



## **OPEN LETTER FROM CIVIL SOCIETY TO THE CHAIR OF THE MC13 OPPOSING WTO PLURILATERAL ON INVESTMENT FACILITATION**

cc to members of WTO

29 February 2024

As civil society organisations from across Africa, Asia, Latin America, the Pacific, the United States and Europe, we totally reject the Investment Facilitation Agreement being promoted by some countries in the World Trade Organization (WTO) as well as efforts to portray it as a vehicle for development.

We stand in solidarity with South Africa and India who have opposed the adoption of the agreement at this week's WTO Ministerial Conference in Abu Dhabi.

This agreement does not benefit developing countries. In reality, it is a charter for foreign investors. A core rule, ironically called "transparency", puts obligations on governments to provide mechanisms for foreign investors to intervene in our democratic processes. It empowers multinational corporations to lobby against new laws that they oppose, giving them rights that we don't have as citizens.

While the agreement provides new rights for foreign investors, it imposes no new obligations on them to behave responsibly and in the interests of our nation's workers, women, Indigenous peoples and other communities. Nor is there any obligation on foreign states to ensure their investors comply with local or home country laws.

The long list of restrictions on how we design and implement our national laws, policies and procedures that are in any way related to foreign investments is an assault on our sovereignty. It limits our ability to apply national interest criteria to the authorisation of foreign investments and to levy fees to contribute to revenue. Moreover, the text imposes substantive obligations on governments to ensure they apply their investment policies in a "reasonable manner" or to not "unduly complicate investment activities," giving the ability to other countries to second guess government decisions regarding investment.

In contrast to the promise of increasing investment in developing countries, this agreement will not address the main reasons why foreign investors may not come. A survey of investment determinants across 30 African countries identified the regulatory and legal framework as having a negative impact on investment decisions in under 5% of cases.<sup>1</sup> Other studies<sup>2</sup> show that issues of primary concern to investors include size and growth potential of markets, infrastructure development, location and geography, availability of resources (natural and abundant labour) and above all potential for profit.

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<sup>1</sup> UNCTAD. (1999). World Investment Report 1999: Foreign Direct Investment and the Challenge of Development. Geneva, United Nations Conference on Trade and Development.

<sup>2</sup> Paulo Elichea Tembe & Kangning Xu (2012) « Attracting Foreign Direct Investment in Developing Countries: Determinants and Policies-A Comparative Study between Mozambique and China », <https://ideas.repec.org/a/jfrt/ijfr11/v3y2012i4p69-81.html>. See also: U.S. Agency for International Development (2005) Foreign Direct Investment: Putting It to Work in Developing Countries. Washington, DC: USAID.

There are no development provisions, called special or differential treatment, in the agreement either. In fact, it is the reverse. Rich countries already comply with most or all of the rules, so they don't have to do anything to implement it. The burden of extensive implementation and notification requirements will fall on developing country governments, which are already burdened with debt and need to prioritise their scarce resources to implement laws, policies and procedures that can genuinely benefit our people. If our countries decide some or all of these steps are good for us we can adopt them ourselves at our own pace and reverse or adjust them if they don't work.

We also support the position of dissenting countries that reject the attempt to expand the World Trade Organization to include an agreement on foreign investment. It does not even pretend to be about trade. If this is allowed to happen, where will the powers of the WTO end? With the world now facing multiple crises, we need participatory, people-centred approaches to address those problems, not more secretly negotiated pro-corporate charters that may serve to deepen these crises.

Finally, we are deeply concerned that this agreement is called "investment facilitation", but investment is not defined, so it potentially covers all forms of investment at every stage of the investment process, and provides rights to corporations that do not exist in some International Investment Agreements (IIAs). While it says that IIAs can't be imported into the agreement, it can't prevent the reverse - importing these rules into IIAs that then become enforceable through investor-state dispute settlement.

1. Alliance Sud Switzerland
2. Anders Handeln Austria
3. Africa Trade Network
4. Arab NGO Network for Development
5. Asia Indigenous Women's Network
6. ATALC-Amigos de la Tierra América Latina y Caribe
7. Attac Austria
8. Australian Fair Trade and Investment Network
9. COAST Foundation, Bangladesh
10. Congress of South African Trade Unions (COSATU)
11. Equity and Justice Working Group, Bangladesh (EquityBD)
12. European Trade Justice Coalition
13. Food Sovereignty Alliance, India
14. Fundación InternetBolivia.org
15. Global Justice Now United Kingdom
16. Handelskampanjen /The Norwegian trade campaign
17. Indian Social Action Forum, India
18. Indonesia for Global Justice (IGJ), Indonesia
19. IT for Change, India
20. Its Our Future Aotearoa New Zealand
21. Joint Action Committee Against Foreign Retail and E-Commerce, India
22. Justiça Ambiental JA! - Friends of the Earth Mozambique
23. Just Net Coalition, Global/ India
24. Pacific Network on Globalisation
25. Pakistan Kissan Mazdoor Tehreek
26. Public Citizen United States
27. Public Services International
28. REDES-Amigos de la Tierra Uruguay
29. Roots for Equity, Pakistan
30. Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education)
31. The Peoples Coalition of Fisheries Justice (KIARA), Indonesia
32. TWN Trust India
33. Trade and Investment Research Project, Canada
34. Trade Justice Movement United Kingdom
35. Transnational Institute Netherlands