortcomings exist with regard to the completeness of such information (sub-articles 5.4 and 6.1), the consolidation of information in a single information portal (7.1) as well as the regular updating of the information (7.2). Workshop participants mentioned the following examples of incomplete information: Some application forms are available only as hard copies, there is no extensive list of sectors that are open or prohibited for investment, no indicative timelines and no details on opportunities for public participation, the appeal or review of application decisions. Moreover, in the cases of Lao PDR and Togo, not all information is available in English, meaning that foreign investors face language barriers when screening relevant information. Another frequently mentioned difficulty is non-functioning hyperlinks on the aforementioned websites, which either do not open or lead to error messages. All of these shortcomings make it hard for investors to review and also keep track of changes in the regulatory environment of the countries.

IFD Section III: Streamlining and speeding up administrative procedures

The three sub-articles of Section III have only, at best, been partly implemented across the three LDCs. Hereby, not all provisions listed under authorisation procedures (14.1) have actually been implemented. For instance, authenticated copies are often accepted, but not by all relevant institutions; indicative timeframes are provided for some procedures, but there are very often delays; information about the status of an application and its completeness is provided only in person upon request. A proper single-entry point for applications to avoid multiple applications for authorisation (15.1) was still under development in all three countries at the time of our research. Even though different authorisation processes that include the responsible authorities are described online on the IPA websites, investors still have to approach multiple agencies to submit their documentation. Furthermore, the electronic submission of applications, documents and copies as well as the use of electronic forms (17.1) are also very limited. In general, this sub-article exhibits the highest implementation gap due to missing implementation in Lao PDR and very limited implementation in other countries. While in Zambia and Togo only some institutions allow for submitting

Figure 1: Implementation status of selected IFD provisions in three case countries



Source: Authors

online applications (e.g. Zambia Development Agency; Patents and Companies Registration Agency in Zambia; the business licensing authority in Togo, called Centre de Formalités des Entreprises), in Lao PDR investors need to submit signed hard copies of applications, only some of which are available online. Thus, many efforts are necessary to enable the streamlining and speeding up of administrative procedures in LDCs, with the major challenge being in the areas of ICT and e-government.

IFD Section IV: Focal points, domestic regulatory coherence and cross-border cooperation

This section depicts the lowest implementation rate across the three sections studied, with the main challenges being associated with the domestic supplier database (23.1-23.3) and domestic institutional cooperation (22.3). Across all three countries, 12 out of 18 observations in Section IV have not been implemented, while the rest have been partially implemented.

In particular, the regularly updated online domestic supplier database (23.1-23.3), which enables an efficient matching process between foreign investors and local firms, has not been implemented yet by any of the three countries. In Zambia, for example, there is only a database for public procurement at the Zambia Public Procurement Authority, but it is not suitable for foreign investors to identify appropriate domestic suppliers. In Togo, foreign investors can receive domestic supplier information only in person upon request. Similarly, in Lao PDR, there is only a fraction of information available offline and it has to be requested in person. Furthermore, domestic regulatory coherence (22.3) – a key element for successful investment facilitation efforts – has only been partially implemented in Zambia (e.g. according to the National Investment Promotion Strategy) and not been implemented in Lao PDR or Togo. In Lao PDR, for instance, participants mentioned that domestic regulatory coherence does not really exist since there are sectorally differentiated policies and laws. In Togo, the cooperation and coordination mechanism operates mainly on an informal basis. Thus, these provisions of the IFD Agreement might pose a particular implementation challenge for the LDCs in light of weak administrative capacities. In contrast to the previous provisions, all countries possess a designated focal point institution to support investors or persons seeking to invest. However, these institutions (mainly IPAs) do not necessarily have wide-ranging competencies and still struggle with obtaining the necessary information on investment authorisation from the relevant ministries (21.1). Whereas in Lao PDR and Zambia some of the additional focal point functions (21.3) have been implemented (e.g. in Lao PDR the focal point offers information on problem solutions, but it does not engage itself in problem solution processes involving other governmental agencies), in Togo the specific functions, such as solving investors' problems, have not been implemented at all.

Most significant barriers to full implementation

To gain a deeper understanding of the implementation gaps outlined above, stakeholders were asked what they perceived to be the most significant implementation hurdles keeping the respective authorities from implementing the analysed IFD sub-articles. Figure 2 summarises the main findings: The pie chart on the left depicts the share of each dimension in all identified barriers, while the box on the right lists the most frequently encountered individual barriers and the respective policy dimensions they are associated with. Most mentioned barriers are related to the areas of procedures, ICT and institutions. While stakeholder discussions in all three countries prominently revealed barriers related to the area of procedures, the share of this dimension is the highest in Lao PDR with 32 per cent, followed by 23 per cent in both Togo and Zambia. Furthermore, the share of implementation hurdles related to ICT is the highest in Togo (26 per cent) compared to Zambia (23 per cent) and Lao PDR (20 per cent), while barriers in the area of institutions constitute the highest share of 22 per cent in Zambia, followed by 18 per cent in Togo and 16 per cent in Lao PDR.

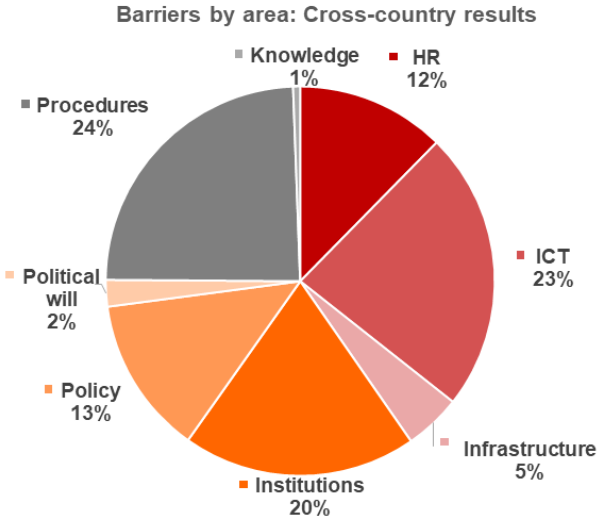
Moreover, for Lao PDR we also identify a comparable share (17 per cent) of barriers in the area of human resources and training.

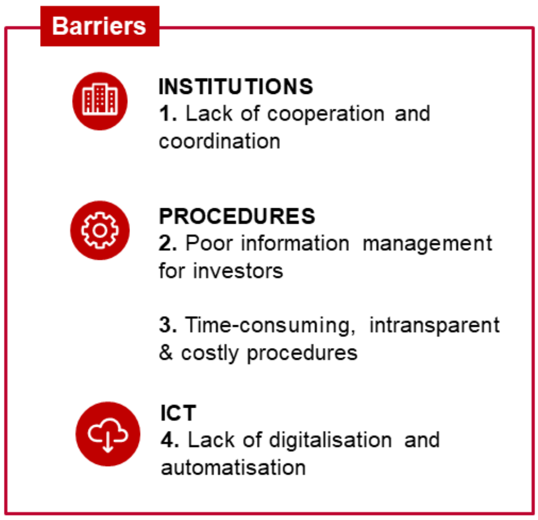
The most frequently mentioned individual barrier across all three countries concerns **the lack of cooperation and coordination among the relevant authorities**. This is also the top barrier in Togo and Zambia. In many cases, a legal basis for inter-agency cooperation is missing, and the distribution of tasks and mandates across and within institutions is unclear. Government officials in Zambia stressed that, even within certain institutions, authorisation decisions are not coordinated, and departments sometimes communicate conflicting decisions. Also, coordination between agencies on the regional and national levels needs improvement in Zambia and Laos, especially when investments encompass specific sectors such as agriculture or mining. Generally, the lack of official communication channels and pre-established workflows between authorities poses a great challenge to the consolidation of information on a single information portal and to the establishment of an operational single-entry point for all authorisation procedures.

The second most frequently encountered barrier for IFD implementation is **poor information management for investors.** This is also the top barrier in Lao PDR. As outlined in the gap analysis, none of the countries possess a well-functioning, single information portal with all details regarding legal background, individual steps for all required authorisation procedures, timelines, fees and charges, permits for investment applications and other practical information needed to navigate administrative procedures. Thus, information is often scattered across different governmental institutions, sometimes it is not available online or in English, and the proper contact point is hard to locate for investors. A business representative in Laos explained in this context that business organisations regularly serve as the first point of contact for foreign investors and provide them with support for navigating domestic bureaucracy. Thus, foreigners rather tend to invest with the help of local partners, who can contact respective authorities in person and submit all the necessary documents without any confusion.

Time-consuming, intransparent and inefficient procedures constitute another important hurdle. Due to insufficient intra-agency communication and poor information management, investors face high costs to access information, authorisation processes are sometimes duplicated and procedures overlap or are simply not digitalised and are therefore time-consuming. For example, a

Figure 2: Identified barriers to IFD implementation





Note: The barriers are ranked in descending order based on their frequency of occurrence across all 13 selected sub-articles of the IFD Agreement.

Source: Authors

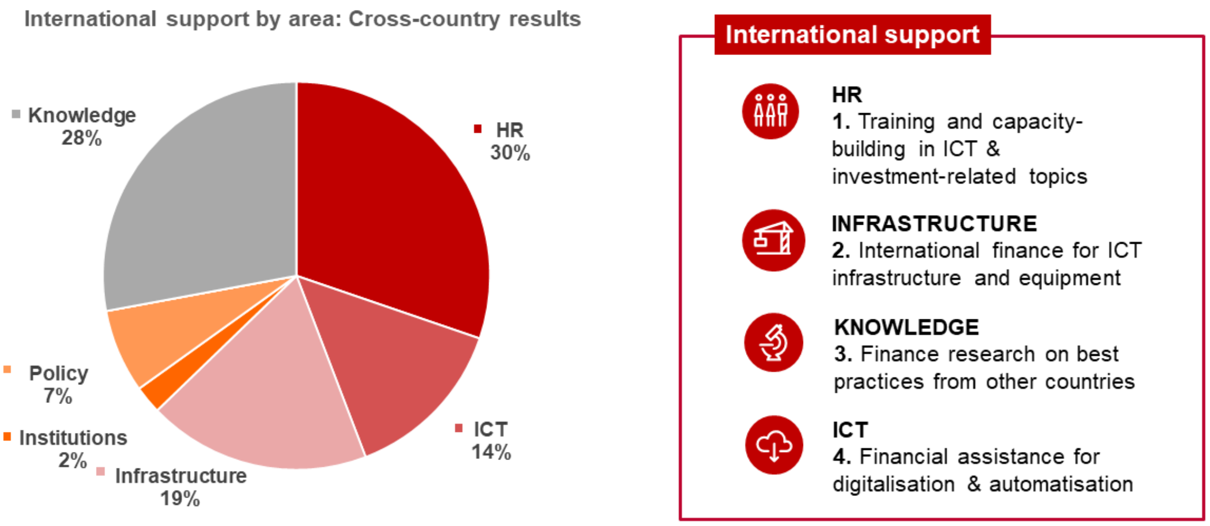
business representative in Zambia noted that land permits have to be requested and granted by both the respective municipal council and the national Ministry of Lands and Natural Resources. Similarly, in Lao PDR, provincial agencies have to be approached for land permits, which extends the process, especially due to the limitations concerning poor ICT infrastructure and connectivity. A Laotian government representative noted also that business registration forms must be obtained and submitted as signed hard copies in person. A private-sector representative from Togo provided another example that one sometimes needs to send an official printed letter to obtain the needed information from governmental agencies. In general, workshop participants mentioned non-compliance with communicated timeframes as a common issue, since delays occur very often. In this context, a representative of civil society in Togo stated that long delays discourage foreign investors.

Another important barrier to the implementation of the IFD Agreement is **the lack of digitalisation and automatisation**, which is crucial, for example, for a well-functioning, single-entry point information portal or online domestic supplier database. In all three countries, we find limited use of e-government services, some institutions lack proper websites, automated updates are not operationalised and adequate digital communication tools are not being applied. For example, in Lao PDR, official communication between governmental agencies is still conducted via printed letters, while unofficially different mobile phone applications are used to speed up procedures. In Zambia, a government representative said that an automated application tracking system, with which one can check the status of applications or receive notifications if documents are missing, is still not available. The establishment and maintenance of such e-services and online information are impeded by staff shortages as well as a lack of key competencies such as knowledge of ICT, investment and/or language skills. A Togolese governmental official noted that digital solutions are still not used in many administrative procedures, and that the digitalisation of processes constitutes a great challenge to the relevant authorities.

Actions suggested by stakeholders

To ensure the successful implementation of the IFD Agreement, workshop participants were also consulted on what national and international actions should be promoted to mitigate the

Figure 3: Identified international actions to support IFD implementation



Note: The international actions are ranked in descending order based on their frequency of occurrence across all 13 selected sub-articles of the IFD Agreement.

Source: Authors

challenges outlined above. Naturally, the identified **national actions** closely revolve around the identified implementation barriers. Across all countries, workshop participants saw the **creation of a single information portal and a single-entry point** as the most important national action to be taken. Such a portal would consolidate all investment-relevant information and provide the possibility of submitting authorisation applications online, in turn leading to significant gains in transparency and efficiency for both investors and administrators. The second most important national action revolves around **the re-definition and extension of mandates and functions of institutions**, which overlaps tightly with the third most frequently mentioned action, **the enhancement of institutional cooperation**. Both of these actions are particularly important to the work of an IPA, which should be enabled to mediate between the different governmental agencies by augmenting and enhancing its mandate. In addition, setting up a National Investment Facilitation Committee – similar to the one for trade facilitation – would improve cooperation between the large number of institutions involved in the whole investment cycle.

Among the most important **international support actions**, the majority is allocated to the areas of HR, knowledge, infrastructure and ICT (Figure 3). **Training and capacity-building in ICT and investment-related topics** stand out as the most demanded support activities across all LDCs. Clearly, in order to implement the IFD provisions, a sound understanding of the respective provisions, extensive expertise in all investment-related issues as well as rigorous ICT skills are necessary. Moreover, **financial support for ICT infrastructure** as well as for **digitalisation and automatisation** are also among the most demanded international actions, given the budgetary restrictions of LDCs. Improving internet connectivity, providing powerful servers and other ICT equipment, supporting LDCs in the development of their digital strategies, setting up various e-services and automating administrative procedures using sophisticated communication tools are examples of the expected support measures to be provided by the international community. Another very important external action consists of **researching and sharing best practices,** which represent the knowledge dimension. Many workshop participants stressed their willingness to learn from forerunners in the field of investment facilitation and to take into account the lessons learnt about their way of implementing different provisions, such as an efficient single-entry point with an automated and coordinated workflow among all relevant investment authorities.

Conclusion and recommendations

The WTO IFD Agreement has the potential to increase FDI to developing countries and produce economic benefits (Balistreri & Olekseyuk, 2021), but only if the countries are able to actually implement the Agreement's provisions. Needs assessments are pivotal for reaping these benefits: They allow for an evaluation of the current implementation status of IFD provisions and an assessment of the necessary technical assistance and capacity-development measures. This policy brief lays out key insights from pilot needs assessments in three LDCs and highlights the strong demand for international support to fully implement the WTO IFD Agreement.

To support national governments in conducting successful needs assessments, we put forward the following key recommendations.

Firstly, the WTO itself should strengthen outreach activities to promote knowledge about the WTO IFD Agreement. National workshops demonstrated that knowledge about the Agreement – and investment facilitation in general – was largely missing among key national stakeholders. Although some progress has been made so far, it is still important to use the momentum for awareness-raising activities, as the negotiations are about to conclude and needs assessment guides are being developed by the WTO Secretariat, with support from international organisations.

Secondly, use national needs assessments as a means for demand-driven technical assistance and capacity-development measures. Conducting effective needs assessments is pivotal to identify the needs of LDCs for external support under the Special and Differential Treatment section of the IFD Agreement. To ensure the successful implementation of the IFD provisions, WTO Members should facilitate self-assessments as soon as possible.

Thirdly, countries should apply a whole-of-government and multi-stakeholder approach with regard to the implementation of the IFD Agreement. For successful needs assessments, it is essential that all key stakeholders and investment-relevant institutions actively participate in the discussions and continue to support the implementation. It is also important to reach an alignment of investment facilitation topics and the national development strategy as well as the individual priorities of government institutions. This should be encouraged through stronger co-operation and mutual communication between the WTO mission and other institutions involved. To ensure effective cooperation and coordination that is in line with the whole-of-government approach, it may be advisable to establish a National Investment Facilitation Committee – a joint institutional platform including various actors involved in the whole investment cycle. This will reduce communication hurdles and transaction costs while speeding up processes and increasing the commitment of the involved institutions.

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