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WTO-illegal Investment Facilitation rejected at MC13

South Africa and India have formally opposed the adoption of the Investment Facilitation “for Development” Agreement for consideration during the 13th Ministerial Conference (MC13) of the WTO, upholding legal procedures regarding plurilaterals of the global trade body.

The Marrakesh Agreement is unambiguous that a new plurilateral agreement can only be adopted in the WTO through “Annex 4” rules, as proponents of the IF agreement are proposing, exclusively by explicit consensus of all WTO Members.

There is no consensus at the MC13 that the IF can even be legally entered on the agenda. Previous decisions of WTO Ministers are clear that negotiations on investment can only be launched by consensus, once the [Doha round](#) is over, so the IF has no legal status in the WTO.

The Minister of Trade for South Korea, a co-sponsor of the agreement, acknowledged they would need consensus to incorporate the deal, and let slip that the “WTO Secretariat is trying to persuade opponents” to drop their opposition.

The Marrakesh Agreement -- the WTO’s constitution -- is explicit that the Director-General and Secretariat, in the discharge of their duties, “shall refrain from any action that might adversely reflect on their position as international officials.”

In her speech to the opening of the Conference, WTO Director General Ngozi Okonjo-Iweala muddied the waters by describing the IF agreement as a possible “deliverable” -- *even though it is not part of the formal agenda*. This continues a growing list of examples where the D-G is usurping the role of Members in this constitutionally member-driven organisation. Earlier this month, she aggressively condemned South Africa and India in the General Council for their opposition to this agreement.

Emeritus Law Professor Jane Kelsey commented “congratulations to South Africa and India for holding firm in insisting the WTO complies with its own rules and challenging the fallacy that the Investment Facilitation Agreement is about development. The plurilateral negotiation always was, and still is, illegitimate. Any attempt by its proponents to continue pushing the adoption of the agreement at MC13 in the face of this clear and explicit formal notification that there is no consensus and that the matter cannot be deliberated on at this ministerial will show how ethically bankrupt this organization has become.”

Simon Eppel, from the Congress of South African Trade Unions (COSATU) said, “The Congress of South African Trade Unions (COSATU) has seen the attempts to pressurise our government at the WTO to cave into demands to consent to an improper and damaging process: namely to support the JSI on Investment Facilitation. We remind member states that the JSIs were designed to circumvent the imperative for consensus at the WTO, and to undermine the mandate to pursue developmental outcomes in the DDA. The JSI on IF cannot be developmental in nature if it is actually intended to scuttle the development agenda. No amount of rhetoric and pressure can pretend otherwise.”

Putting icing on a stone doesn't turn it into a gourmet meal. The JSI will be a stone for the interests of developing countries. If they ratify it, they will sink with it."

"Not only is there no mandate for these negotiations, there is a negative mandate. Countries who are trying to push this through at the MC13 are breaching fundamental WTO rules to push an anti-democratic, pro-corporate-investor agenda", says Deborah James, facilitator of the Our World is Not for Sale network.

"We ask India and South Africa to stand firm in their position against the discussion and adoption of the Investment Facilitation Plurilateral Initiative at the 13th Ministerial Conference of the WTO. Their objection underscores the importance of consensus and upholding WTO rules," commented Lucia Barcena, from Transnational Institute.

Rahmat Maulana Sidik, Executive Director, Indonesia for Global Justice said "thank you India and South Africa for consistently fighting for our right to industrialize, maintain policy space, regulate investment and the right to development of the lives of small communities through stopping investment facilitation negotiations at WTO."

Despite the registering of a formal opposition, there is still concern that the D-G and chair will seek to bring this through the back door at this MC13. If this is to occur, then it will set a bad precedent for the WTO and its ability to be a Member driven and rules-based organisation.

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OWINFS is a network of organizations and social movements worldwide fighting the current model of corporate globalization embodied in the global trading system of the WTO. OWINFS is committed to a sustainable, socially just, democratic and accountable multilateral trading system.

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