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**WTO STRUCTURED DISCUSSIONS ON
INVESTMENT FACILITATION FOR DEVELOPMENT**

NEGOTIATING MEETING HELD ON 25 AND 26 JANUARY 2021

Summary of discussions by the Coordinator¹

An open-ended negotiating meeting of the Structured Discussions on Investment Facilitation for Development, coordinated by Ambassador Mathias Francke (Chile), was held on 25 and 26 January 2021. As indicated in the annotated agenda circulated to all WTO Members ahead of the meeting², the purpose of this meeting was: (a) for the Coordinator, to debrief Members about his recent informal bilateral consultations with interested Members and briefly present the organization of work for the first half of 2021; (b) to discuss the revised draft text prepared by the Coordinator circulated to all Members on 13 January 2021; and (c) to continue the negotiations on an Agreement on investment facilitation for development (IFDA).

**1 DEBRIEFING ABOUT THE COORDINATOR'S INFORMAL BILATERAL CONSULTATIONS
AND ORGANIZATION OF WORK FOR THE FIRST HALF OF 2021**

1.1. Following an invitation sent to all Members, the Coordinator conducted informal bilateral consultations with a large number of Members, including developing and least developed country (LDC) Members, in the week prior to the plenary meeting. From those consultations he gathered that Members' shared objective for this new phase of the negotiations was to progress as much as possible on the development of the specific provisions of the future IFDA – keeping in mind the final objective of reaching a substantive outcome at MC12. Work would need to be organized accordingly, and mid-term objectives and milestones would need to be set.

1.2. Turning to the organization of work, the Coordinator explained that the proposed calendar of meetings (INF/IFD/W/29) provided for monthly two-day negotiating meetings between January and July 2021. In addition, one-day intersessional meetings might be held, as necessary. During the upcoming months, the negotiations would continue to be conducted on the basis of the Informal Consolidated Text,³ and the Revised Draft Text prepared by the Coordinator.

1.3. On the process itself, the Coordinator considered that it had become evident that work must be stepped up, particularly on some key provisions/sections of the future Agreement. Part of that work could be conducted in "small groups" or "discussions groups" focusing on specific topics. Such work in small groups needed to be guided by some basic parameters to ensure transparency and inclusivity, as well as concrete outcomes. Firstly, small groups shall be open to all interested Members, and shall report to the plenary. All Members must be informed in advance of the dates when such groups would meet. In addition, the facilitators of the discussion groups shall remain in close contact with the Coordination – so that the Coordination may be able to assist their work where and when needed. Secondly, the groups' work shall be focused and outcome oriented – with clear milestones and the objective of contributing with concrete options and text proposals to the plenary. As to the specific sections or provisions that could be addressed in small/discussion groups, the consultations showed delegations' interest in focusing, notably, on scope and the 'firewall' provisions, and transparency. Other issues might emerge as the negotiations advance. The Coordinator confirmed that Colombia would continue to coordinate the discussion group on scope and firewall provisions – based on the above-mentioned parameters. If needed, the Coordinator might also convene informal groups on specific elements or issues, in which case full transparency would also be ensured.

¹ 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.

² Document INF/IFD/W/30 dated 20 January 2021.

³ Latest version contained in document INF/IFD/RD/50/Rev.8 – updated on an ongoing basis.

1.4. The Coordinator also encouraged Members who had submitted proposals covering the same provisions to work together and submit joint proposals, with a view to facilitating convergence around specific elements or issues. Those joint proposals, as well as other proposals - including revised ones - should contain specific drafting text and ideally be based on the Revised Draft Text, taking into account on-going discussions.

1.5. Another important point that emanated from the consultations was the need to further increase Members' participation in the negotiations. With that in mind, the Coordinator indicated that he would reach out to the representatives of the different regional groupings, as well as other major groups in the coming weeks to discuss ways to ensure that participants are not left behind in the process, and that appropriate channels can be found for them to express their views, interests and concerns on the issues being discussed.

1.6. Turning to the mid-term objective of this new phase of the negotiations, the Coordinator expressed his intention to prepare and circulate - around Easter - a compilation of all the Revised Draft Texts presented by the Coordination and discussed by participating Members by then - the 'Easter Text'. In the relevant sections and subsections covered by the 'Easter Text', the latter would replace the 'Informal Consolidated Text', and the relevant proposals by Members would be included in an Annex. In sections and subsections where the Coordinator had not presented 'Revised Draft Text', the Informal Consolidated Text, together with the proposals submitted by participating Members, would remain unchanged. The immediate objective would be to cover as many provisions as possible in the 'Easter Text'. Between Easter and July, the idea would be to build upon the Easter Text, as a single text and main basis for drafting, enriching it as much as possible on the basis of discussions carried out both in the plenary and in small groups. At the meeting in July, participating Members would take stock of progress made and plan ahead.

1.7. The work plan and procedures outlined by the Coordinator were widely supported and endorsed by participating Members.

2 NEGOTIATIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

2.1 General introduction and discussion of new text proposals submitted by Members since the last meeting

2.1. Three new text proposals were presented at the meeting: i) a comprehensive proposal addressing various provisions spread over various sections of the Informal Consolidated Text;⁴ ii) a joint communication by two Members on the facilitation of the entry and temporary stay of business persons for investment purposes,⁵ which replaced the previous proposals on the same element separately submitted by the same Members; iii) a proposal regarding certain specific provisions contained in the informal consolidated text⁶; and, iv) a revised proposal on measures against corruption.⁷ The first three proposals were discussed in detail at this meeting, while the revised proposal on anti-corruption would be addressed at a forthcoming meeting due to lack of time.

2.2 Discussion of new elements contained in proposals submitted by Members since the last meeting

2.2. Under this agenda item, one of the proponents referred to above⁸ presented its proposal concerning new elements, namely: a) compliance with domestic laws and international obligations (section III *Quater* of the Informal Consolidated Text); b) maintenance of public health, labour, environmental and safety standards (element 7 in section VI); and c) social and environmental responsibility (element 10 in section VI).

2.3. On the first issue, in the Member's view, the future IFDA should strike a balance between Members' and investors' commitments. Addressing questions raised by other Members, it clarified that, in its view, the Agreement should apply from the moment the investment was authorized. Therefore, it would not apply to the initial stages (prospecting activities, etc.) of a given investment.

⁴ Document INF/IFD/RD/64 of 12 January 2021.

⁵ Document INF/IFD/RD/65 of 19 January 2021.

⁶ Document INF/IFD/RD/66 of 20 January 2021.

⁷ Document INF/IFD/RD/67 of 25 January 2021.

⁸ Document INF/IFD/RD/64.

As for the maintenance of standards on public health, labour, the environment and safety, the proponent explained that the proposal aimed at ensuring that Members recognized that national laws and regulations in this area should not be relaxed to encourage investment. This was closely related to the approach outlined above regarding investors' responsibilities. Finally, the proposal underlined the social and environmental dimensions of investments taking a positive approach to social and environmental responsibility. The objective was to promote socially responsible investment so as to turn it into a competitive advantage for companies committed to social and environmental responsibility.

2.4. In their general comments on the proposal, some Members questioned limiting the scope of the future Agreement to post-establishment only – stating that transparency and some obligations related to authorization procedures should apply also at the pre-establishment stage. Further, doubts were cast as to whether specific provisions on compliance with domestic law were necessary in the context of a future IFDA.

2.5. The proponent indicated that it was ready to continue discussions with any interested Members with a view to making progress on the future IFDA.

2.3 New proposals contained in Section III *bis* of the Informal Consolidated Text

2.6. Under this agenda item, participating Members discussed the joint proposal by two Members on facilitation of the entry and temporary stay of business persons for investment purposes⁹, as well as a new text proposal on facilitation of the movement of natural persons for investment purposes contained in one of the other proposals presented at the meeting.¹⁰

2.7. In presenting their joint proposal,¹¹ the two Members concerned explained that they had removed elements from their previous individual proposals so as to make them more palatable. One of the proponents considered that further guidance from Members regarding its proposal on multiple entry visas and the definition of businessperson would be helpful.

2.8. In presenting the other proposal, the Member concerned explained that it applied only to measures affecting the entry and temporary stay of natural persons of a Member who carried out investment activities in the territory of another Member. The proposal did not apply to measures affecting natural persons seeking to access the labour market of a Member, nor to measures relating to citizenship, residence or employment on a permanent or temporary basis – nor would it prevent a Member from applying measures to regulate the entry or temporary stay of natural persons in its territory. The objective was to grant the necessary permissions for the entry, exit, stay and work of natural persons of another Member having a permanent or temporary relationship with the investment, such as administrators, experts and technicians, in accordance with the legislation in force in the Member concerned. To this end, it was proposed that Members make available online information on the relevant requirements and procedures for admission and temporary stay. It was also proposed that each Member process within a reasonable period of time complete applications for admission and temporary stay submitted by natural persons of other Members and notify the applicant of the decision on his/her request.

2.9. While a few Members supported the proposals in general terms, still raising questions and concerns over specific aspects – other Members considered that both proposals addressed issues pertaining to immigration policies, which fell outside the scope of an agreement intending to facilitate investments.

2.10. In summing up the discussions, the Coordinator considered that more work was required on this issue and encouraged the proponents to further discuss with other Members, in particular with those who questioned the inclusion of these type of provisions in a future IFDA.

⁹ Document INF/IFD/RD/65.

¹⁰ Document INF/IFD/RD/64.

¹¹ The joint proposal (INF/IFD/RD/65) replaces the previous proposals on this element submitted by each Member, respectively, in documents (INF/IFD/RD/48) and (INF/IFD/RD/49).

2.4 Discussion of the Revised Draft Text prepared by the Coordinator

2.11. Participating Members reviewed the latest version of the Revised Draft Text put forward by the Coordinator covering both the revisions made to the previous version and newly added provisions.¹² The revisions to the previous version of the revised draft text¹³ were based on the discussions held at the intersessional meetings of 29 October and 27 November 2020, and concerned articles 3 and 4 in section II; articles 7, 8, 10, 11, 12, 13 and 14 in section III; as well as articles 15 and 16 in section IV. Newly added revised draft text, based on Members' discussions held at the intersessional meetings on 23 and 27 November 2020 and at the regular meeting on 7-8 December 2020, were put forward on paragraphs 1.4 and 1.5 of article 1 (Scope) in section I, and article 28 (WTO Committee on Investment Facilitation) in section VII. Overall, participating Members welcomed the latest version of the draft text, with some issues under the section on 'Transparency of investment Measures' to be discussed at the forthcoming meeting.

2.5 Continuation of the negotiations based on the Informal Consolidated Text

2.12. In the remaining time available, participating Members continued negotiations based on the latest version of the Informal Consolidated Text¹⁴ and any other available text proposals by Members not yet incorporated into it, as appropriate.

2.5.1 Risk management techniques and "silence is consent" principle (element 10 *Bis* in section III of the Informal Consolidated Text)

2.13. Discussions addressed a specific proposal on these issues submitted by a Member.¹⁵ Participants that commented on the proposal considered that the "silence is consent" principle was useful for investors and noted that the provision was drafted as an encouragement to Governments, but considered nonetheless that it might be difficult to incorporate it in an agreement. The proposal on risk management techniques was also deemed by some Members as too prescriptive. One Member suggested that these issues could be part of a work program in the future WTO Committee on Investment Facilitation.

2.14. The proponent indicated that it would work on a revised proposal on these issues.

2.5.2 Fees and charges – Financial services (element 12 *Bis* in section III)

2.15. The discussion was based on a specific proposal by a Member.¹⁶ The proponent explained that its proposal aimed at adapting certain provisions of an IFDA to the specific context of financial services, proposing alternative text to Article 12 (Fees and Charges) as it would apply to financial services. Several delegations agreed with the need for a specific provision on fees and charges applicable in the financial sector. In reply to a question, the proponent clarified that the proposal was not meant to add obligations to the general provision on fees and charges, but rather to cater for the specificities of financial services.

3 NEXT MEETING

3.1. The Coordinator informed participating Members that an intersessional meeting would be held on 9 February 2021. The main purpose of that meeting would be to hold a dedicated discussion on section II (Transparency of Investment Measures) of the Revised Draft Text, for which guiding questions would be circulated; and to discuss the "firewall" provisions (relating to the insulation of the future IFDA from international investment agreements - IIAs), on the basis of the outcome of the deliberations of the discussion group on scope-firewall. Time permitting, participants would continue negotiations on the basis of the informal consolidated text. As foreseen in the schedule of meetings, the next regular negotiating meeting would be held on 8 and 9 March 2021.

¹² Revised Draft Text by the Coordinator, restricted document without symbol, dated 13 January 2021 – which was circulated to all Members.

¹³ Document without symbol, dated 23 November 2020, circulated to all Members.

¹⁴ Document INF/IFD/RD/50/Rev.7, dated 19 January 2021.

¹⁵ Document INF/IFD/RD/58, dated 23 October 2020.

¹⁶ Document INF/IFD/RD/59, dated 10 November 2020.