



## WTO STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

### NEGOTIATING MEETING HELD ON 8 AND 9 OCTOBER 2020

#### *Summary of discussions by the Coordinator<sup>1</sup>*

An open-ended negotiating meeting of the Structured Discussions on Investment Facilitation for Development, coordinated by Mr. Mathias Francke (Ambassador-designate, Chile), was held on 8 and 9 October 2020. As indicated in the annotated agenda circulated to all WTO Members ahead of the meeting,<sup>2</sup> the purpose of this meeting was to continue the negotiations on a multilateral framework on investment facilitation for development.

In keeping with the Joint Initiative's open, transparent and inclusive nature, all WTO Members were invited to attend the meeting.

#### **1 BRIEF INTRODUCTION OF NEW TEXT PROPOSALS SUBMITTED BY MEMBERS SINCE THE LAST MEETING**

1.1. Two written communications were submitted prior to the meeting – one submitted by two Members and containing general comments on the negotiations and outlining areas of interest<sup>3</sup> and another one providing a general view of the negotiations as well as concrete drafting suggestions to insulate the investment facilitation framework from obligations in International Investment Agreements (IIAs).<sup>4</sup>

1.2. In the first communication, the two Members concerned highlighted the importance of clarifying the scope of the initiative, and of insulating any outcome from existing and future investment treaties, including with respect to investor-state dispute settlement. Both delegations also proposed that consideration should be given to concrete actions that capital exporting Members could take to incentivize outward investment in a manner that promotes sustainable development in the host state. They held the view that the future framework on investment facilitation for development must also address capacity building in developing countries, including small vulnerable economies (SVEs) and LDCs, in a manner which encourages investment targeted towards their sustainable development needs. Furthermore, both delegations were of the view that technical assistance and capacity building should be available to developing countries, including SVEs and LDCs, during the ongoing negotiations, and welcomed any support that could be provided to assist in undertaking needs assessments to determine any policy, legal, institutional, human resource or other gaps in the context of the obligations under negotiation.

1.3. Several delegations commented on the communication and stressed the importance of promoting sustainable investment. They also highlighted that development was at the core of the initiative and looked forward to further discussing provisions on special and differential treatment. One Member further agreed that the promotion of sustainable investment was also the responsibility of home states, which prompted the proposals it had made on investors' due diligence. The same Member further reminded delegations that technical assistance and capacity building for participation

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<sup>1</sup> This summary, prepared and circulated under the Coordinator's responsibility, provides a non-exhaustive, illustrative review of the issues addressed by Members at the meeting.

<sup>2</sup> Document INF/IFD/W/26, dated 2 October 2020.

<sup>3</sup> Document INF/IFD/RD/56, dated 6 October 2020.

<sup>4</sup> Document INF/IFD/RD/57, dated 12 October 2020.

in the negotiations was already provided by international organizations, such as the ITC and the World Bank. Finally, another Member supported the call made in this communication to insulate the investment facilitation framework from IIAs.

1.4. In the presentation of the second communication, the Member concerned focused on the concrete drafting proposals contained therein, which aimed at separating and insulating the future investment facilitation framework from Members' obligations in their IIAs. In this Member's view, in addition to the exclusion of market access, ISDS and investment protection, the framework should include a provision banning the interpretation of provisions in the framework as a basis of claims under those IIAs. Furthermore, the framework should separate the scope of its obligations from other IIAs' obligations so that a breach of the framework could not be considered as a breach of any provisions in IIAs. Finally, in the context of MFN, the framework should provide that it would not allow an importation of the framework's obligations into any other IIA, and vice versa.

1.5. Several delegations showed interest in the proposal, which had not yet been circulated at the time of the meeting and looked forward to further engaging in discussions with this proponent.

## **2 NEGOTIATIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT**

2.1. Participating Members continued their negotiations on the basis of the latest version of the informal consolidated text.<sup>5</sup> Negotiations resumed where they were adjourned at the previous meeting, and focused on completing the review of the provisions on transparency (Section II of the informal consolidated text) and on streamlining and speeding up administrative procedures and requirements (Section III of the same text). The provisions on enquiry points (in Section II) were left outside of the discussions at this meeting, since they will be addressed together with the provisions on contact/focal points and similar mechanisms in a subsequent meeting.

2.2. As regards Section II of the informal consolidated text, participating Members discussed the drafting of the provisions on publication and availability of measures and information, notification to the WTO, and the specific exceptions to obligations on transparency. The provisions on information to be published when an authorization is required to invest in a country were addressed in the context of Section III due to its relationship with provisions on investment authorization procedures included therein.

2.3. Before starting the paragraph-by-paragraph discussion on the provisions in Section III, participating Members held an informal conceptual discussion on the scope of that section as well as of specific provisions contained therein. The discussion was based on guiding questions sent by the Coordinator to all Members in advance of the meeting. During this discussion, a preference was expressed by participating Members to focus on investment authorization procedures.

2.4. After this informal conceptual discussion, participating Members started the discussion of Section III covering the provisions on the administration of measures of general application, the reduction and simplification of administrative procedures and documentation requirements, the criteria for administrative procedures, authorization procedures, treatment of incomplete and rejection of applications, fees and charges, information to be published when an authorization is required for investments, the periodic review of administrative procedures and requirements, the use of ICT/e-government including electronic applications, and the independence of competent authorities.

2.5. In concluding the meeting, the Coordinator praised the high level of engagement displayed by participating Members. In his view, discussions showed significant common ground among delegations as well as many similarities in the different proposals concerning the provisions in Sections II and III of the informal consolidated text addressed so far.

2.6. Taking as a basis Members' written proposals submitted for this meeting, those already inserted in the informal consolidated text, as well as the detailed discussions on Sections II and III at this and the September meetings, the Coordinator announced that he would prepare, under his responsibility, revised draft text consolidating text proposals, eliminating redundancies and streamlining the current text of those provisions addressed thus far. He also announced that he

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<sup>5</sup> Document INF/IFD/RD/50/Rev.3, dated 7 October 2020.

would convene an open-ended intersessional negotiating meeting on 29 October to discuss such drafting suggestions. He expressed the hope that this would enable the negotiations to make progress and show concrete results by the end of the year.

2.7. Participating Members welcomed the initiative by the Coordinator to put forward revised text for the provisions discussed, and to hold an intersessional meeting.

### **3 NEXT MEETING**

3.1. As indicated above, an open-ended intersessional meeting to discuss the revised text by the Coordinator will be held on 29 October 2020. Following that, as foreseen in the schedule of meetings, the next regular negotiating meeting will be held on 9-10 November 2020 to continue the discussion of provisions in the informal consolidated text.

3.2. The Coordinator encouraged all Members wishing to do so to send their text proposals or contributions as early as possible before the November meeting. A revision of the informal consolidated text incorporating the latest written proposals will be circulated ahead of the meeting.

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