Tanzania

# Country Update

## Trade and Investment in the Multilateral Trading System: EAC Stakeholder Perspectives

Provided by

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## 1. Introduction

Since 1986, Tanzania has been pursuing social economic reforms aimed at promoting growth through market liberalization. Notwithstanding this positive effort, the country continued to face many developmental problems. Beginning in 1995, the government took initiative of preparing National Developmental Vision 2025 which was completed and launched in 1999. The Vision spells out national long-term development goals priorities and direction, and aims, amongst other things, to transform Tanzania from low productivity agricultural economy to semi-industrialized economy, led by modernized and highly productive agriculture activities. The policy reforms undertaken from 1980s have to a great extent contributed in attracting a considerable amount of foreign resources in terms of Foreign Direct Investment (FDI), Official Development Aid (ODA) and remittances. These foreign resources have been used to augment the limited domestic saving and bring with them finance, managerial skills, technology, marketing expertise and market link all of which are most needed for the economic development. These benefits have thus influenced the country to increasingly put in place the environment necessary for attracting their inflows.

With regard to promotional efforts, the Government continued to promote investments by offering a well-balanced and competitive package of fiscal incentives to investors both international and domestic with a view to attract new investments. In addition, the Government signed new bilateral investment agreements (BITs), which are aimed at promoting and protecting new and existing investments. It also signed double taxation treaties (DTTs) with various countries.

### The Investment Policy framework

The investment legal regime in Tanzania opened up to foreign investors during the mid-1990s as a result of radical policy shift from state controlled investment towards private sector. This was made possible through the crafting of National Investment Promotion Policy (1996), legislation of Tanzania Investment Act (1997) and establishment of Tanzania Investment Centre (1997). Through these initiatives as well as other plans, legislations, and strategies, the Government of Tanzania managed to attract a considerable number of investors in various sectors such as mining, agriculture, telecommunications, manufacturing, tourism, energy, oil and gas.

Notwithstanding the aforementioned initiatives that the government has been pursuing in the recent past towards promotion of investment growth, the legal framework for investment climate remains not only complex but also out-dated. This is echoed in the OECD Investment Policy Review carried out in Tanzania in 2013, which highlights a number of anomalies that inhibit investment promotion in Tanzania.

The major laws and regulations frameworks that guide investment in Tanzania are:

i. ***Tanzania Investment Act, 1997***: This is the primary law that sets out the legal criteria and guidelines for investors in the Tanzanian economy. However, this Act does not apply to: (a) mining and oil exploration currently covered under the Mining Act, 1998, and the Petroleum Exploration and Production Act, 1980; (b) Zanzibar, which is administered under separate legislation; or (iii) investments below US$300 000 for foreign investors (wholly owned or joint ventures) and below US$100 000 for local investors. This Act provides protection against nationalization, access to credit from domestic sources and right for investor to transfer capital and profits after having paid all the taxes required by law in Tanzania.

   Mnali (2012) also points out that this Act provides for tax incentives to investors, which provide exemption of import duty to capital goods including establishment facilities for investment by 90% and reduced VAT on project capital goods includes deemed capital goods to 10%. He further reveals that the Tanzania Investment Act (1997) provides foreign investors with possibility to seek for assistance to obtain land for investment, automatic immigration quota of up to 5 expatriates at the initial stage of the project and strategic investor status granted to projects that put up investment in remote and marginalized regions.

ii. ***Business Activities Registration Act (BARA), 2007***: This replaced the Business Licensing Act No. 25 of 1972 and established licensing regulations for business registration and operations, which are implemented by the Business Registration and Licensing Agency (BRELA), within the Ministry responsible of Industry, Trade and Investment.

***iii.*** ***Land Act No. 4 (Cap 113), 1999, and Land (Amendment) Act No. 4, 2004***: The Land Act No. 4 provides basic guidelines in relation to general and urban land, management/ administration of land, as well as settlement of disputes and related matters. Through the Land (Amendment) Act, investors are allowed to obtain land for investment purposes but only through TIC, which issues derivative or occupancy rights from the government. The amendment act also provides provisions to facilitate the granting of mortgages to secure loans, and to make it easier for lenders to take possession of and sell mortgaged land.

iv. ***Village Land Act No. 5 (Cap 114), 1999:*** This Act provides for the management and administration of land in villages and deals with customary rights of occupancy. USAID (2011) establishes that village land falls into one of the following three (3) categories: communal land (e.g. public markets and meeting areas, grazing land, burial grounds); occupied land (usually an individualized holding or grazing land held by a group); and vacant land (available for future use as individualized or communal land, specifically encompassing unoccupied land within the ambit of village land.

v. ***Employment and Labour Relations Act, 2004***: This Act makes provision for core labour rights, establishes basic employment standards and a framework for collective bargaining, and provides for the prevention and settlement of disputes. TIC (2005) elaborates that this law was enacted to create a labour regime whose policies; laws and regulations promote and protect labour, at the same time allowing enterprises to grow and compete.

Other laws and regulations are: (i) The Income Tax Act 2004; (ii) Companies Act No. 12 of 2002; (iii) Export Processing Zones Act No. 11 of 2002; (iv) Commission for Human Rights & Good Governance Act No. 7 of 2001; (v) Mining Act 1998; (vi) Financial Laws Miscellaneous Amendments Act 1997; (vii) Tanzania Revenue Authority Act No. 11 of 1995; (viii) Immigration Act No. 7 of 1995; (ix) Special Economic Zones Act 2006; (x) Standards Act 2009.

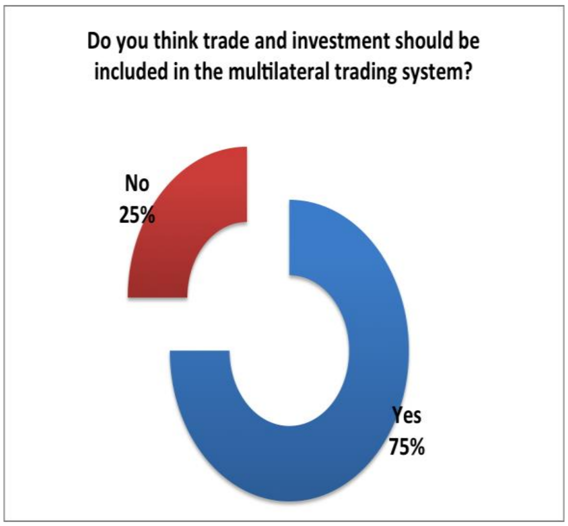
## 2. Stakeholders' Perspectives

### *a. Trade and Investment as part of multilateral trading system*

A very formidable and fundamental question was raised to the researchers as to "What exactly made Investment and other Singapore issues being dropped during the 2003 Cancun Ministerial Conference?"

The answer to this was simple; Baldwin (2006)[1] clearly points out that the absence of greater commitments by the developed countries to reduce agricultural subsidies and lower import barriers on agricultural commodities led to this collapse.

It was apparent that, discussions with most of the respondents pointed out that trade and investment shouldn't be part of the WTO system.



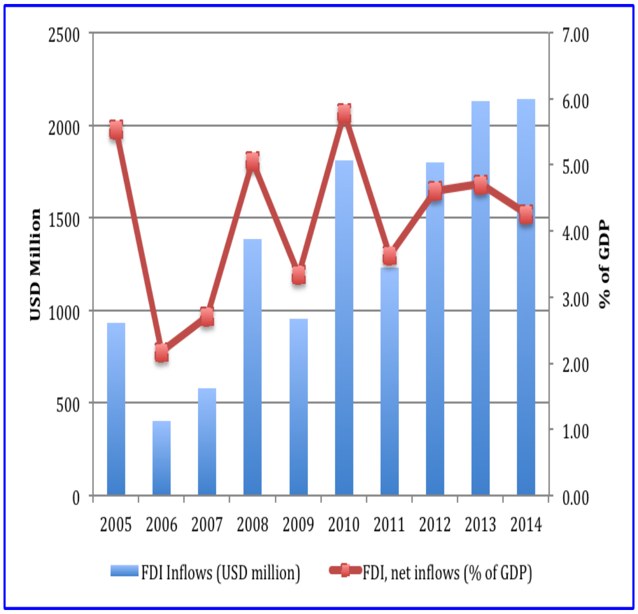

Most of these respondents strongly believed that bilateral trade and investment agreements play significant role towards attaining development in countries such as Tanzania. It is believed that through such bilaterals, Tanzania and LDCs as a whole are in better position to discuss terms that are more appealing as opposed to general consensus that would be reached at multilateral level. The fact that there has not been real proof that WTO would greatly promote increase in trade as opposed to bilateral trade agreements; hence it is still believed that with the current agreements, nations are in better position to plan and achieve their development objectives.

If the Doha round of negotiations is still inconclusive up to date on issues that are very pertinent to developing countries, I think this teaches us a lesson that having a crucial matter such as trade and investment at the WTO may lead to a stalemate.
***John Shilinde, Researcher, ESRF***

As depicted by figure below, in spite of not a having liberalised multilateral investment system, Tanzania has been able to attract considerable amount of investments into the country over the past decade. This provides enough proof that the BITs should be the way to go for increasing investments as opposed to liberalisation.

[1] Baldwin, Robert E. "Failure of the WTO ministerial conference at Cancun: reasons and remedies." (2006).

**Figure 1: Tanzania FDI Inflows and Share to GDP, 2005-2014**




It was also raised that as the fundamental principles of WTO are trade liberalization and non-discrimination, having investment as part of a multilateral agreement would defeat the whole purpose of attaining inclusive and sustainable development goals that the developing countries are striving to achieve. This is mentioned due to the fact that, having such an agreement in place and taking into consideration the fundamental overlying principles of the WTO, we are more than likely to see domestic policies being ruled out and create an environment of which only the strong will survive and the environment being put into jeopardy. The general assumption should be investments would not automatically deliver benefits without adequate domestic flanking policies.

***b. Implications to both developed and developing countries***

In order for investment to be considered in the WTO negotiations, there is still a general feeling that much of what developing countries were advocating for during the DDA rounds have not been taken into serious consideration. It is understood that, with more than two decades passed, still developing countries are faced with the same challenges that make them fail to compete fairly especially on investments. This being the case, if such an agreement is put in place; there are several implications that will be observed in developing countries:

- Increase in influx of FDI into the countries but this will be to the expense of the growth of developing countries' private sector.
- Denied right of the developing countries to regulate FDI at national level such as regulating quality of investment, which in turn develop the productive capacities of the country and ensuring positive spill over effects to the local economy.
- The WTO dispute settlement mechanism to enforce investment disciplines may end up being too costly to developing countries.

It is believed and assumed that, with the economic strength endowed by the developed countries, they are the most likely to gain from a multilateral investment agreement as opposed to developing countries. The reason being that it is an open truth that when such a system is in place, we will see a great shift of movement by investors to developing countries. This can be seen as beneficial to developing countries, however, with limited control by the governments of the developing countries, there are more chances of seeing increased capital flights and massive wealth generated that will be reinvested in developed countries at the expense of development to developing countries.

The capacities of the private sector in developing countries is still very small and it is obvious that opening up would simply result to their ultimate demise.

### c. Main Challenge

In the event that this agenda is being tabled for negotiation at the WTO level, the main challenge that would arise and would be critical, is providing scientifically proven evidence on the extent to which such agreement will result not only to increase in investments, but also ensure transparency, protect own national development interests, and promote sustainable development goals.

For a country like Tanzania, a very significant issue would be whether such move will be aligned to the general industrialization national agenda for national interests.

The developed countries have a lot to do to convince developing countries that what they are bringing on the table has development as a cornerstone, rather than just liberalisation.

### d. General Recommendations

It is important to take into consideration that for a country like Tanzania to be able to comply once trade and investment is an integral part of the WTO, then technical assistance and support for capacity building is made as an integral aspect during negotiations and should form as a critical component of the agreements being negotiated.

To the policy makers and Geneva Ambassadors, the following forms the key recommendations for consideration:

*i.* Need to refrain from any steps, which might undermine governments' rights to regulate FDI to ensure that investment generates sustainable economic activity. In doing so, push for genuine development provisions in all agreements that will allow host countries, and not just investors, to benefit from FDI

*ii.* More importantly, seek for evidence on the role, which trade and investment play, for economic development and growth.

*iii.* Make sure that the negotiations address issues that have proved to be lacking in the bilateral agreements and which can only be addressed at the multilateral level.

## CUTS International, Geneva

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, and Ghana have made our footprints in the realm of economic governance across the developing world.



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