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A stocktaking of investment-related barriers in Africa

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1. Introduction

The title of this paper is somewhat misleading for a simple reason – it is not possible at this point in time to take full stock of investment-related barriers in Africa. Indeed, various attempts to take stock of investment barriers even in OECD countries, where levels of transparency are arguably higher and the number of restrictions much lower than in Africa, have been self-described as having "inevitably an arbitrary and subjective aspect" largely due to the ambiguous impact of various investment-related regulatory measures across countries and industries (see e.g. OECD, 2003). As such, the present paper does not attempt to actually take stock of investment-related barriers in Africa. Rather, it takes stock of what we do know about investment-related barriers in Africa and suggests ways in which these barriers might be addressed.

Section 2 surveys and categorizes the main types of investment impediments. Section 3 surveys the empirical literature with a view to synthesising our current understanding of investment impediments in Africa. Section 4 concludes with a number of suggestions for reducing barriers to investment in Africa.

2. Two types of investment impediment

In contrast with impediments to trade, investment impediments tend to be embedded 'deeper' and more broadly within any given country's regulatory framework. Whereas the main impediments to trade can be found "at the border" (e.g. tariffs, quotas), impediments to foreign investment can be found in almost any dimension of a country's regulatory framework, and often these impediments are not labelled as regulations specifically directed towards foreign

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investment. As such, impediments to foreign investment defy easy identification and classification.

Nonetheless, as regulatory reform issues relating to foreign investment have come to the fore in recent years, especially with the proliferation of regional and international initiatives aimed at developing investment rules (e.g. the NAFTA and most recent regional trade agreements contain investment chapters, the MAI, the introduction of investment on the WTO agenda as one of the Singapore issues), various attempts have been made to better codify existing impediments to foreign investment. Part of the motivation for such an exercise is that a necessary first step towards creating a regulatory environment more conducive to investment flows is the identification of the impediments to such flows, an issue to which we will return in the conclusion.

A first important classification of measures that can affect foreign investment is between specific FDI measures and more general regulatory measures that can affect FDI.[2] Measures specific to FDI are obviously easier to identify than general regulatory measures. Among the more important types of provisions that countries maintain with respect to FDI can be categorised according to whether they relate to entry and establishment, ownership and control and, thirdly, operational measures.

With respect to entry and establishment, all countries maintain some types of impediments to foreign investment. These range from bans on foreign investment in certain sectors to screening and approval requirements. While many measures on entry and establishment are clear (e.g. the outright ban on foreign ownership in certain sectors or quantitative limits on the equity stake that can be held by foreigners), other measures highlight the important role played by administrative discretion. This is particularly the case with respect to screening requirements where various criteria, often of a subjective nature, are applied in determining whether and under what conditions a foreign investment will be allowed.

With respect to measures relating to ownership and control, many governments seek to enhance local involvement in foreign investments, usually with a view to encouraging various transfers to the local economy. These transfers can be of a financial nature (e.g. in the case of compulsory joint ventures, where the earnings are shared) or ‘softer’ transfers, such as technological and managerial know-how. Within the context of the present discussion of impediments to foreign investment, measures relating to ownership and control are often difficult to interpret. The critical issue is to what extent such measures when imposed create a gap between what a foreign investor must do to establish a presence in a particular jurisdiction and how the foreign investor would choose to establish a presence in the absence of ownership and control requirements. Unfortunately for governments that seek to enhance the benefits for the local economy through such requirements, the costs of such measures are difficult to calculate (at least more difficult than in the case, for example, of outright bans on foreign investment) since it is difficult to establish how much foreign investment doesn’t take place due to ownership and control restrictions.

With respect to operational measures, the impact of these as potential impediments to foreign investment depends crucially on the nature of the incentives that typically accompany them. Performance requirements, for example, are almost always accompanied by various direct and indirect incentives. As with measures relating to ownership and control, evaluation of the extent to which operational measures act as an impediment to foreign investment is difficult due largely

[2] This is the approach taken, for example, in the UNCTAD investment policy reviews (see, e.g., UNCTAD, 2003a; UNCTAD, 2003b).

to their ad hoc administration. Table 1 provides a summary of the types of measures that are specifically applied to FDI.

Table 1. Measures specific to FDI

Entry and establishment	Bans on foreign investment in certain sectors
	Quantitative restrictions on foreign ownership
	Screening and approval
	Restrictions on the legal form of foreign investments
	Minimum capital requirements
	Conditions on subsequent investment
	Conditions on location
	Admission taxes
Ownership and control	Compulsory joing ventures with domestic investors
	Limits on the number of foreign board members
	Government appointed board members
	Government approval required for certain decisions
	Restrictions on foreign shareholders' rights
	Mandatory transfer of some ownership to locals within specific time frame
Operational measures	Performance requirements
	Local content restrictions
	Restrictions on imports of labour, capital and raw materials
	Operational permits or licences
	Ceilings on royalties
	Restrictions on repatriation of capital and profits

Source: adopted from UNCTAD (1996).

With respect to general regulatory measures that can impact upon FDI without necessarily being aimed at FDI per se, the list is long since virtually all regulations that apply to business in general can have an FDI effect. Such general business regulations can include, inter alia, tax policy, foreign exchange regulations, labour laws, employment regulations, commercial laws and standards, land law, intellectual property laws, competition laws and environmental laws. They also include the extent of state involvement in the economy which can, in those sectors where the state has reserved for itself monopoly control, serve as a de facto prohibitive measure against foreign direct investment.

Our distinction between regulations that specifically apply to foreign investors and those of more general application whose effect on FDI is more incidental raises an important point with respect to impediments to FDI. In the case of laws that specifically apply to FDI, impediments put in place are usually intended. For example, if a government passes a law prohibiting foreign ownership of land (see, e.g., the case of Lesotho in UNCTAD, 2003a, pp.37-40), this is an example of a government exercising its legitimate right to regulate by choosing to consciously put in place an impediment to foreign investment. We might argue whether the policy in question is in the best interests of the country with respect to development and other objectives but the main point is that the policy is clear as well as its impact on foreign investment (i.e. it discourages foreign investment).

However, in the case of laws that are not specifically aimed at FDI impediments are often much more difficult to identify (due to the more general nature of such provisions) and, more importantly, barriers to foreign investment are more likely to be *unintended*. For example, in contrast with the example given above in which a particular policy on land ownership would seem to reflect the government's acceptance of a trade-off between foreign investment and national control over land ownership, in many developing countries regressive features of the tax system would seem to serve to discourage all forms of enterprise development, foreign and domestic. In the case of Nepal, for example, general tax laws, labour regulation and government regulation in most areas affecting business have been identified as significant impediments to foreign investment (UNCTAD, 2003b). However, in this case the barriers to foreign investment do not derive from a conscious policy framework aimed at specific objectives vis-à-vis foreign investors. Rather, it is the more general regulatory environment that is having an incidental negative impact on foreign investment.

3. Sources of information on barriers to foreign investment in Africa

As we implied in our introduction, it is simply not possible to provide a comprehensive stock-taking of investment impediments in Africa (or anywhere else for that matter). However, there is considerable information available from various sources that does allow us to generate a sense of the relevance of various types of investment impediments in terms of "orders of magnitude". In other words, although we cannot provide a detailed report on every investment barrier in Africa, an impossible task, we can, using existing information, get a sense of those sectors and regulatory "areas" where investment barriers are most prevalent.

In recent years, intergovernmental organisations such as the United Nations, the World Bank, the IMF, the WTO and the OECD have paid increasing attention to regulatory reform issues, including with respect to the treatment of foreign investment. Indeed, each of these institutions has compiled, in one form or another, information on the investment regimes in Africa. The following summaries are by no means comprehensive but provide examples of some of the key impediments to foreign investment highlighted in different studies, reports and official notifications.

i. The WTO

Investment issues became a prominent feature of the multilateral trading system with the establishment of the WTO at the end of the Uruguay Round. As such, the WTO, through the various reporting requirements associated with different agreements and the trade policy review mechanism, has become a valuable source of information on the investment regimes of the WTO membership.

The WTO's trade policy reviews (TPRs) deal not only with trade issues but also provide detailed descriptions of countries' investment regimes. To date, nine sub-Saharan countries have had trade policy reviews conducted. These include Botswana, Burundi, Lesotho, Namibia, Niger, South Africa, Swaziland, Senegal and Zambia.[3] Each TPR describes in significant detail the rules and regulations relevant for foreign investors, including planned changes to these. Despite the fact that TPRs do provide detailed information on the investment regime of countries that are reviewed, they nonetheless suffer from an important shortcoming, namely that they do not comment on how the investment regime works in practice. For example, the TPR for Senegal describes an investment regime that has improved tremendously in recent years and which, on paper at least, looks very positive from a foreign investment perspective. However, other sources have highlighted continued problems faced by foreign investors, especially as concerns

[3] See WTO, various years. It should be noted, however, that although we cite these reports in the bibliography, they all remain restricted documents.

administrative procedures, labour regulations and infrastructure (see, e.g. United States Department of Commerce, 2003).

Another important source of information on impediments to foreign investment in Africa can be found in the mode 3 commitments that countries have scheduled under the GATS (mode three is defined as the provision of a service through a commercial presence, i.e. through foreign investment). Most of the obligations outlined in the GATS only apply to the sectors which countries inscribe into their scheduled commitments and even here, countries are allowed to specify particular exceptions. Table 2 provides summary information on mode 3 commitments made by developed, developing and least developed countries (mostly African) according to 12 broad service sectors. For each country grouping, the table identifies the number of countries that have scheduled commitments for a particular service sector and the number of countries that have scheduled full commitments with respect to the service in question (i.e. no limits with respect to market access or national treatment for the sector in question). By implication, the table also highlights the number of countries that have not scheduled any commitments for a particular service sector (by comparing the number of countries that have scheduled commitments with the total number of countries in the country grouping in question). For example, of the 69 developing countries that have scheduled GATS commitments, only 12 have scheduled some sort of commitment with respect to distribution services (column 4) and, of these, only 6 have scheduled commitments without limits on either national treatment or market access.

Table 2. Mode 3 commitments and limits by sector and level of development

	1	2	3	4	5	6	7	8	9	10	11	12	Total
Developed countries (15)													
# of countries with scheduled commitments	15	15	13	14	9	14	15	5	15	11	14	2	142
# of countries with no limits	0	6	10	8	5	2	0	1	7	7	2	2	50
Developing countries (69)													
# of countries with scheduled commitments	48	52	30	12	8	10	60	17	64	24	40	4	369
# of countries with no limits	19	7	11	6	2	5	5	9	33	8	12	1	118
Least developed countries (29)													
# of countries with scheduled commitments	16	9	9	3	7	6	9	5	26	9	7	2	108
# of countries with no limits	8	4	7	3	6	5	4	3	15	6	2	2	65
Total (113)													
# of countries with scheduled commitments	79	76	52	29	24	30	84	27	105	44	61	8	619
# of countries with no limits	27	17	28	17	13	12	9	13	55	21	16	5	233

Legend

1. Business Services
2. Communication Services
3. Construction and Related Engineering Services
4. Distribution Services
5. Educational Services
6. Environmental Services
7. Financial Services
8. Health Related and Social Services
9. Tourism and Travel Related Services
10. Recreational, Cultural and Sporting Services
11. Transport Services
12. Other Services not Included Elsewhere

Source: WTO Services Database and author's calculations

A general point that emerges from Table 2 is that a high proportion of developed countries have made mode three commitments across all service sectors, with the exception of health related and social services (only 5 of 15 developed countries have made commitments and only one of these commitments is without limits on national treatment or market access). All 15 countries in this group have made commitments with respect to business services, communication services, financial services and tourism and travel related services. On average, the developed countries have made mode three commitments in 80 per cent of service sectors and, of these, just under 30 percent are without limits on national treatment or market access. In contrast, developing countries have only made mode 3 commitments in 45 per cent of service sectors on average and, of these, only 14 per cent are without limits. The equivalent statistics for the LDCs are 31 per cent and 18 per cent, respectively.

In addition to the sectoral commitments made by Members, an understanding of the investment implications of the GATS also requires an evaluation of horizontal limits that Members have inscribed in their schedules and their Article II (MFN) exemptions. Table 3 summarises the numbers of horizontal limits on market access and national treatment related to mode 3. In an examination of scheduled horizontal limits, twelve general types appeared most frequently. A few countries even inscribed “unbound” limits with respect to mode 3 in general (i.e. all mode 3 commitments by these countries are open to future derogations from commitments made with respect to national treatment and market access). In the case of developed countries, most horizontal limits relate to notification requirements, land ownership restrictions, local employment requirements (mainly requirements that a certain number of board members be residents in the country in question) and subsidies relating to research and development.

Among the most important developing country horizontal limits on market access and national treatment are restrictions on land ownership and equity requirements. One important distinction between developed and developing countries concerns the nature of their horizontal limits relating to authorisation requirements. In the case of developed countries these requirements are mainly stand-alone administrative procedures (e.g. the registration of an investment). In the case of developing countries, however, authorisation requirements are usually linked to the various other requirements appearing in the list (i.e. authorisation for an investment is usually contingent upon other requirements being fulfilled).

Another general pattern associated with horizontal limits is the relative emphasis placed upon market access and national treatment limitations by developed and developing countries. Whereas the former have twice as many national treatment limits than market access limits (28 versus 14), the opposite relative relationship holds true for developing countries (102 limits on market access versus 50 limits on national treatment). A final point concerning table 3 is the fact that the least developed countries, mostly in Sub-Saharan Africa, have the fewest horizontal limits on average (less than 0.5 horizontal limit per country).

Table 3. Horizontal limits on market access (MA) and national treatment (NT) related to mode 3

		Developed (15)		Developing (69)		LDC (29)		
	Type of measure	Limits on MA	Limits on NT	Limits on MA	Limits on NT	Limits on MA	Limits on NT	TOTAL
1	authorisation/notification requirements	7	3	27	3	5	1	46
2	equity requirements	0	0	17	7	1	0	25
3	restrictions on land ownership	2	8	20	14	3	1	48
4	debt-equity requirements	0	1	0	2	1	1	5
5	restrictions on remittances	0	0	7	9	0	0	16
6	subsidies	0	8	1	3	0	0	12
7	local employment requirements	2	7	9	6	0	0	24
8	forex requirements	0	0	3	2	0	0	5
9	sectoral limits	3	1	12	2	0	0	18
10	technology transfer requirements	0	0	4	1	0	0	5
11	local content requirements	0	0	2	1	0	0	3
12	unbound	0	0	1	2	1	1	5
	Total	14	28	102	50	10	3	207

Source: WTO Services Database and author's calculations

Other Agreements in the WTO have various reporting and disclosure requirements that can be used to gain information on the investment regimes of Members. For example, the Agreement on Trade-Related Investment Measures requires that countries notify their non-conforming TRIMs (article 5.1) and notify national sources and publications in which information on TRIMs can be found (article 6.2). However, it should be noted that only 2 African countries have notified non-conforming TRIMs under article 5.1 (out of a total of 37 notifications) and only 13 African countries have notified sources where information on TRIMs can be found (out of a total of 75).

ii. UNCTAD

UNCTAD conducts, at the request of member countries, investment policy reviews. These cover the performance of the country in question with respect to foreign investment, a detailed explanation of the policy framework for foreign investment (including an evaluation of aspects of the policy framework that constitute impediments to foreign investment) and proposals for improving the foreign investment regime.

To date, investment policy reviews in Africa have been prepared for Uganda, Mauritius, Ethiopia, Tanzania, Botswana, Ghana and Lesotho. An important feature of UNCTAD's IPRs is a follow-up programme, involving an evaluation of, first, whether the strategic recommendations in the original IPR were adopted and, second, whether the proposed reforms led to improvements in the country's foreign investment performance. One of the innovative features of UNCTAD's IPRs is that these usually involve firm-level surveys in the country. As such, the evaluation of the investment regime of a given country and the identification of impediments to investment is based largely on the experiences of firms themselves.Table 4 summarizes some of the main impediments to foreign investment identified in IPRs that have been completed to date.

Table 4. Examples of impediments to foreign investment identified in UNCTAD IPRs

Country	Main impediments to foreign investment
Botswana (2002)	Employment policy, land policy and competition policy.
Uganda (2000)	Administrative and bureaucratic bottlenecks (which negate the high standard rules in place), low quality infrastructure.
Lesotho (2003)	Land policy, tax system, employment policies, commercial law and accounting
Tanzania (2001)	Labour laws, commercial and contract law, tourism and fishery regulations.

iii. World Bank and IMF

The World Bank and IMF have a number of programmes that serve to shed light on various dimensions of the investment regimes of African countries. For example, MIGA published a detailed foreign investment survey in 2002 that highlighted both the future plans of MNEs as well as the factors they consider most important in their foreign investment decisions. Among the most important factors identified are access to customers, stable social and political environments and ease of doing business (table 5).

Table 5. Top 20 location factors[4]

Access to customers	77
Stable social and political environment	64
Ease of doing business	54
Reliability and quality of infrastructure and utilities	50
Ability to hire technical professionals	39
Ability to hire management staff	38
Level of corruption	36
Cost of labour	33
Crime and safety	33
Ability to hire skilled labourers	32
National taxes	29
Cost of utilities	28
Roads	26
Access to raw materials	24
Availability and quality of university and technical training	24
Available land with all services in place	24
Local taxes	24
Access to suppliers	23
Labour relations and unionization	23
Air services	23

Source: World Bank Group/MIGA (2002).

That these key factors in the foreign investment decisions of MNEs have generally been problem areas for a number of African countries is reflected in the generally low importance that the firms in the MIGA survey ascribed to various African countries in their future investment plans. Tables 6 and 7 compare the percentage of firms surveyed that indicated that they are either “very” or “somewhat” interested in various countries in Africa and Asia, respectively. A comparison of these survey results highlights two points. First, although African countries are on average less attractive to foreign investors than countries in, for example, Asia, some African countries stand out in terms of their high scores, especially with respect to their attractiveness to MNEs in service sectors. Second, whereas MNEs rank Asian countries more or less equally as between manufacturing and services, African countries are ranked 50 per cent higher on average as attractive destinations for FDI in services than in manufacturing. This “gap” in attractiveness is most pronounced for Kenya, for which only 1 per cent of companies expressed any interest in the country for investment in manufacturing but 10 per cent expressed interest for investment in services. What this suggests is the need to examine whether and to what extent these gaps are a function of differences in the regulatory frameworks governing investment in manufacturing and services, respectively.

[4] Percentage of companies surveyed that were either “very” or “somewhat” interested in the country.

Table 6. Africa/Middle East as an investment location[5]

	Manufacturing	Services
South Africa	11	12
Saudi Arabia	8	10
Israel	6	8
Egypt	6	16
Mozambique	6	2
Iran	5	7
Cote d'Ivoire	5	3
Morocco	5	10
Nigeria	5	8
Kuwait	4	5
Syria	4	3
Mali	4	2
Mauritius	4	2
Senegal	4	5
Tanzania	2	0
Ghana	1	5
Kenya	1	10
Jordan	0	5
Lebanon	0	3
Ethiopia	0	2
Uganda	0	5

Source: World Bank Group/MIGA (2002).

Table 7. Asia/Pacific Rim as an investment location[6]

	Manufacturing	Services
China	48	29
Thailand	24	16
Australia	23	34
Singapore	22	25
India	20	20
Malaysia	20	18
Indonesia	19	12
Japan	17	23
Republic of Korea	17	20
Taiwan	13	21
Philippines	13	16
Vietnam	12	13
New Zealand	11	15
Hong Kong	10	23
Pakistan	6	7
Cambodia	2	5

[5] Percentage of companies surveyed that were either “very” or “somewhat” interested in the country.

[6] Percentage of companies surveyed that plan foreign investments in Asia/Pacific RIm before 2005.

Source: World Bank Group/MIGA (2002).

Investment has also come to play an increasingly important role in the IMF and World Bank Poverty Reduction Strategy Papers (PRSPs) (IMF, 2003).[7] Among the initiatives associated with PRSPs in Africa have been efforts by Mauritania to simplify its tax structure, a reduction in the time required to process papers required to establish a new business in Burkina Faso from three months to 15 days and the reduction in the number of formalities involved in setting up a business from 15 to 8 and a revision of the commercial code in Mozambique. One of the overarching findings in PRSPs is that corruption and weak governance are major impediments to investment, including foreign investment. This problem is exacerbated in the context of investment regimes that are complex and opaque, with multiple layers of bureaucracy involved and numerous administrative formalities (table 8).

Table 8. A comparison on administrative procedures in Africa and the OECD

Procedure	Sub-Saharan average	OECD average
Starting a business (# procedures)	11	7
Flexibility of hiring index[8]	49	49
Flexibility of firing index	40	28
Enforcing contracts (# procedures)	30	17

Source: World Bank (2003).

4. Conclusion: How to overcome investment barriers in Africa

This paper has surveyed some of the principal sources of information on barriers to investment in Africa. One of the key issues highlighted in most studies of the investment regimes in Africa is that an understanding of how a given regulatory regime is actually implemented is critical to understanding the impact of various rules, regulations and laws on foreign investment. It is for this reason that many studies of investment regimes have made use of firm-level surveys to find out what firms themselves consider the most important impediments to investment.

Across the various publications and studies that we have surveyed there is something of a consensus with respect to the main impediments to foreign investment in Africa. Apart from massive disruptions to various economies involving war and strife, the key impediments to investment in Africa would seem to involve heavy administrative requirements, corruption, burdensome tax systems and restrictive policies with respect to land ownership.

What can African countries do to reduce impediments to foreign investment? The removal of impediments to foreign investment in Africa requires three fairly intuitive steps. These are:

1. Identification: before barriers to investment can be removed, they need to be identified. Our survey indicates a growing body of studies on investment impediments in Africa but the coverage remains limited. The WTO TPRs cover the investment regime but do not consider how the regime is administered in practice. The UNCTAD IPRs are specifically focussed on investment barriers and include firm-level surveys to determine what parts of

[7] As of July 2003, 28 PRSPs have been initiated in African countries.

[8] The index goes from 0 to 100 with 100 representing the highest level of regulation. For methodological details go to http://rru.worldbank.org/doingbusiness/default.aspx

the regime act as impediments in practice but these reviews are only conducted by countries that request them. Various surveys and reports by the IMF and World Bank, including the PRSPs, deal with investment issues. However, according to the IMF and the Bank, “an ongoing concern…has been that PRSPs rarely use specific analysis (such as firm-level surveys) to identify priorities for improving the investment climate” (IMF, 2003, p. 23). As such, there continues to be a need for a more concerted effort at documenting impediments to foreign investment in Africa.

2. Evaluation: Once barriers to investment have been identified, a decision needs to be taken as to whether the barriers should be kept or not. Many barriers are intended to serve a particular function (e.g. to protect domestic producers) and the benefits of the barrier is expected to outweigh the costs. However, this calculus would need to be revisited from time to time as conditions change to make sure that the original logic behind a barrier actually still remains. Countries are, of course, always free to sacrifice efficiency and economic development in the name of other objectives but it remains that in many instances the assumed benefits never materialise.

3. Action: Once barriers to foreign investment have been identified and evaluated we are left, in theory with two lists. A list of barriers that we choose to keep (for whatever reasons) and a list of the barriers we want to eliminate. All that remains to be done at this stage is to eliminate the barriers in the second list.

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