



RIS Discussion Paper # 331

# Investment Facilitation for Development at WTO: Issues and Implications

Anwar Hussain Shaik, Pankaj Vashisht and  
Vaasu Aggarwal



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# Investment Facilitation for Development at WTO: Issues and Implications

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Anwar Hussain Shaik, Pankaj Vashisht and Vaasu Aggarwal\*

**Abstract:** The Investment Facilitation for Development (IFD) Agreement represents the latest attempt to introduce investment-related disciplines into the World Trade Organization (WTO) framework through a plurilateral initiative. While proponents frame the agreement as a development-oriented instrument focused on transparency, administrative efficiency, and regulatory cooperation, it has generated significant debate among developing countries. This paper situates the IFD within the broader evolution of global trade and investment governance and examines its implications for the multilateral trading system. It argues that although the agreement avoids contentious issues such as market access, investment protection, and investor-state dispute settlement, its procedural disciplines effectively internationalise domestic regulatory practices and create new forms of binding commitments. The paper further analyses the legal and institutional concerns regarding mandate, consensus-based decision-making, and the incorporation of the Agreement under Annex 4 of the Marrakesh Agreement. It concludes by assessing India's strategic choices as the WTO approaches the Fourteenth Ministerial Conference (MC14).

**Keywords:** Investment Facilitation, WTO, MC14, Marrakesh Agreement, Plurilaterals.

## 1. Introduction

International trade and investment are two important drivers of economic growth and structural transformation. Trade expands market access, enables better resource allocation and supports productivity growth while investment facilitates capital formation, technology

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\* Anwar Hussain Shaik is a Former Chairperson, WTO-TBT Committee, and Executive Director, Railway Board, New Delhi, Pankaj Vashisht is Associate Professor and Coordinator, ASEAN-India Centre (AIC) at the RIS, New Delhi and Vaasu Aggarwal is a Research Assistant at the ASEAN-India Centre (AIC) at RIS, New Delhi

up-gradation and integration in Global Value Chains (GVC). The combined influence of trade and investment determines how countries industrialise, diversify production structures, and build resilience within an increasingly interdependent economic system. Nevertheless, despite being equally vital to development, the governance architecture of trade and investment has evolved along markedly different trajectories. On one hand, trade has been progressively multilateralised under the aegis of World Trade Organization (WTO), resulting in a comprehensive, rules-based multilateral framework covering goods, services and Intellectual Property Rights (IPR). Investment, on the other hand, has not acquired a comparable universal multilateral framework. Instead it has continued to be governed by domestic legal frameworks and an intricate web of bilateral and regional International Investment Agreements (IIAs). This divergence is not accidental; rather, it reflects enduring political and developmental sensitivities surrounding the regulations of foreign investment. Trade transactions are typically completed at the border, after which the relationship between the product and its country, largely cease. In contrast, investment establishes a long-term relationship between home and host countries through ownership, control, and profit flows, directly engaging domestic regulatory systems. Consequently, rules governing investment carry far deeper implications for policy autonomy and development strategies. These sensitivities have historically made countries wary of binding multilateral disciplines.

There has been several efforts to multilateralise investment within the WTO framework. The first notable attempt was made at the 1996 Singapore Ministerial Conference, where investment was introduced as one of the “Singapore Issues” (Khor, 2007). Developing countries strongly resisted its inclusion, citing concerns over erosion of policy space, constraints on regulatory sovereignty, and asymmetrical bargaining power. This resistance ultimately led to the removal of investment from the WTO’s multilateral negotiating agenda under the 2004 July Package, reaffirming that any expansion of the WTO mandate requires explicit consensus of the entire WTO membership.

Notwithstanding this exclusion, investment-related disciplines have resurfaced within the WTO framework through plurilateral initiatives. The Investment Facilitation for Development (IFD) Agreement, finalised in late 2023, represents the most recent attempt to anchor investment within the WTO framework. Proponents of IFD have characterised it as a pragmatic and development-oriented initiative that deliberately avoids contentious issues such as market access, investment protection standards, and Investor-State Dispute Settlement (ISDS) (WTO, 2023). Instead, they argue that it focuses on transparency, streamlining administrative procedures, improving regulatory predictability, and promoting the use of digital governance tools across the investment life cycle. As per the supporters these procedural disciplines would enhance the investment climate without constraining sovereign choices regarding entry conditions or substantive protection commitments. The proponents of IFD have formally proposed its incorporation into the WTO treaty framework under Annex 4 of the Marrakesh Agreement, which governs Plurilateral Trade Agreements (WTO, 2024).

However, several developing countries, including India, have opposed the agreement on both procedural and substantive grounds, arguing that procedural disciplines could be as consequential as substantive obligations because they convert domestic administrative practices into binding international commitments. India's opposition, particularly, is rooted in the experience of the 1996 Singapore Ministerial Conference, where investment was explicitly sidelined from the multilateral agenda due to a lack of consensus. From India's perspective, the IFD initiative reintroduces investment through a procedural backdoor, raising concerns about circumvention of established mandate and the erosion of consensus-based decision-making within the WTO. India along with South Africa, has questioned the procedural basis for incorporating the agreement into the WTO treaty structure, particularly under Annex 4 of the Marrakesh Agreement, which houses Plurilateral Trade Agreements. Under Article X:9 of Marrakesh Agreement, the addition of any new agreement to Annex 4 requires the explicit consensus of the entire membership, a provision India invoked effectively to block

its incorporation in last Ministerial Conference (MC 13) at Abu Dhabi. India has further maintained that the IFD does not qualify as a trade agreement, as it regulates domestic administrative conduct rather than cross-border trade in goods or services. By resisting its formal inclusion, India, thus far, has asserted that the coalition of willing members cannot override the negative mandate on multilateral investment negotiations, established under the 2004 July Package.

As the WTO approaches its Fourteenth Ministerial Conference (MC14) in March 2026, the legal and institutional status of the IFD Agreement is set to resurface as a contentious issue. For India, the challenge at MC14 extends beyond the technical merits of investment facilitation. It raises broader questions regarding the preservation of development policy space, the integrity of multilateral mandates, and the balance between multilateralism and plurilateralism within the WTO system. While a significant proportion of the WTO membership now supports the IFD, India so far has continued to prioritise unresolved Doha Development Agenda issues, including public stockholding for food security and agricultural subsidies, over initiatives that lack an agreed mandate. The strategic dilemma confronting India is whether to maintain a principled holdout to safeguard institutional norms and policy space, or to recalibrate its position to avoid isolation in an increasingly fragmented and plurilateral global trade order.

Against this backdrop, this paper situates the IFD within the broader debate on plurilateralism at the WTO, traces its evolution, and assesses its implications for development and for India's strategic interests. It argues that while investment facilitation appears technical and benign, its disciplines internationalise domestic regulatory practices, generate investor expectations, and alter the institutional balance within the WTO. For India, the issue is not simply whether to join or remain outside the IFD, but how to safeguard development policy space, uphold multilateral principles, and navigate emerging shifts in global trade governance. The paper contends that India's strategic interest at MC14 lies in continuing to oppose the incorporation of the IFD Agreement under Annex 4.

The remainder of the paper is structured as follows: Section 2 outlines the technical contours of investment governance and clarifies the distinction between trade and investment disciplines; Section 3 traces the evolution of investment facilitation discussions within the WTO, from the Singapore Issues to the Joint Statement Initiative; Section 4 examines the textual architecture of the IFD Agreement and its core obligations; Section 5 evaluates the claimed developmental benefits advanced by its proponents; and Section 6 presents a detailed critique of the agreement from mandate, legal, and systemic perspectives, before outlining India's strategic options at MC14.

## **2. Contours of Investment: Promotion, Protection and Facilitation**

Understanding the IFD Agreement requires conceptual clarity regarding the broader contours of investment governance. Investment regulation may be analytically divided into three interrelated but distinct pillars: promotion, protection, and facilitation. Promotion refers to measures designed to attract foreign investment through marketing strategies, fiscal incentives, sector-specific targeting, and location branding. These measures are competitive and country-specific in nature, often embedded within national industrial policy frameworks and tailored to domestic developmental objectives. Protection, on the other hand, covers the sovereign assurances extended to investors, usually through bilateral or regional investment treaties. These commitments typically include guarantees against direct and indirect expropriation, standards of fair and equitable treatment, most-favoured-nation (MFN) clauses, national treatment provisions, and, in many cases, ISDS mechanisms. Protection disciplines are legally binding and enforceable under international law, and they directly constrain the regulatory autonomy of host states by subjecting state conduct to treaty-based adjudication.

Facilitation occupies a distinct but increasingly significant space within this governance architecture. It relates to the administrative and procedural framework that governs how investors establish, operate, expand, and exit investments. Unlike protection, facilitation does not

traditionally address substantive standards of treatment; instead, it focuses on procedural transparency and administrative efficiency. Though, there is no universally accepted definition of investment facilitation, United Nations Conference of Trade and Development (UNCTAD) defines it as policies and actions aimed at making it easier for investors to establish and expand their investments through transparent and predictable rules, efficient administrative procedures, effective dispute prevention and resolution mechanisms, and constructive stakeholder engagement. In operational terms, facilitation encompasses licensing and authorisation procedures, single-window systems, information portals, statutory timelines, publication requirements, digital processes, fee structures, regulatory coherence, and inter-agency coordination.

Although facilitation appears technical and administratively neutral, it has direct implications for domestic regulatory authority. Authorisation procedures, review mechanisms, timelines, and publication obligations determine how governments screen, sequence, and condition foreign investment in sensitive sectors. When such procedures are embedded within an international agreement, they cease to be purely domestic administrative choices and instead become treaty obligations enforceable through state-to-state dispute settlement. In this sense, facilitation disciplines can shape regulatory behaviour and investor expectations in ways that approximate protection disciplines, even in the absence of explicit market access commitments or ISDS provisions.

### **3. Investment Facilitation in the WTO: A Brief History**

The origin of investment discussions within the WTO can be traced to the Singapore Ministerial Conference of 1996, where members introduced the four so-called Singapore Issues: (i) trade and investment, (ii) trade and competition policy, (iii) transparency in government procurement, and (iv) trade facilitation. Members agreed to establish working groups to examine the relationship between trade and these issues, without granting formal negotiating mandate. The discussions were exploratory in nature and limited to clarifying conceptual linkages rather than developing

binding disciplines. During the discussion, while developed countries asserted that investment is a trade issue, India, along with a coalition of developing countries, consistently maintained that investment governance extends beyond trade policy and implicates sovereign regulatory authority, domestic industrial strategy, and development planning. From this perspective, investment was viewed not merely as a trade-related matter but as a core sovereign function involving entry conditions, sectoral screening, ownership caps, performance requirements, and national security considerations.

These differences became more pronounced during the Doha Development Round. While some members sought to advance negotiations on investment, consensus remained elusive. Consequently, investment was dropped from WTO negotiating agenda. The July 2004 Package marked a decisive moment of institutional clarity, as members agreed to launch negotiations on 'Trade Facilitation' multilaterally under the Doha Work Programme, while explicitly excluding investment. The text stated that investment would not form part of the work programme and that no work towards negotiations on investment would take place during the Doha Round. This represented a clear multilateral decision to keep investment outside the scope of WTO negotiations. The Nairobi Ministerial Decision of 2015 reaffirmed this position by emphasising that any decision to launch multilateral negotiations on new issues would require the agreement of all WTO members, thereby reinforcing consensus as the cornerstone of WTO rule-making. Consequently, while trade facilitation advanced multilaterally, investment remained set aside (WTO, 2015).

However, the issue of investment resurfaced at WTO in 2017. At the May 2017 General Council, a proposal was tabled to include investment facilitation as an agenda item. India objected to its inclusion in the absence of mandate clarity, leading to procedural tensions and a brief adjournment until proponents clarified that the discussion would remain informational rather than a step toward formal negotiations. Following this, a group of members formed the "Friends of Investment Facilitation for Development" (FIFD) and initiated structured discussions outside a formal multilateral mandate. At MC11 in Buenos Aires later that year,

70 members co-sponsored a Joint Ministerial Statement calling for such discussions. These discussions gradually evolved into formal negotiations in September 2020, culminating in the conclusion of negotiations in July 2023 and the finalisation of the IFD Agreement’s legal text in November 2023.

With negotiations being concluded, attention shifted from substance to institutional placement. In the WTO, decisions are made at the biannual Ministerial Conferences through the consensus of the full membership. The General Council, as a delegated body, also makes decision by consensus. When new multilateral agreements are finalised, they are attached to the WTO legal architecture as Annex 1 agreements. WTO also recognises certain plurilateral agreements and has placed them in Annex 4. These plurilateral agreements were at advanced stages of discussion among a few countries in the GATT era, and when the WTO was formed, they were formally recognised, subject to the condition that they apply only to their participants and do not create any obligation for the rest of the membership. Incorporation of any agreement into Annexes 1 and 4 require full membership consensus.

In this background of decision making, there are three possible pathways for incorporating the IFD text into the WTO’s legal architecture. The first option is to seek its addition as an Annex 1 multilateral agreement, similar to the Trade Facilitation Agreement (TFA). However, this route requires a multilateral negotiating mandate and full membership support, two conditions which IFD clearly lacks. The second option involved creating a stand-alone agreement that establishes a new Annex in the WTO legal architecture, called “Annex 5”. This approach also requires full membership consensus and risks setting a new institutional precedent without clear legal grounding (King and Spalding, 2021). The third pathway is to seek incorporation of the IFD Agreement as an Annex 4 Plurilateral Trade Agreement under Article X:9 of the Marrakesh Agreement. Article X:9 provides that the Ministerial Conference may, by consensus, decide to add agreements to Annex 4. The proponents of IFD have opted for the third pathway. During MC13 in Abu Dhabi, the IFD participants issued a Joint Ministerial Declaration and formally requested

the incorporation of the IFD Agreement as a Plurilateral Agreement into Annex 4 of the Marrakesh Agreement. India, along with South Africa, blocked consensus, arguing that there was no multilateral mandate to negotiate investment and that incorporating a plurilateral investment agreement without consensus would undermine the WTO's institutional framework. Ministers subsequently referred the matter to the General Council for further deliberation, where discussions shifted from the substance of the IFD Agreement to its legal and institutional placement within the WTO framework. The unresolved question is therefore likely to return at MC14, with the core debate centered on mandate discipline, the scope of Article X:9, and the systemic implications of embedding plurilateral agreements within a consensus-based institution.

#### **4. Textual Architecture of the IFD**

The IFD Agreement (hereinafter also referred as the 'Agreement') is organised into seven sections covering: (i) scope and general principles, (ii) transparency of investment measures, (iii) streamlining and speeding up administrative procedures, (iv) focal points, regulatory coherence & cross border cooperation, (v) special and differential treatment (S&DT), (vi) sustainable investment and responsible business conduct, and (vii) institutional arrangements, including dispute settlement among Parties. While its architecture resembles the TFA in its procedural orientation, however, IFD contains several design features that merit closer examination in order to understand both the developmental claims associated with the Agreement and the broader systemic questions it raises.

The stated objectives of IFD emphasise improving transparency, streamlining administrative procedures, adopting facilitation measures and promoting cooperation to facilitate Foreign Direct Investment (FDI) flows, particularly to developing and least developed country Parties. The Agreement applies to measures relating to investment activities of investors in another country, covering establishment, acquisition, expansion, operation and disposal. A notable omission, however, is that the Agreement does not define the term 'investment'. This creates

interpretive latitude regarding its scope and could potentially extend beyond FDI to other forms of investment, including portfolio investment, which remains a sensitive matter for several developing countries due to concerns relating to capital flow volatility and financial stability.

A central textual feature of IFD is the explicit attempt to construct a firewall between facilitation and traditional investment disciplines. Article 2 of IFD clarifies that the Agreement does not create or modify commitments on market access, investment protection or ISDS, and does not confer a right of establishment. Parties retain sovereign authority to regulate entry and screen investments in accordance with their domestic law. Article 4 reinforces this by stating that international investment agreements shall not be used to interpret the IFD, and that the IFD shall not serve as a basis for ISDS claims. These provisions are intended to underscore the procedural character of the Agreement. Nevertheless, question remains regarding whether facilitation commitments could indirectly shape investor expectations in other legal contexts, even if the Agreement itself excludes protection standards.

Article 5 of IFD introduces MFN treatment in the application of IFD provisions. While a footnote limits enforceable rights of non-parties, the MFN formulation embeds non-discrimination in administrative treatment. This creates a structural tension: facilitation reforms, once implemented domestically, tend to operate in an MFN manner in practice, yet enforceability under WTO dispute settlement would remain confined to participating Parties, reflecting the Agreement's Annex 4 plurilateral design.

Sections II and III of IFD constitute the operational core of the Agreement. They require publication and accessibility of investment-related measures, establishment of single information portals, advance publication where practicable, opportunities to comment, and notification to the WTO. It states that authorisation procedures must be reasonable, objective and impartial, processed within indicative timelines, supported by acceptance of copies, accompanied by written explanations for rejection and subject to review or appeal mechanisms. Fees must be reasonable and transparent, and electronic submission and e-government

tools are encouraged. Collectively, these provisions aim to reduce information asymmetries, transaction costs and administrative discretion. At the same time, they internationalise elements of domestic regulatory practice, licensing, timelines, documentation and review procedures, transforming them from policy choices into treaty disciplines among Parties.

Section IV establishes focal points and promotes domestic regulatory coherence and inter-agency coordination, including supplier databases and cross-border cooperation mechanisms. Section V introduces S&DT modelled on the TFA, allowing developing and LDC Parties to self-designate commitments under implementation categories linked to capacity and technical assistance. However, given that the Agreement spans the entire investment lifecycle and multiple domestic regulatory domains, implementation demands may be institutionally more intensive than the TFA experience suggests. Section VI urges parties to encourage investors and enterprises to adopt responsible business practices, standards and principles which are internationally recognised and further ensure that measures are taken to prevent and fight corruption and money laundering through the development of anti-corruption policies. The last Section (VII) on institutional arrangements focuses on the establishment of a WTO Committee on Investment Facilitation which shall review the operation and implementation of the agreement. The section further includes general exceptions, amendment procedures, and dispute settlement among Parties under the Agreement.

## **5. Perceived Benefits of the IFD Agreement**

While debates on the IFD Agreement are often shaped by concerns over mandate and policy space, its proponents emphasise several potential benefits, particularly for developing and least developed countries. These benefits are not merely conceptual but are embedded in specific provisions aimed at improving transparency, administrative efficiency, and institutional coordination in investment governance.

The Agreement seeks to reduce information asymmetries faced by investors through its transparency disciplines. Article 6.5 on publication

and availability of investment measures requires members to make laws, regulations, procedures and administrative rulings publicly accessible, preferably through electronic means. The obligation to establish or maintain a single information portal for investment-related measures further lowers search costs and improves predictability (Article 8) among potential investors. Advance publication and the opportunity to comment on proposed measures, where practicable, are intended to enhance regulatory quality by allowing stakeholders to understand and respond to changes before they take effect (Article 10).

Additionally, IFD promotes the streamlining and speeding up of administrative procedures through provisions that require applications relating to investment be processed in a reasonable, objective and impartial manner (Article 14), and within indicative timeframes (Article 15). Furthermore, Article 15 requires written explanations for rejections of applications and the availability of review or appeal mechanisms. Proponents argue that the Agreement also encourages the use of digital governance tools with Article 18. For developing countries, such provisions can complement ongoing domestic reforms on digital public infrastructure and single-window clearance systems, producing spillovers beyond foreign investment alone. The Agreement is also positioned to strengthen institutional coordination through provisions on focal points and regulatory coherence, encouraging coordination between relevant authorities and establishing a supplier database. Articles 22, 23 and 24 of the Agreement intend to link foreign investors with domestic enterprises, including MSMEs, thereby enhancing local participation in investment value chains.

IFD integrates development flexibility through its S&DT framework. Articles modeled on the TFA allow developing and least-developed countries to self-designate commitments (Article 28.2) under different implementation categories linked to capacity and technical assistance. Obligations relating to technical assistance and capacity building seek to ensure that implementation is sequenced and supported, rather than imposed uniformly (Articles 35 & 36). This architecture recognises heterogeneity in institutional readiness and aims to avoid

front-loading compliance burdens. The Agreement also embeds principles of sustainable and responsible investment. Articles on responsible business conduct (Article 37), and anti-corruption (Article 38) promote standards that go beyond mere facilitation and attempt to align investment with development objectives. Finally, proponents argue that facilitation complements domestic reform agendas. Many countries already pursue ease-of-doing-business reforms; embedding some of these practices in an international framework can enhance credibility, attract longer-term investment and promote responsible business conduct.

## **6. Critics of IFD**

While the IFD is framed as a technical and development-friendly reform agenda, it raises deeper concerns that go beyond administrative efficiency. IFD's disciplines implicate legal mandate, institutional design, systemic coherence of WTO, strategic balance of power, and long-term development policy space. The critique of IFD therefore lies not only in what the Agreement contains, but also in how it is negotiated, incorporated, and potentially expanded within the multilateral trading system.

### **a) Legal and Institutional Implications**

The IFD raises a cluster of interrelated legal and institutional questions that go beyond the technical design of facilitation disciplines. These concerns relate to the legal basis of its incorporation into the WTO framework, its compatibility with existing treaty structures, and the implications of its procedural commitments for dispute settlement and regulatory autonomy.

The most prominent legal question is related to the incorporation of IFD into the WTO under Article X:9 of the Marrakesh Agreement. Article X:9 allows the Ministerial Conference to add a trade agreement to Annex 4, through consensus. Proponents argue that IFD can be incorporated as a plurilateral agreement similar to the Government Procurement Agreement. However, two fundamental concerns arise. First, IFD is not a trade agreement in the conventional WTO sense. Core

WTO agreements primarily regulate tariffs, market access for goods and services and trade rules. In contrast, the IFD disciplines domestic administrative procedures relating to investment governance rather than trade liberalisation. Extending Article X:9 to cover investment, therefore, clearly stretches the legal architecture of the WTO beyond its scope.

Second, the WTO operates as a treaty-based system governed by principles of public international law. Under the Vienna Convention on the Law of Treaties (VCLT), a “party” is a state that has consented to be bound and for which the treaty is in force. Questions, therefore, arise regarding ratification thresholds, entry into force, and the legal status of the IFD prior to Annex 4 incorporation. Unlike the original Annex 4 agreements, negotiated at Marrakesh, no new agreement has been added to Annex 4 since the WTO’s establishment. This creates legal uncertainty regarding sequencing, whether incorporation should precede ratification or vice, versa, and the institutional consequences of either approach.

The structure of MFN treatment under the IFD also has legal ramifications. Article 5 of IFD extends MFN treatment in the application of facilitation measures, but a related footnote clarifies that non-participating WTO Members do not have recourse to dispute settlement under the Agreement. Without an enforcement mechanism, the MFN benefits are effectively void for those who do not join, transforming the IFD into an exclusive ‘trade club’ rather than a multilateral instrument. This sets a dangerous precedent for ‘unfettered plurilaterals’ that divert WTO resources from their intended multilateral mandates.

Additionally, the agreement’s supposed ‘firewall’ against international investment agreements (IIAs) is a one-way valve. While the IFD excludes ISDS claims, it cannot preclude arbitral tribunals under existing IIAs from referencing facilitation commitments as part of the broader regulatory context when interpreting standards such as fair and equitable treatment or legitimate expectations. In this sense, procedural commitments under IFD may indirectly inform investment arbitration without being directly enforceable.

The implementation burden of the IFD is also significantly higher than previous agreements like the TFA. While the TFA focused narrowly on customs and border measures, the IFD covers the entire investment life cycle, from establishment to disposal, which places an onerous reform burden on developing nations and LDCs as they would have to adjust domestic institutions, train officials, and re-engineer administrative processes involving fiscal, political, and regulatory costs. Provisions like Article 10.3, which require informing foreign investors of policy changes in advance, further complicate domestic governance by making consultative processes binding under an international treaty.

The absence of a definition of “investment” further introduces interpretive flexibility regarding the scope of covered measures. This leaves it to natural interpretation, which would be very open and broad and include every kind of asset, a precursor to a deluge of disputes. In addition, Article 45 of IFD allows amendments by a two-thirds majority of participating Members, suggesting that the content of obligations may evolve over time without requiring unanimity among all WTO Members.

## **b) Systemic Implications for the WTO**

Beyond its legal architecture, the IFD raises broader systemic questions about the future direction of the WTO. Articles III, IX and X of the Marrakesh Agreement collectively anchor the WTO in multilateralism and consensus-based rule-making. Article III situates the WTO as a forum for negotiations concerning multilateral trade relations; Article IX affirms decision-making by consensus and Article X establishes structured amendment procedures. The incorporation of IFD through a plurilateral pathway, particularly in the absence of a prior multilateral negotiating mandate, therefore, raises concerns about whether this foundational balance is threatened.

The systemic implications stem less from the subject matter of investment facilitation itself and more from the institutional precedent it could establish. If incorporated under Annex 4, IFD would set a precedent for unfettered plurilateralism. It will effectively allow

Members to negotiate new rules on areas outside multilateral mandates and later seek Annex 4 incorporation. Consequently, the distinction between multilateral and club-based governance will vanish. This may fragment the WTO into multiple regulatory clubs operating under the same institutional roof. Second, it will reinforce asymmetrical bargaining power. Smaller developing and LDC members will face political and capacity pressures to join initiatives shaped by major powers. Third, it will divert institutional resources like secretariat time, committee structures and technical assistance towards plurilateral priorities at the expense of unresolved multilateral development issues. Fourth, it will constrain policy space as administrative procedures will become treaty obligations. What today are flexible domestic governance choices will become subject to international scrutiny and dispute settlement.

### c) Strategic and Developmental Dimensions

The IFD must also be examined through a strategic lens. While investment facilitation is presented as a technical governance reform, its geopolitical and geo-economic implications cannot be overlooked. Earlier investment discussions within the WTO were primarily led by developed economies. In contrast, the current IFD initiative reflects strong participation by emerging powers, particularly China. A significant feature of the IFD coalition is its overlap with Chinese connectivity and infrastructure initiatives (Table 1). Of the 128 IFD participants, 98 are also members of China’s Belt and Road Initiative (BRI).

**Table 1: Countries which are Part of IFD and/or BRI**

Member Status	No. of Countries
Both BRI and IFD	98
BRI Only	52 (150)
IFD Only	30 (128)

Source: Authors’ calculations based on data retrieved from WTO and Nedopil, Christoph (2025): “*Countries of the Belt and Road Initiative*”

Though correlation does not imply formal linkage, this convergence highlights how multilateral facilitation disciplines may complement geo-economic strategies. By standardising regulatory procedures across participating economies, the IFD could indirectly strengthen the operational environment for large-scale cross-border infrastructure and investment networks.

For India, this regional and geopolitical context is particularly relevant. The centre of gravity in the IFD discussions has shifted from earlier EU-Japan leadership to a configuration in which China plays a prominent convening role. From India's perspective, incorporating investment facilitation disciplines into the WTO architecture may reinforce strategic investment corridors in its neighbourhood. Projects such as the China-Pakistan Economic Corridor (CPEC), which traverse Pakistan-occupied Kashmir, raise sovereignty concerns for India. Although the IFD does not directly legitimise specific projects, embedding facilitation norms multilaterally could enhance regulatory certainty for capital-exporting states operating in politically sensitive regions.

## **7. India's Positions on IFD**

India did not join the Joint Statement Initiative (JSI) on investment facilitation and has consistently opposed the incorporation of the IFD Agreement into the WTO framework. India did not reject investment facilitation per se and its opposition to IFD is mainly based on concerns regarding mandate, legality, institutional integrity, and development policy space at WTO. It has not contested facilitation reforms in principle; rather, it has questioned their placement within the WTO absent explicit multilateral authorisation. Roots of India's position could be traced back to the 1996 Singapore Ministerial Conference, which authorised only exploratory discussions on the "relationship between trade and investment," without conferring a negotiating mandate. This understanding was firmly reinforced by the July 2004 General Council Decision, which explicitly excluded investment from the Doha Work Programme and stated that no work towards negotiations on investment

would take place during the Doha Round. From India's perspective, this amounted to a clear multilateral determination establishing a negative mandate against investment negotiations within the WTO framework.

India has consistently argued that no subsequent Ministerial decision has reversed or modified this mandate. In the absence of such authorisation, incorporating investment disciplines into the WTO architecture, whether multilaterally or plurilaterally, raises questions about institutional consistency and procedural legitimacy. India has argued that WTO is designed to govern multilateral trade relations under Articles II:1 and III:2 of the Marrakesh Agreement, whereas IFD, as an investment facilitation initiative, is not covered by existing WTO agreements and therefore requires an explicit Ministerial mandate to negotiate and implement the same.

Further, Article X:9 permits the addition of agreements to Annex 4 only through consensus, functioning as a structural safeguard against systemic fragmentation. India has relied on this consensus requirement to prevent what it views as the creeping institutionalisation of plurilateralism. It also defends the consensus principle under Article IX:1, warning that advancing IFD through majoritarian methods risks replacing multilateral rule-making with club-based governance.

India is exercising caution that JSIs like IFD will divert negotiating capital and Secretariat resources from mandated priorities and may constrain developing countries' ability to sequence reforms and align investment governance with national development strategies. In a nutshell, India's stance is framed not as opposition to facilitation reforms, but as a defence of mandate discipline and the integrity of the multilateral rule-making process.

## **8. Way Forward and Policy Considerations**

In the current international trade environment, trade in goods is witnessing heightened uncertainty, particularly in light of unilateral tariff measures and growing strategic competition between major economies. India is facing the structural challenge of navigating between what may be described as the 'elephant of supply' (China) and the 'elephant of demand'

(the United States). In such a context, passivity in trade policy carries the risk of marginalisation. However, this logic does not automatically extend to investment governance, even though trade and investment are closely interconnected.

In trade agreements, market access is the principal driver of negotiations. Countries with manufacturing capacity seek assured access to foreign markets, and such certainty is secured through multilateral commitments at the WTO and through preferential trade agreements. The offensive interests in trade negotiations typically lie with exporting nations seeking predictable access for their goods and services. In contrast, in the sphere of international investment, the primary beneficiaries of inward investment are host countries themselves. Investment-seeking countries design regulatory and facilitative frameworks to attract capital, technology, and employment. Such policy choices do not inherently require binding international treaty commitments, except where sovereign assurances relating to investment protection are extended through a distinct legal discipline.

For India, the IFD issue at the forthcoming MC14 in March 2026 presents two distinct questions: first, whether India should join the IFD Agreement; and second, if it does not join, whether it should continue to oppose the incorporation of the IFD Agreement into Annex 4 of the Marrakesh Agreement framework. The first question is largely settled. India was not a participant in the Joint Statement Initiative negotiations that produced the IFD text, and accession at this stage would imply acceptance of obligations negotiated without its participation. Moreover, the likelihood of reopening substantive provisions to accommodate non-participating members appears limited, given the sensitivity and negotiated balance embedded in the text. From a policy standpoint, India does not stand to gain materially from treaty-based facilitation commitments. India's foreign direct investment regime is already among the more liberal frameworks globally, with most sectors open to 100 per cent FDI under the automatic route, subject to limited sectoral restrictions. Any remaining gaps in procedural facilitation, such as enhanced transparency mechanisms or single-window coordination,

can be addressed through domestic reforms, including alignment with elements identified in the UNCTAD Global Action Menu for Investment Facilitation, without assuming binding multilateral obligations.

The second question, whether India should relent on the incorporation of the IFD under Annex 4, must be assessed from both legal and consequential perspectives. The WTO is a rules-based institution grounded in consensus-based decision-making. Investment remains the only subject area on which Ministers have effectively established a negative negotiating mandate through the 2004 July Package. Efforts since 2017 to introduce investment facilitation through plurilateral mechanisms raise concerns regarding the interpretation of mandate and institutional procedure. Permitting incorporation without explicit consensus could establish a precedent whereby Joint Statement Initiatives progressively expand the WTO's scope beyond agreed multilateral mandates, thereby weakening the consensus principle that underpins the organisation's legitimacy.

Beyond institutional considerations, strategic implications also arise, particularly through China's expanding overseas investment footprint under BRI, which intersects significantly with over 75 per cent of IFD-participating countries, including several in India's neighbourhood. Incorporation of the IFD within the WTO framework could enhance regulatory coordination among participating members and potentially amplify China's economic influence in regions of strategic interest to India. While the IFD is not formally linked to any particular geopolitical initiative, its institutionalisation within the WTO architecture could alter the strategic landscape in ways that warrant careful consideration.

In a nut shell, both legal principle and strategic calculus point toward the same conclusion. It is in India's interest to continue opposing the incorporation of the IFD Agreement under Annex 4 of the Marrakesh framework.

## References

- King & Spalding (2021). Plurilateral Negotiations and Outcomes in the WTO. [www.kslaw.com](http://www.kslaw.com)
- Khor M. (2007): *The “Singapore Issues” in the WTO: Evolution and Implications for Developing Countries*, TWN Trade & Development Paper No. 33, Third World Network, available at <https://twn.my/title2/t%26d/tnd33.pdf>
- Marrakesh Agreement (1994) <https://treaties.un.org/doc/publication/unts/volume%201867/volume-1867-i-31874-english.pdf>
- Nedopil, C. (2025). Countries of the Belt and Road Initiative (BRI). Green Finance & Development Center, FISF Fudan University. <https://greenfdc.org/countries-of-the-belt-and-road-initiative-bri/>
- United Nations. (1969). Vienna Convention on the Law of Treaties. In *United Nations, Treaty Series* (p. 331). [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)
- World Trade Organization (2004). Doha Work Programme WT/L/579. [https://www.wto.org/english/tratop\\_e/trips\\_e/ta\\_docs\\_e/2\\_wtl579\\_e.pdf](https://www.wto.org/english/tratop_e/trips_e/ta_docs_e/2_wtl579_e.pdf)
- World Trade Organization. (2015). *Nairobi ministerial declaration*, WT/MIN(15)/DEC. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN15/DEC.pdf&Open=True>
- World Trade Organization. 2021. THE LEGAL STATUS OF ‘JOINT STATEMENT INITIATIVES’ AND THEIR NEGOTIATED OUTCOMES. WTO Doc WT/GC/W/819/Rev.1 <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W819R1.pdf&Open=True>
- World Trade Organization. (2023). *Investment Facilitation for Development (IFD) toolkit* (WTO Doc). Available at [https://www.wto.org/english/tratop\\_e/invfac\\_public\\_e/ifd\\_toolkit\\_e.pdf](https://www.wto.org/english/tratop_e/invfac_public_e/ifd_toolkit_e.pdf)
- World Trade Organization. 2024. *Communication from the Co-Coordiators of the Joint Statement Initiative on Investment Facilitation for Development: Proposal for the Incorporation of the IFD Agreement under Annex 4 of the Marrakesh Agreement*. WTO Doc WT/GC/W/927. Geneva: WTO. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/GC/W927.pdf&Open=True>
- WTO|*Investment Facilitation for Development- Members parties*. (n.d.).[https://www.wto.org/english/tratop\\_e/invfac\\_public\\_e/invfac\\_participation\\_list\\_e.htm](https://www.wto.org/english/tratop_e/invfac_public_e/invfac_participation_list_e.htm)

## About the Authors



**Mr. Anwar Hussain Shaik** is a senior diplomat and officer, distinguished for his leadership in global trade governance. While serving at the Permanent Mission of India in Geneva, he was elected Chair of the WTO Committee on Technical Barriers to Trade (TBT) in 2022. In this capacity, Mr. Shaik oversaw the drafting of the TBT Annual Reviews and formal reports on Specific Trade Concerns (STCs), which resolve regulatory frictions between member nations. An alumnus of the Harvard Kennedy School where he specialized in public policy, he also served as Counsellor (Agriculture), authoring policy briefs on agricultural subsidies.



**Dr. Pankaj Vashisht** is an Associate Professor and Coordinator at the ASEAN-India Centre (AIC) at the Research and Information System for Developing Countries (RIS). He specialises in the field of international trade, labour economics, and applied econometrics. With over 16 years of experience in policy-oriented research, Dr. Vashisht specializes in international trade, technology, labor economics, applied econometrics, and industrial competitiveness. He has worked closely with policymakers at both the central and state levels in India and has conducted research for international organizations such as The World Bank, Asian Development Bank, and Elcano Royal Institute. He has also collaborated with Indian industry associations, including the Auto Component Manufacturers Association (ACMA) and the Society of Indian Automobile Manufacturers (SIAM). He holds a PhD in Economics from Jawaharlal Nehru University (JNU), New Delhi, and is a recipient of the Young Scholar Grant to attend the 38th NBER Summer Institute in Cambridge, USA, in 2015.



**Mr. Vaasu Aggarwal** is a Research Assistant at the ASEAN-India Centre (AIC) at the Research and Information System for Developing Countries (RIS). He holds a Bachelor's (Honours) and a Master's degree in Economics from Dr. B. R. Ambedkar University Delhi (AUD). His research interests lie in areas of financial inclusion, monetary policy, development finance, infrastructure finance and international trade, with hands-on experience in policy evaluation and macroeconomic analysis.

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Core IV-B, Fourth Floor, India Habitat Centre  
Lodhi Road, New Delhi-110 003 India., Tel. 91-11-24682177-80

Fax: 91-11-24682173-74, Email: [dgoffice@ris.org.in](mailto:dgoffice@ris.org.in)

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