



## Investment Facilitation for Development: India's Policy Dilemma at MC 14

Anwar H. Shaikh, Pankaj Vashisht and Vaasu Aggarwal

### 1. Introduction

The question of whether and how investment should be addressed within the World Trade Organization (WTO) has remained one of the most contested issues in global economic governance. Unlike trade in goods and services, which is governed by a comprehensive multilateral framework under the WTO, international investment has largely remained outside the organisation's formal rulemaking architecture. Instead, it has traditionally been regulated through domestic laws and a network of bilateral and regional International Investment Agreements (IIAs). Nevertheless, several attempts have been made to introduce investment-related disciplines within the multilateral trading system. The first such attempt was made at the Singapore Ministerial Conference of

1996, where four issues, trade and investment, trade and competition policy, transparency in government procurement and trade facilitation were introduced. Members agreed to establish working groups to examine the relationship of these issues with trade without granting a formal negotiating mandate (Khor 2007). During these discussions, developed countries stressed that investment is a natural extension of trade rules in an increasingly integrated global economy. In contrast, India and several developing countries argued that investment governance extends far beyond trade policy and implicates sovereign regulatory authority over issues such as industrial policy, development planning, ownership restrictions, and national security considerations. These differences became more pronounced

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during the Doha Development Round when some members advocated launching negotiations on investment disciplines. However, lack of consensus prevented progress, and the ‘July 2004 Package’ ultimately removed investment from the Doha negotiations.

Notwithstanding the negative mandate under the July 2004 Package that removed investment from the Doha negotiating agenda (WTO, 2004), Investment-related discussions resurfaced at WTO in 2017 when a group of members proposed including investment facilitation as an agenda item at the WTO General Council. India objected to this move, citing the absence of a multilateral mandate. Following these exchanges, proponents clarified that the discussions on investment would remain exploratory rather than formal negotiations. Subsequently, a coalition of interested members formed the “Friends of Investment Facilitation for Development” (FIFD) group and initiated structured discussions outside a formal multilateral negotiating framework. At the Eleventh WTO Ministerial Conference (MC11) in Buenos Aires, seventy members issued a Joint Ministerial Statement supporting such discussions, which gradually evolved into negotiations under a Joint Statement Initiative framework. Formal negotiations began in September 2020 and quickly culminated in the conclusion of the Investment Facilitation for Development (IFD) Agreement in July 2023, with the final legal text released in November 2023.

Having finalised the agreement, participating members sought the incorporation of IFD into the WTO treaty framework as a plurilateral agreement under Annex 4 of the Marrakesh Agreement (WTO 2024) during the

Thirteenth WTO Ministerial Conference (MC13). However, several developing countries, including India and South Africa, raised procedural and substantive concerns regarding the proposal. India blocked consensus on incorporating the agreement into the WTO framework, arguing that investment negotiations lack a multilateral mandate and that incorporating such an agreement into the WTO framework could undermine the institution’s consensus-based decision-making structure. Consequently, the issue was referred to the General Council for further discussion, where deliberations have continued but have not produced a consensus. Notwithstanding the continued disagreement, there are indications that the positions of some key objecting members have shown a degree of moderation, even as core concerns relating to mandate, process, and systemic implications remain unresolved (WTO 2025).

As the WTO approaches its Fourteenth Ministerial Conference (MC14) in March 2026, the issue of IFD is set to re-emerge. With over 75 percent of WTO members now supporting the agreement, and indications that at least one key opponent may be moderating its position; the negotiating landscape appears to be shifting. In this context, India faces a strategic dilemma: whether to maintain its principled opposition to safeguard institutional norms and domestic policy space, or to recalibrate its stance in response to evolving dynamics within an increasingly plurilateral trading environment. Against this backdrop, this policy brief examines the provisions of the IFD Agreement assesses its legal, institutional, and strategic implications for both the WTO and India and outlines a pathway forward for India’s engagement.

## 2. Textual Architecture of the IFD Agreement

The Investment Facilitation for Development (IFD) 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 and 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. In broad design, the agreement resembles the Trade Facilitation Agreement (TFA) in its procedural orientation. However, while the TFA focuses primarily on border processes and customs administration, the IFD extends into domestic regulatory domains affecting investment decisions across sectors of the economy. Its provisions, therefore address regulatory transparency, administrative processes, and institutional coordination governing the investment lifecycle.

The stated objectives of the agreement emphasise improving transparency, streamlining administrative procedures, adopting facilitation measures and promoting regulatory cooperation to facilitate foreign direct investment flows, particularly to developing and least developed country Parties (WTO 2024). The agreement applies to measures relating to investment activities of investors of another Party, covering the establishment, acquisition, expansion, operation and disposal of investments. Notably, however, the agreement does not define the term “investment.” This omission creates interpretive flexibility regarding the scope of covered activities and could potentially extend beyond

foreign direct investment to other forms of capital flows. For several developing countries, this lack of definitional clarity raises concerns because certain forms of investment, such as portfolio flows, are associated with capital market volatility and financial stability risks.

A central textual feature of the IFD is its attempt to construct a firewall between facilitation disciplines and the commitments of international investment agreements. Article 2 clarifies that the IFD Agreement does not create or modify commitments relating to market access, investment protection, or investor-state dispute settlement (ISDS), and does not confer a right of establishment (WTO 2024). Article 4 further states that international investment agreements shall not be used to interpret the IFD and that the agreement itself cannot serve as a basis for ISDS claims (page no 6, WTO 2024). At the same time, Article 5 introduces most-favoured-nation treatment in the application of IFD disciplines. However, enforceable rights remain confined to participating Parties because non-participants cannot invoke dispute settlement under the agreement (WTO 2024). This creates a structural tension: facilitation measures may operate broadly in practice through domestic administrative reforms, while legal recourse remains limited to members participating in the Annex 4 plurilateral arrangement.

The operational core of the agreement lies in Sections II and III, which focus on transparency and administrative procedures. These provisions require the publication and accessibility of investment-related measures, the establishment of single information portals, and the publication of measures in advance. They also require authorisation procedures to be reasonable, objective,

and impartial, to be processed within indicative timelines, and to be supported by written explanations for rejected applications and by review or appeal mechanisms. Fees must be reasonable and transparent, and electronic submission and e-government tools are encouraged. Collectively, these provisions seek to reduce information asymmetries, transaction costs, and administrative discretion. At the same time, they internationalise elements of domestic regulatory practice, such as licensing, timelines, documentation, and review procedures, by converting them from pure domestic policy choices into treaty disciplines among participating Parties.

The remaining sections deal with coordination, flexibility, and implementation. Section IV establishes focal points and promotes regulatory coherence, inter-agency coordination, supplier databases, and cross-border cooperation mechanisms. Section V introduces S&DT provisions modelled on the TFA, allowing developing and least-developed country Parties to self-designate commitments based on capacity and technical assistance. However, because the agreement spans the entire investment lifecycle and multiple domestic regulatory domains, implementation may be institutionally more demanding than the TFA experience suggests. Section VI encourages responsible business conduct and measures to address corruption and money laundering, while Section VII establishes a WTO Committee on Investment Facilitation to review implementation and includes provisions on general exceptions, amendment procedures, and dispute settlement among Parties.

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

Supporters of the IFD Agreement argue that the IFD Agreement represents a pragmatic approach to improving investment governance without imposing substantive liberalisation obligations. The agreement focuses on administrative and regulatory reforms that are widely regarded as beneficial for improving the investment climate, particularly in developing economies where bureaucratic procedures can create uncertainty for investors. The agreement seeks to reduce the transaction costs associated with cross-border investment by enhancing transparency, streamlining regulatory procedures and strengthening coordination among government agencies. Proponents therefore view the initiative as a development-oriented framework that complements domestic reform agendas rather than constraining policy autonomy.

One frequently cited benefit of IFD is transparency and information availability. The agreement requires members to publish investment-related measures and establish accessible single information portals that provide investors with details regarding regulatory requirements, application procedures and relevant authorities. Such transparency provisions are intended to reduce information asymmetries that often discourage investment, particularly in jurisdictions complex or fragmented regulatory frameworks. In addition, the agreement encourages advance publication of regulatory measures and stakeholder consultation where practicable; enabling investors and other stakeholders to anticipate policy changes and respond accordingly.

A second perceived benefit lies in administrative efficiency. The agreement requires applications relating to investment to be processed in a reasonable, objective, and impartial manner, and encourages governments to act within indicative timeframes (Articles 14 and 15, WTO 2024). It also requires written explanations for rejected applications and the availability of review or appeal mechanisms. In addition, Article 18 encourages electronic submissions and digital governance tools, which can complement broader domestic reforms such as single-window systems and digital public infrastructure. Proponents contend that these measures can reduce transaction costs, improve the ease of doing business, and produce spillover benefits beyond foreign investment by modernizing administrative procedures more broadly (WTO 2023).

A third benefit highlighted by proponents is related to institutional coordination. Through focal points, regulatory coherence measures, and supplier databases, the agreement seeks to improve communication between investors and authorities and to strengthen linkages between foreign investors and domestic enterprises, including MSMEs (Articles 22-24, WTO 2024). This, supporters argue, can help domestic firms integrate into value chains and better leverage foreign investment for broader development gains. At the same time, the agreement incorporates S&DT by allowing developing and least-developed countries to self-designate commitments and sequence implementation according to institutional capacity, supported by technical assistance and capacity building (Articles 28, 35 & 36, WTO 2024). Together with provisions on responsible business conduct and anti-corruption (Articles 37 & 38, WTO

2024), proponents argue that the IFD can align investment facilitation with broader development objectives.

## 4. Major Concerns

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, how it seeks to be incorporated, and potentially expand within the multilateral trading system.

### 4.1 Legal and Institutional Concerns

Proponents of IFD are seeking its incorporation into Annex 4 of the Marrakesh Agreement. Article X:9 of the Marrakesh Agreement allows the MC to add a trade agreement to Annex 4, through consensus (Marrakesh Agreement, 1994). Proponents argue that IFD can be incorporated as a plurilateral agreement similar to the Government Procurement Agreement. However, there are two fundamental concerns which puts question mark on the legality of this route. 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 WTO's legal architecture. Second, the WTO is 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 (United Nations 1969). 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 Annex 4 agreement has been added since the WTO’s establishment. Therefore, it creates legal uncertainty about sequencing, whether incorporation should precede ratification or vice versa, and about the institutional consequences of either approach.

Another legal issue is related to MFN and dispute settlement. Article 5 of IFD provides MFN treatment but limits the rights of non-parties to invoke dispute settlement. This creates a club-based governance structure within a multilateral institution. Though the benefits are claimed to be extended horizontally, their enforceability, under the current IFD agreement text, remains confined to the parties. Additionally, the agreement’s supposed ‘firewall’ against international investment agreements (IIAs) is a one-way valve. While IFD excludes ISDS, it cannot prevent arbitral tribunals under IIAs from referring to facilitation commitments when interpreting fair and equitable treatment or legitimate expectations clauses in existing bilateral treaties, as they create ‘legitimate expectations’ of the investor. Procedural commitments under IFD can thus indirectly migrate into investment arbitration.

The implementation burden of the IFD is also significantly higher than that of previous agreements such as 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.

A very serious shortcoming of the text is the omission of a definition of “investment”. 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. Additionally, Article 45, which allows amendments by a two-thirds majority, implies that although market access and protection are excluded today, future amendments could introduce deeper disciplines without unanimous consent, altering the balance of obligations over time.

#### **4.2 Systemic Implications for the WTO**

Beyond its legal provisions, the IFD raises significant questions about the WTO’s institutional trajectory. Articles III, IX, and X of the Marrakesh Agreement collectively embed the organization’s commitment to multilateralism and consensus-based decision-making. 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. India has maintained that the WTO’s mandate, under Articles II:1 and III:2 of the Marrakesh Agreement,

is limited to multilateral trade relations. Since the IFD governs domestic investment facilitation rather than trade in goods or services, India argues that its negotiation and implementation require an explicit Ministerial mandate to prevent blurring the line between multilateral governance and “club-based” arrangements.

If incorporated under Annex 4, IFD could set a precedent for unfettered plurilateralism, enabling members to develop new rules outside multilateral mandates and later formalise them. This risks eroding the distinction between multilateral and club-based governance, potentially fragmenting the WTO into multiple “trade clubs” under the same institutional roof. Smaller developing and least-developed members could face political and capacity pressures to join initiatives shaped by major powers, thereby reinforcing asymmetrical bargaining dynamics. Plurilateral prioritisation could also divert WTO resources, including Secretariat attention, committee structures, and technical assistance, away from unresolved multilateral development issues. Furthermore, by converting domestic administrative procedures into binding obligations, IFD could constrain policy space, subjecting flexible governance choices to international scrutiny and potential dispute settlement.

### 4.3 Strategic and Developmental Dimension

Apart from legal and systemic issues, IFD also carries significant geopolitical and geo-economic implications. 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; 98 of the 128 IFD participants are also members of China’s Belt and Road Initiative (BRI), highlighting a potential convergence between multilateral facilitation disciplines and broader geo-economic strategies. By standardising regulatory procedures across participating economies, IFD could indirectly enhance the environment for large-scale cross-border infrastructure and investment networks.

For India, this regional and strategic context is critical. The leadership of IFD discussions has shifted from EU-Japan to a configuration in which China plays a prominent convening role. From Indian point of view, the incorporation of investment facilitation into the WTO could potentially reinforce strategic investment corridors in its neighbourhood. Projects such as the China-Pakistan Economic Corridor (CPEC), which go through Pakistan-occupied Kashmir (PoK), raise sovereignty concerns. While IFD does not directly endorse specific projects, embedding facilitation norms multilaterally could increase regulatory certainty for capital-exporting states in politically sensitive regions, indirectly affecting India’s strategic interests.

**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 (n.d.) and Nedopil, Christoph (2025): “Countries of the Belt and Road Initiative”*

## 5. Way Forward for India

In trade agreements, market access is the principal driver of negotiations as countries with manufacturing capacity seek assured access to foreign markets through multilateral commitments at the WTO and preferential trade agreements. As a result, the main push in trade negotiations comes from exporting nations that want predictable conditions for their goods and services abroad. In contrast, investment operates differently, where the primary beneficiaries of inward investment are host countries themselves, which actively design regulatory and facilitative frameworks to attract capital, technology, and employment. These efforts generally rely on domestic regulatory frameworks and do not necessarily require binding international commitments, except where governments choose to provide treaty-based guarantees on investment protection.

For India, the IFD issue at the MC14 in March 2026 raises two questions: the first is whether India should join the IFD Agreement; and, if it chooses not to, should it continue opposing its incorporation into Annex 4 of the Marrakesh Agreement. The first question is largely settled as India did not participate in the Joint Statement Initiative negotiations that produced the IFD text, and joining now at this stage would mean accepting obligations negotiated without its involvement. Furthermore, given the delicate balance already struck among participating members, reopening the agreement to accommodate late entrants is also unlikely. Therefore, from a policy perspective, India has little to gain from accepting binding facilitation commitments. India's foreign direct

investment (FDI) regime is already among the most open globally, with the majority of sectors permitting up to 100 per cent foreign investment through the automatic route, subject only to limited and clearly defined restrictions. Any remaining procedural improvements or better coordination through single-window systems can be addressed through domestic reforms. These improvements can be pursued in line with internationally recognised best practices, such as those outlined in the UNCTAD Global Action Menu for Investment Facilitation, without necessitating additional multilateral commitments.

The second question, whether India should allow the IFD Agreement to be incorporated under Annex 4, requires closer scrutiny. The WTO operates on consensus-based decision-making. Investment is the only area where ministers effectively set a negative negotiating mandate through the 2004 July Package and since 2017, attempts to introduce investment facilitation through plurilateral initiatives have raised concerns about both the mandate and the procedure (WTO 2004). Allowing the IFD to be incorporated without explicit consensus could create a precedent for JSIs to expand the WTO's scope beyond agreed multilateral mandates, potentially weakening the consensus principle that underpins the institution.

There are also strategic considerations, especially given China's significant expansion of its overseas investment presence through BRI, which overlaps with more than three-quarters of the countries participating in the IFD initiative, including several in India's neighbourhood. Incorporating the IFD into the WTO framework could

deepen regulatory coordination among participating members and, indirectly, reinforce China's economic influence in regions of strategic importance to India and its sovereignty. While the agreement itself is not formally linked to any geopolitical project, its institutionalisation within the WTO system could shape the broader strategic environment.

Taken together, both legal and strategic considerations point in the same direction; continuing to oppose the incorporation of the IFD Agreement into Annex 4 of the Marrakesh framework remains the more consistent position for India.

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China's leadership in the whole process and its ability to mobilise a large number of developing countries along with the potential synergies of IFD with its Belt and Road Initiative (BRI) has geopolitical and geostrategic implications which India needs to keep in mind while taking its stance at the upcoming ministerial meeting.

**Mr. Anup Wadhawan**

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Introducing IFD through a plurilateral pathway without a multilateral mandate erodes consensus decision-making and sets a precedent for “unfettered plurilaterals”. For India, the challenge ahead of MC14 is not only whether to join IFD, but how to defend multilateralism, consensus, development policy space and institutional integrity while managing the costs of staying outside and the risks of allowing IFDA to reshape WTO architecture

**Mr. Anwar H. Shaik**

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If pressure continues and other Members gradually cave in, India risks standing alone under a consensus-based system that is increasingly becoming politicised. While one option is to continue objecting robustly to protect multilateral principles, another is to engage tactically by proposing guardrails.

**Mr. G.D. Lohani**

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Debates on IFD must be grounded in the legal architecture of the Marrakesh Agreement and the Vienna Convention on the Law of Treaties (VCLT), rather than relying solely on ministerial declarations or political understandings.

**Professor Prabhash Ranjan**

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The consensus requirement for an Annex 4 agreement is only at the time of its entry and post that any further change in its structure only requires the members of that agreement to have a consensus, which means the IFD agreement that we see today might not be the one it ends up becoming in the future.

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India's stance on IFDA should be anchored not merely in the text of the agreement, but in a strategic assessment of India's development trajectory, the desired role of the WTO in investment governance, and the extent of openness and protection India wishes to offer to investors in the future.

**Mr. Vaibhav Rundwal**

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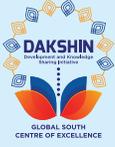


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FIDC, has been engaged in exploring nuances of India’s development cooperation programme, keeping in view the wider perspective of South-South Cooperation in the backdrop of international development cooperation scenario. It is a tripartite initiative of the Development Partnership Administration (DPA) of the Ministry of External Affairs, Government of India, academia and civil society organisations.



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