

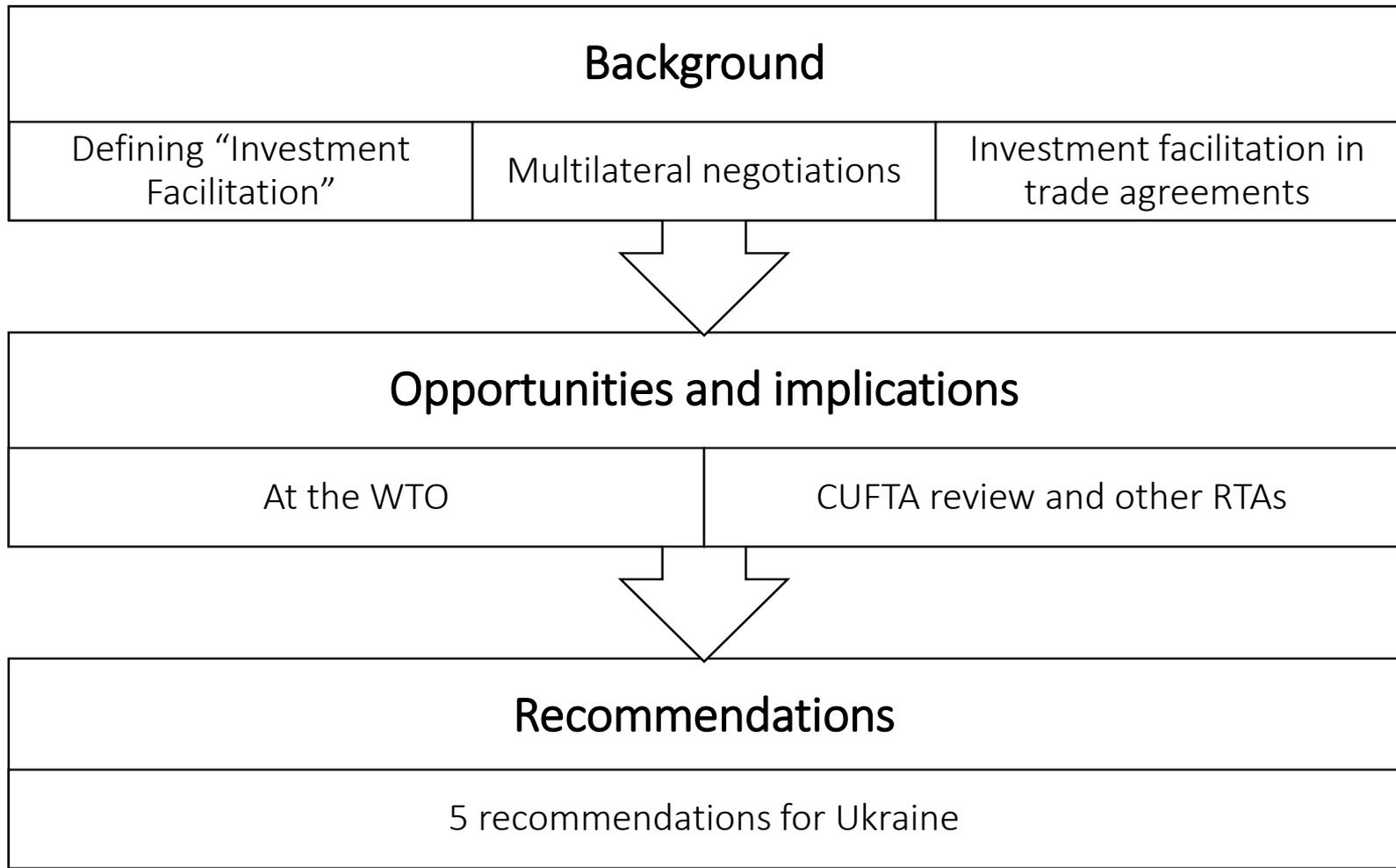
Investment Facilitation Negotiations: Opportunities and Implications for Ukraine

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on Services Trade and Investment Negotiation

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Background

What is “Investment Facilitation”?

What is “investment facilitation”?



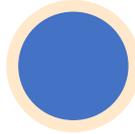
Transparency

Improving regulatory transparency and predictability, with the publication of investment-related regulations, and the creation of enquiry points;



Simplification

Streamlining and speeding up administrative procedures, by simplifying documentation requirements and approval procedures;



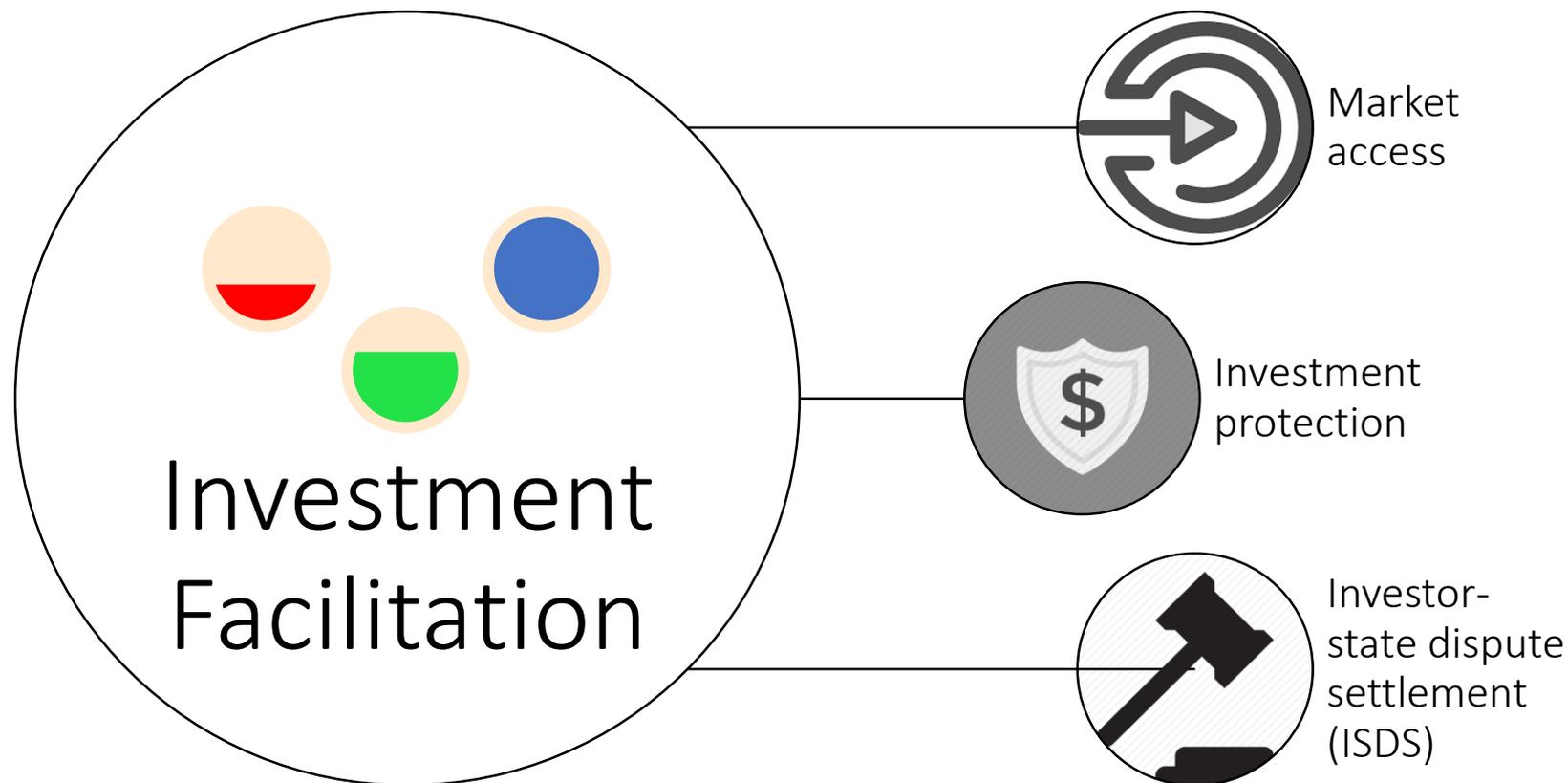
Cooperation

Enhancing international cooperation, by exchanging best practices and providing financial technical assistance to developing countries



Through public-private collaboration

What is NOT investment facilitation?

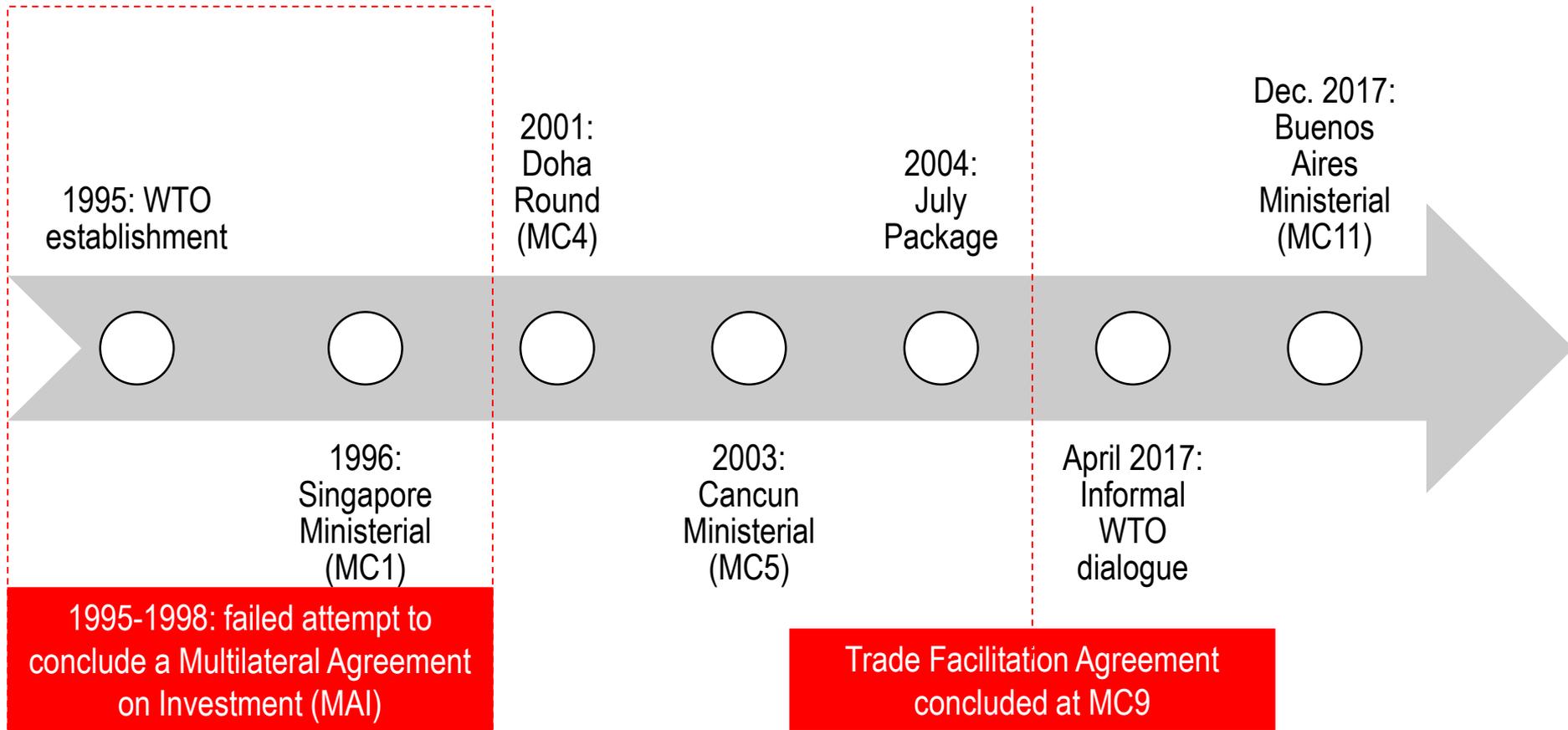




Background

Multilateral negotiations

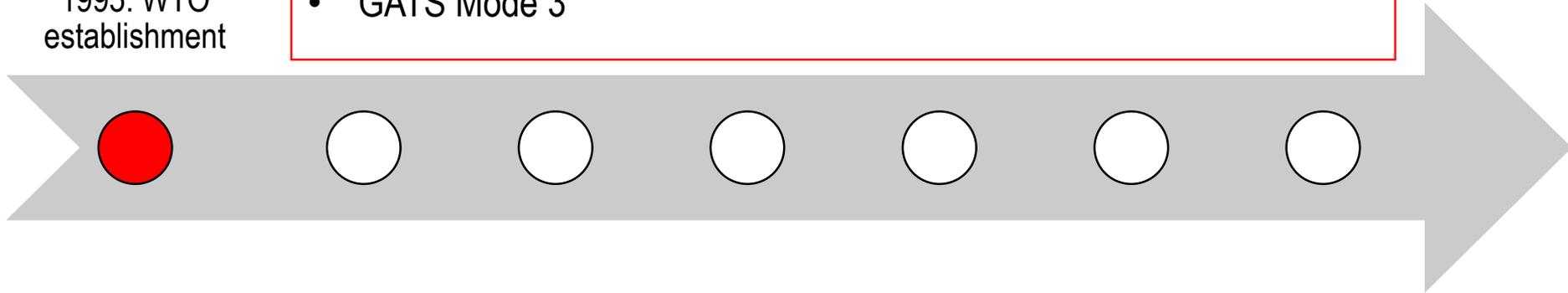
Historical background : Ups and downs of investment facilitation



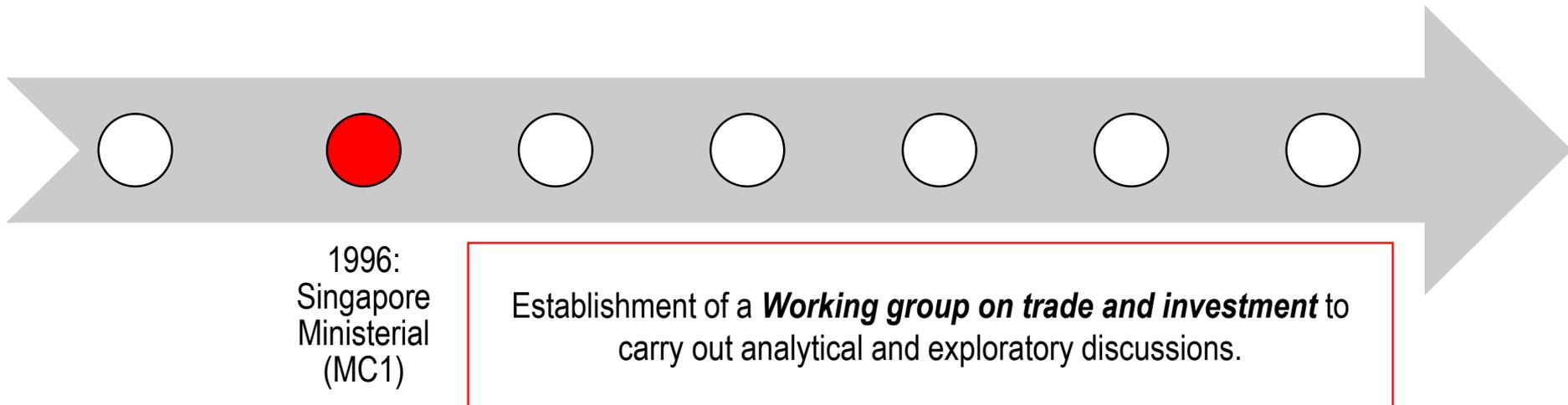
Historical background : Ups and downs of investment facilitation

1995: WTO
establishment

- TRIMS Agreement
- GATS Mode 3



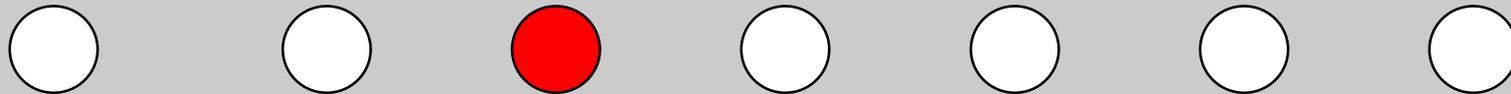
Historical background : Ups and downs of investment facilitation



Historical background : Ups and downs of investment facilitation

2001:
Doha
Round
(MC4)

The Declaration includes **principles** such as the need to balance home vs host countries' interests, countries' right to regulate investment, development, public interest, etc.

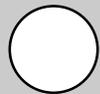


The Doha Declaration instructs the **working group to clarify the scope and definition of the issues**, transparency, non-discrimination, development provisions, exceptions and safeguards, consultation and dispute settlement.

Historical background : Ups and downs of investment facilitation

In Cancun Declaration, WTO members agree to:

- intensify investment-related negotiations
- provide strengthened and adequately resourced technical assistance to developing countries and LDCs.



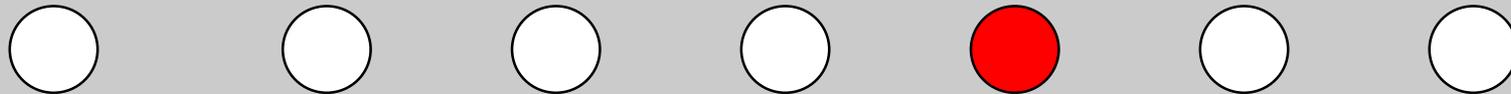
2003:
Cancun
Ministerial
(MC5)

No progress made in Cancun.
Members accept to pursue
negotiations.

Historical background : Ups and downs of investment facilitation

The WTO General Council decides to drop investment as a negotiation issue.

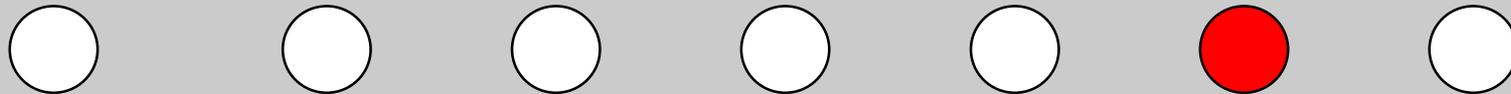
2004:
July
Package



Investment “will not form part of the Work Programme set out in [Doha] Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.”

Historical background : Ups and downs of investment facilitation

FIFD: Argentina, Brazil, Chile, China, Colombia, the Gambia, Hong Kong China, Guatemala, Kazakhstan, Korea, Liberia, Mauritania, Mexico, Nigeria, Pakistan, Qatar, and Uruguay.



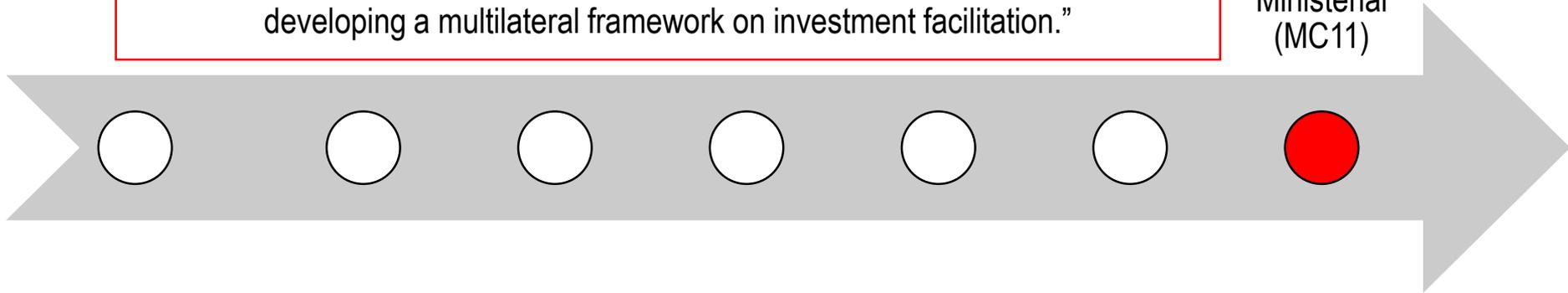
In April 2017, the "Friends of Investment Facilitation for Development" (FIFD) – currently 17 members, majority developing– proposed an Informal WTO Dialogue on Investment Facilitation for Development.

April 2017:
Informal
WTO
dialogue

Historical background : Ups and downs of investment facilitation

Joint Ministerial Statement on Investment Facilitation for Development by 70 WTO members calling for “call for beginning structured discussions with the aim of developing a multilateral framework on investment facilitation.”

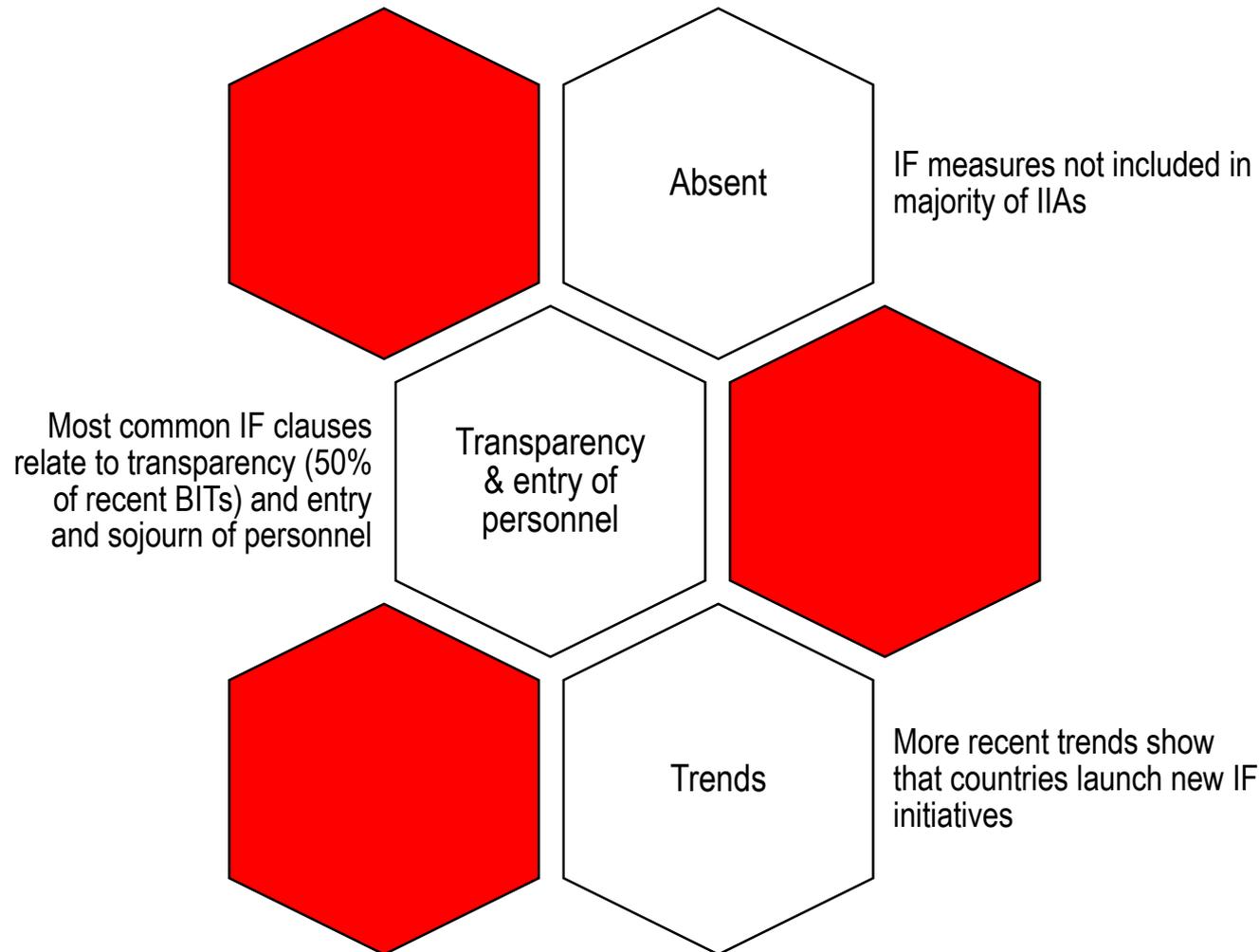
Dec. 2017:
Buenos
Aires
Ministerial
(MC11)



Background

Bilateral and regional negotiations

Investment facilitation in BITs and TIPs

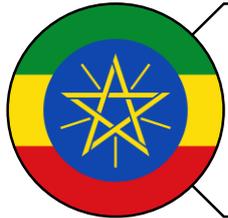


Investment facilitation initiatives

Bilateral



Brazil's Cooperation and Investment Facilitation Agreement (CIFA)



Brazil-Ethiopia CFIA (2018)



Canada-EU CETA (2016)

Regional

MERCOSUR

- Protocol on Investment Cooperation and Facilitation (2017)

APEC

- Investment Facilitation Action Plan (IFAP) in 2008
- Reports monitoring implementation progress

African RECs

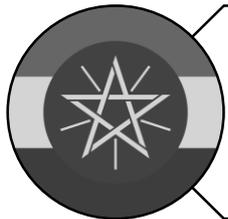
- Protocols / agreements with IF provisions
- E.g. COMESA's CCIA simplifying procedures for investment projects

Investment facilitation initiatives

Bilateral



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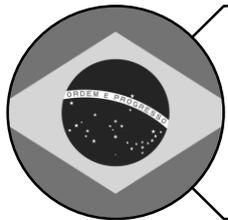
Canada-EU CETA (2016)

Highlights

- Brazil drafted a new BIT model based on IOs studies and in consultation with domestic private sector
- Aim to improving institutional cooperation and facilitating bilateral investments
- Focused on
 1. Risk mitigation;
 2. Institutional governance;
 3. Thematic agendas for investment cooperation and facilitation.

Investment facilitation initiatives

Bilateral



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Brazil-Ethiopia CFIA
(2018)



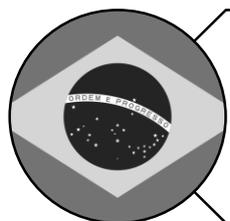
Canada-EU CETA (2016)

Highlights

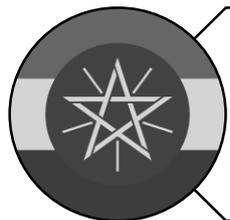
- Objective: facilitate and encourage investment through “mechanisms for risk mitigation and prevention of disputes”
- Transparency: laws and regulations for qualification, licensing and certification, are published without undue delay and, when possible, in electronic format”
- CSR: “Investors and their investment shall strive to achieve the highest possible level of contribution to the sustainable development of the host State and the local community” based on OECD Guidelines

Investment facilitation initiatives

Bilateral



Brazil's Cooperation and
Investment Facilitation
Agreement (CIFA)



Brazil-Ethiopia CFIA
(2018)



Canada-EU CETA (2016)

Regional

- CETA includes no investment facilitation provisions except for consultations prior to ISDS tribunal: “A dispute should as far as possible be settled amicably” through consultation.

Investment facilitation initiatives

Highlights

- “Regionalization” of Brazilian new BIT model
- Dispute prevention: “If a Member State considers that a specific measure adopted by the other Party constitutes a breach of this Agreement, it may invoke this Article to initiate a dispute prevention procedure within the Joint Committee”
- Establishes national investment “Focal Points or ‘Ombudsmen’” for IF

Regional

MERCOSUR

- Protocol on Investment Cooperation and Facilitation (2017)

APEC

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- Reports monitoring implementation progress

African RECs

- Protocols / agreements with IF provisions
- E.g. COMESA’s CCIA simplifying procedures for investment projects

Source: Aznar & Moraes, “The MERCOSUR Protocol on Investment Cooperation and Facilitation: regionalizing an innovative approach to investment agreements, EJIL: Talk!”

Investment facilitation initiatives

Highlights

- Comprehensive prescription of actions across a range of policy areas and valuable reference tool for improving the APEC investment climate
- Sets a non-exhaustive list of APEC's IF principles
- Provides capacity building and technical assistance to lesser developed APEC economies
- Foresees a menu of actions and measures, measurements and reporting

Regional

MERCOSUR

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Investment facilitation initiatives

Highlights

COMESA's CCIA: “strengthen the process of **facilitation**, promotion and liberalization (for) a more liberal and **transparent** investment environment”

Implementation: Cooperation and facilitation program in annex, amongst others:

- Increase transparency in investment rules, regulations, procedures, etc.
- Simplify and expedite procedures for applications and approvals of investment projects
- Promote public-private sector linkages through regular dialogues to identify investment impediments

Regional

MERCOSUR

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Opportunities and implications for Ukraine

WTO negotiations

CUFTA review

WTO Negotiations

Figure 5. Overview of investment facilitation elements identified in WTO member proposals

	Def. of IF	Regulatory Transparency and Predictability	Streamlining & simplifying admin process	Non-discrim.	Single processing window	E-application	Protection of confidential information	Facilitation of outward investment	Appeals and reviews of admin decisions	Nat'l institution arrangement	Multilateral institution arrangement	Institutional cooperation	SDT	Tech. assistance	CSR	Dispute Prevention and/or Dispute Settlement	Future Disciplines on Market Access and Treatment
Russia (2017)		Y	Y		Y	Y	Y			Y			Y	Y		Domestic remedies	Y
MIKTA* (2017)		Y	Y	Y								Y		Y			
FIFD+ (2017)		Y	Y									Y	Y				
China (2017)		Y	Y		Y			Y		Y		Y	Y	Y	Y		
Argentina & Brazil (2017)	Y	Y	Y		Y					Y		Y	Y	Y	Y		
Brazil (2018)	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Refer to DSU	

* MIKTA is a group of five WTO members: Mexico, Indonesia, Korea (Republic of), Turkey and Australia.

+ FIFD stands for "Friends of Investment Facilitation for Development", a group of WTO members. Initiated by China in April 2017. By December 2017, 16 countries had joined FIFD.

WTO Negotiations

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Russia (2017)		Y	Y		Y	Y	Y			Y			Y	Y		Domestic remedies	Y
MIKTA* (2017)		Y	Y	Y								Y		Y			
FIFD* (2017)		Y	Y									Y	Y				
China (2017)		Y	Y		Y			Y		Y		Y	Y	Y	Y		
Argentina & Brazil (2017)	Y	Y	Y		Y					Y		Y	Y	Y	Y		
Brazil (2018)	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Refer to DSU	

Consensus on two topics:

- Regulatory transparency and predictability
- Streamlining & simplifying administrative procedures

WTO Negotiations

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Russia (2017)		Y	Y		Y	Y	Y			Y			Y	Y		Domestic remedies	Y
MIKTA* (2017)		Y	Y	Y								Y		Y			
FIFD* (2017)		Y	Y									Y	Y				
China (2017)		Y	Y		Y			Y		Y		Y	Y	Y	Y		
Argentina & Brazil (2017)	Y	Y	Y		Y					Y		Y	Y	Y	Y		
Brazil (2018)	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Refer to DSU	

Quasi-consensus on three other topics:

- Institutional cooperation
- Special & differential treatment
- Technical assistance

WTO Negotiations

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Russia (2017)		Y	Y		Y	Y	Y			Y			Y	Y		Domestic remedies	Y
MIKTA* (2017)		Y	Y	Y								Y		Y			
FIFD* (2017)		Y	Y									Y	Y				
China (2017)		Y	Y		Y			Y		Y		Y	Y	Y	Y		
Argentina & Brazil (2017)	Y	Y	Y		Y					Y		Y	Y	Y	Y		
Brazil (2018)	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Refer to DSU	

Brazil's proposal is the most ambitious in terms of scope, while MIKTA's the least.

CUFTA Review

Article 19.2: Review Clause

The Parties undertake **to review this Agreement within two years of its entry into force** [i.e. 1 August 2019], in light of further developments including within the framework of the WTO Agreement, and other agreements to which the Parties are party, with a view to examining the further development and deepening of its provisions and **to extending it to subject matters not covered** therein, including cross-border trade in services, financial services, **investment**, telecommunications, temporary entry and any other subject area as decided by the Parties.

Recommendations

5 policy recommendations for Ukraine

Recommendations

You may want to consider the following suggestions...

1. Launching consultation with domestic and foreign private sector representatives on investment impediments in Ukraine (and abroad).
2. Undertaking a comprehensive analysis and review of investment-related laws, regulations, procedures, and documentation requirements with the view to identify cumbersome or unnecessary processes.
3. Pursuing participation in discussions at the WTO for the creation of a multilateral framework of rules on investment facilitation in line with Ukraine's national interests and particularities – be a rule-maker.
4. Modernizing 25 year-old bilateral BIT with Canada in the context of CUFTA review by including investment facilitation measures.
5. Taking action quickly on investment facilitation measures and reforms, with technical and financial support if needed – be a leader.

Thank you for your attention!