

TRADE AND INVESTMENT

Paper Outline:

1. Background (Significance of Addis for trade and investment issues)
2. Overview of UN and EU commitments on trade and investment issues
3. Narrative position for discussion
4. Recommendations on trade and investment issues for Addis for discussion

1. Background

1.1. Trade

With regard to trade issues the Financing for Development Conferences of Monterrey and Doha rather took note of what was going on in the WTO and in the regional and bilateral trade negotiations than to set forward new principles or provide alternative of additional guidance.

The 8 August 2014 report of the Intergovernmental Committee of Experts on Sustainable Development Financing (ICESDF) however seems to deviate from that path in that it states that “the current financing and investment patterns will not deliver sustainable development” (§22); that “the quality of finance also matters” (§23) and that “policies and incentives should aim to better match investor preference with investment needs”.

The report presents options for an integrated sustainable development financing strategy, including:
- “Channel international funds towards long-term investment in sustainable development” (§124)
- “Adopt trade and investment rules that are fair and conducive to sustainable development” (§149)

The **2002 Monterrey FFD conference** came shortly after the UN Millennium Declaration and the launch of the Doha Development Agenda (DDA) of the WTO at its 4th Ministerial Conference in Qatar from 9 to 14 November 2001.

From the Millennium Declaration the Monterrey Consensus adopted the “*credo*” in “*a universal, rule based, open, non-discriminatory and equitable multilateral trading system*” and the commitment “*to trade liberalisation and to ensure that trade plays its full part in promoting economic growth, employment and development for all*”.

From the DDA the Monterrey Consensus copied the development centred rhetoric and all its major commitments.

With regard to foreign direct investments the Monterrey Consensus promoted domestic reforms to increase the attractiveness for investors, policies that encourage outward investment in source countries and public-private partnerships, but also corporate social responsibility and prudential regulations.

The **2008 Doha Declaration** on FFD was issued at the time when DDA was already in limbo for many years while the dominant position of the developed countries had been challenged by the rise of the emerging countries, increasing South-South trade, and the outbreak of the financial and economic crisis.

In the Doha Declaration the free trade “*credo*” was once again restated, but this time with the important nuance that “*the optimum pace and sequence of trade liberalisation depends on the specific circumstances of each country*”, so that “*each country will make this decision based on its own evaluation of costs and benefits*”. Indeed since scientific economic research is inconclusive on

the relation between trade liberalisation, economic growth and poverty reduction, trade liberalisation can no longer be propagated as guaranteed road to development. Less so at a time when a financial and economic crisis had erupted as a result of unfettered liberalisation of financial services.

The Doha Declaration also devoted much attention to the new concept of "Aid for trade" which was born three years before out of the recognition that the liberalisation agenda of the WTO's DDA could hurt poor developing countries if it would not be accompanied by increased aid to strengthen institutional and productive capacities and infrastructure.

Today South-South trade has surpassed North-South trade and the economic crisis that followed the financial crisis is still haunting the largest trading block, the EU.

The WTO's DDA is still stuck and in addition of the many bilateral negotiations for increasingly comprehensive free trade agreements, negotiations for far reaching plurilateral agreements and mega-trade deals (transpacific, transatlantic) have been launched.

The EU position

While still paying lip services to multilateralism the EU is pursuing its bilateral and plurilateral trade negotiations with more energy than ever, now also seeking very far-reaching and comprehensive trade and investment agreements with OECD countries, including the USA with which it is seeking regulatory convergence in order to keep the lead as global standard setters.

Trade policy is of key strategic importance for the EU. It maintains a very offensive and elaborate trade liberalisation strategy in an attempt to maintain its position in the world market and increase its access to raw materials which it is lacking at home.

Increasingly the development dimension of its foreign policy is subjected to its offensive economic interest, both in its trade and development cooperation policy. The EU is reducing its unilateral trade preferences in order to push developing countries to accepting negotiations for free trade agreements; and at the same time it is reducing its development aid, while increasing the role of the private sector in its aid policies and making it clear that its aid has to bring benefits home to Europe. Aid for trade, which is in the mean time taking up 30% of its aid, is increasingly serving EU trade objectives.

In the EU's **Accountability Report** the trade and investment part is almost entirely devoted to EU's contribution to Aid for Trade. Beside this it has a small paragraph about the recent reform of its Generalised System of Preferences (GSP), which it has actually reduced by removing the developing countries classified as High Income and Upper Middle Income (above approximately 4000\$ per capita per annum).

The report also has a large section on Policy Coherence for Development, where the Commission describes progress in the PCD follow-up mechanism. In this section it also mentions its Aid for Trade efforts again, its GSP reform, its Raw Material Initiative, its "flexible" Intellectual Property Rights policy and the promotion of CSR.

The Accountability report falls short of any serious assessment of the development impact or incoherence of its trade policy, thereby suggesting that its trade policy is a good contribution to FFD. It is therefore not likely that the EU will be supportive of language in the Addis FFD declaration that would be more critical of the current bilateral or plurilateral trade and investment negotiation frenzy.

1.2. Investment issues

Investment liberalisation (except for services) and investment protection does not fall within the competence of the WTO. At the multilateral level UNCTAD plays a more important role with regard to international investment, both with regard to monitoring and accompanying investment protection negotiations.

Perhaps as a result of that there seems to be more prudential language in the investment chapters in the Monterrey and Doha FFD texts. Encouragements to source and host countries to encourage outward and inward investments are complemented by language on mitigating volatility, encouraging prudential measures and corporate social responsibility of investors.

Still even UNCTAD has also actively been encouraging bilateral investment treaties (until recently) in spite of their heavy bias in favour of excessive foreign investor rights and against the general public interest.

However the pursuit of investment protection chapters and the contested investor to state dispute settlement has been met with increased opposition among developing countries and civil society and has sparked debates all over the world.

The 8 August 2014 ICESDF report has noticed this debate and speaks about a *“better balance between investor rights and the sovereign capacity for recipient states to regulate within areas of public interests”* and suggests *“a further elaboration of standards for investment in areas that directly impact domestic sustainable development outcomes, and ensure that investments do not undermine international human rights standards”* (§153). However the report also recommends exploring steps towards a multilateral approach to international investment regimes (§154) bringing back bad memories of the failed Multilateral Agreement on Investment (MIA).

EU position

The EU in the mean time has entered the scene as negotiators of investment protection agreements and has concluded negotiations with Canada and Singapore but suspended negotiations with the USA because of heavy domestic opposition.

The European Commission claims to have found new approaches and formulations that solve the flaws of past bilateral investment treaty practices. However this heavily contested. Moreover EU Member States still continue to negotiate bilateral investment treaties (BITs) – with the permission of the European Commission- on the basis of old model texts.

In any case by launching negotiating on investment protection with OECD countries, including the USA, the EU is enormously expanding the scope of extraordinary and dangerous foreign investor rights.

2. Commitments made and positions taken per issue

Foreign Direct Investments

Monterrey Consensus 2002	Doha FfD Declaration 2008
<p>[Credo] 20. Private international capital flows, particularly foreign direct investment, along with international financial stability, are vital complements to national and international development efforts.</p> <p>Foreign direct investment contributes toward financing sustained economic growth over the long term. It is especially important for its potential to transfer knowledge and technology, create jobs, boost overall productivity, enhance competitiveness and entrepreneurship, and ultimately eradicate poverty through economic growth and development.</p> <p>[domestic reform to attract FDI] A central challenge, therefore, is to create the necessary domestic and international conditions to facilitate direct investment flows, conducive to achieving national development priorities...</p> <p>21. To attract and enhance inflows of productive capital, countries need to continue their efforts to achieve a transparent, stable and predictable investment climate, with proper contract enforcement and respect for property rights, ...</p> <p>Other mechanisms, such as public/private partnerships and investment agreements, can be important.</p> <p>[capacity building] We emphasize the need for strengthened, adequately resourced technical assistance and productive capacity-building programmes, as requested by recipients.</p>	<p>[Credo] 23. We recognize that private international capital flows, particularly foreign direct investment, are vital complements to national and international development efforts.</p> <p>We appreciate the rise in private international capital flows to developing countries since the Monterrey Conference and the improvements in business climates that have helped encourage it.</p> <p>However, we take note with concern that a significant number of developing countries have not experienced a rise in private international capital flows.</p> <p>[domestic reform to attract FDI] 25. Experience has shown that providing an enabling domestic and international investment climate is fundamental to fostering domestic and foreign private investment.</p> <p>Countries need to continue their efforts to achieve a stable and predictable investment climate, with proper contract enforcement and respect for property rights. ...Efforts should be enhanced to upgrade the skills and technical capabilities of human resources, improve the availability of finance for enterprise, facilitate public-private consultative mechanisms and promote corporate social responsibility.</p> <p>Bilateral investment treaties may promote private flows by increasing legal stability and predictability to investors...</p> <p>[capacity building] We acknowledge the importance of supporting capacity-building in developing countries aimed at improving their abilities to negotiate mutually beneficial investment agreements. It is important to promote good tax practices and avoid inappropriate ones.</p> <p>23... we will strengthen national, bilateral and multilateral efforts to assist developing countries in overcoming the structural or other constraints which currently limit their attractiveness as a destination for private capital and foreign direct investment.</p>

<p>[source countries encourage outward FDI] 22. ... source countries to increase their support for private foreign investment in infrastructure development and other priority areas, including projects to bridge the digital divide, in developing countries and countries with economies in transition. To this end, it is important to provide export credits, co-financing, venture capital and other lending instruments, risk guarantees, leveraging aid resources, ...</p> <p>[host country prudence] 25. Measures that mitigate the impact of excessive volatility of short-term capital flows are important and must be considered... managing national external debt profiles, paying careful attention to currency and liquidity risk, strengthening prudential regulations and supervision of all financial institutions, ...</p> <p>...liberalizing capital flows in an orderly and well sequenced process consistent with development objectives, and implementation,</p> <p>[Corporate social responsibility] 23. ...businesses, for their part, are expected to engage as reliable and consistent partners in the development process. ... We welcome all efforts to encourage good corporate citizenship and note the initiative undertaken in the United Nations to promote global partnerships.</p> <p>[PPP] 24. We will support new public/private sector financing mechanisms, both debt and equity, for developing countries and countries with economies in transition, to benefit in particular small entrepreneurs and small and medium-size enterprises and infrastructure. ...</p>	<p>24...We recognize the need for bilateral and multilateral partners to provide technical assistance and share best practices relating to these efforts</p> <p>[source countries encourage outward FDI] 24. ...We will enhance efforts to mobilize investments from all sources ..that serve to strengthen the business environment, enhance competitiveness and</p> <p>... contributing to mitigating some of the risks faced by private investors in critical sectors in developing and transition economies. 26. ...source countries, to increase their support for private foreign investment in infrastructure development and other priority areas, including projects to bridge the digital divide in developing countries and countries with economies in transition. To this end, it is important to provide export credits, co-financing, venture capital and other lending instruments, risk guarantees, leveraging aid resources, ...</p> <p>[enhance development dimension] 27. We recognize that the development impact of foreign direct investment should be maximized. ... We will strengthen national and international efforts aimed at maximizing linkages with domestic production activities, enhancing the transfer of technology and creating training opportunities for the local labour force, including women and young people. It is also important to enact and uphold, as appropriate, labour and environmental protection and anti-corruption laws and regulations ...</p> <p>[sovereignty over natural resources] We reaffirm that every State has, and shall freely exercise full permanent sovereignty over, all its wealth, natural resources and economic activity. ...</p> <p>[Corporate social responsibility] We welcome efforts to promote corporate social responsibility and good corporate governance. ...we encourage the work undertaken at the national level and by the United Nations, including through the United Nations Global Compact, and the promotion of internationally agreed corporate social responsibility frameworks, such as the International Labour Organization Tripartite Declaration.</p> <p>[PPP] and [ODA] 24....Official development assistance (ODA) and other mechanisms, such as, inter alia, guarantees and public-private partnerships, can play a catalytic role in mobilizing private flows.</p>
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Trade

Monterrey Consensus 2002	Doha FfD Declaration 2008
<p>[Credo] 26. A universal, rule-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can substantially stimulate development worldwide, benefiting countries at all stages of development.</p> <p>In that regard, we reaffirm our commitment to trade liberalization and to ensure that trade plays its full part in promoting economic growth, employment and development for all.</p> <p>[WTO] We thus welcome the decisions of the World Trade Organization to place the needs and interests of developing countries at the heart of its work programme, and commit ourselves to their implementation.</p> <p>[free trade agreements (FTAs)] 32. We also commit ourselves to enhancing the role of regional and subregional agreements and free trade areas, consistent with the multilateral trading system, in the construction of a better world trading system.</p> <p>[regional integration] We urge international financial institutions, including the regional development banks, to continue to support projects that promote subregional and regional integration among</p>	<p>[Credo] 30. ... a universal, rules-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can substantially stimulate development worldwide, benefiting all countries at all stages of development.</p> <p>We are encouraged that international trade, especially the trade of developing countries as a group, has expanded at a fast pace in the current decade. ... However, many developing countries, in particular the least developed countries, have remained at the margins of these developments We also reaffirm our commitment to meaningful trade liberalization and to ensure that trade plays its full part in promoting economic growth, employment and development for all.</p> <p>[WTO] We recall our commitment in the Monterrey Consensus to the decisions of the World Trade Organization to place the needs and interests of developing countries at the heart of its work programme ...</p> <p>32. We are very concerned that, despite significant efforts, the Doha Development Agenda round of multilateral trade negotiations has <i>not yet been concluded</i>.</p> <p>[FTAs and regional integration] 38. We recognize that regional integration as well as bilateral trade and economic cooperation agreements are important instruments to expand trade and investment.</p> <p>...strengthening and consolidating regional and subregional integration. We stress the importance of increased support to South-South trade ...</p>

<p>developing countries and countries with economies in transition.</p> <p>[Technical assistance/capacity building] 36. ...we further invite bilateral donors and the international and regional financial institutions, ...to reinforce the support for trade-related training, capacity and institution building and trade-supporting services....</p> <p>[market acces for developing countries] 33. We recognize the importance of enhanced and predictable access to all markets for the exports of developing countries, ...</p>	<p>[pace and sequence of trade liberalisation] 33. We acknowledge that the optimum pace and sequence of trade liberalization depends on the specific circumstances of each country, and that each country will make this decision based on its own evaluation of the costs and benefits.</p> <p>Trade liberalization must be complemented by appropriate action and strategies at the national level for the expansion of productive capacities, the development of human resources and basic infrastructure, the absorption of technology and the implementation of adequate social safety nets.</p> <p>[Technical assistance/capacity building] Achieving the positive impact of trade liberalization on developing countries will also depend to a significant extent on international support for the above measures and actions against policies and practices that distort trade.</p> <p>34...We will also reinforce efforts to provide technical assistance to least developed countries that request it in order to enable them to participate more effectively in the multilateral trading system, ...</p> <p>[Aid for Trade] 36. Aid for Trade is an important component of the measures that will assist developing countries in taking advantage of the opportunities offered by the international trading system, the outcome of the Doha round and regional trade agreements. A critical aim of Aid for Trade should be to enhance trade capacity and international competitiveness while ensuring ownership and alignment with national development strategies of individual developing countries. ...The commitments by individual donors relating to Aid for Trade should be fully implemented in a timely manner.</p> <p>[market acces for developing countries] 34. We recognize the particular challenges faced by least developed countries...</p>
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<p>34. We call on developed countries that have not already done so to work towards the objective of duty-free and quota-free access for all least developed countries' exports, as envisaged in</p> <p>[raw material dependence]</p> <p>37. Multilateral assistance is also needed to mitigate the consequences of depressed export revenues of countries that still depend heavily on commodity exports...</p> <p>[Participation]</p> <p>38. In support of the process launched in Doha (WTO) , immediate attention should go to strengthening and ensuring the meaningful and full participation of developing countries, especially the least developed countries in multilateral trade negotiations...</p>	<p>We also welcome the actions taken by some individual countries since Monterrey towards the goal of full duty-free and quota-free market access for all least developed countries, and call on other developed and developing countries declaring themselves in a position to do so to take steps towards this objective..</p> <p>[Participation]</p> <p>37. Broader and effective participation of developing countries in the multilateral trading system, including in any round of multilateral trade negotiations and in the World Trade Organization Doha Development Agenda negotiations, are key objectives.</p> <p>[Contribution of other organisations]</p> <p>39. We welcome the ongoing work of international institutions that assist developing countries in realizing the benefits of trade liberalization, in particular the United Nations, the World Trade Organization, the World Bank, IMF and the regional development banks, ... and reaffirm the role of UNCTAD in trade and development.</p>
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3. Narrative Position (for discussion)

The Monterrey Consensus and the Doha Declaration contain interesting statements and principles but the FFD process has no teeth: the real decision making takes place elsewhere, in the WTO (if it would not be paralysed) and in bilateral (and plurilateral) trade and investment negotiations where economic interests and power games prevail. Increasingly aid policies are put at the service of economic and trade interests.

While the Monterrey and Doha FFD conferences focused mostly on economic development, the social and environmental dimensions will be much stronger on the agenda of the Addis FFD conference. This should be reflected in the parts on trade and investment where stronger language must be adopted to make sure that trade and investment policies do not subject all environmental and social policy to the “least trade distorting” principle or extraordinary investor rights and that they are transparent, inclusive and democratically controlled, in stead of the subject of behind closed doors negotiations where corporate interest prevail.

4. Recommendations on trade and investment issues for Addis for discussion