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## WTO STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

NEGOTIATING MEETING HELD ON 19 AND 23 APRIL 2021

### *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 Ambassador Mathias Francke (Chile), was held on 19 and 23 April 2021. 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: (a) hold a first general discussion of the Consolidated Document ('Easter Text')<sup>3</sup>; (b) to discuss text proposals and contributions submitted by Members since the last meeting; (c) hold a discussion on the possible inclusion of a 'Most-Favoured Nation' treatment clause in the future Investment Facilitation for Development (IFD) Agreement; and (d) hold a debriefing session on the state-of-play of the investment facilitation for development negotiations for leading international organizations working in the investment facilitation field.

### **1 GENERAL DISCUSSION OF THE CONSOLIDATED DOCUMENT ('EASTER TEXT') AND THE ORGANIZATION OF WORK**

1.1. The Coordinator introduced and provided an overview of the Consolidated Document ('Easter Text') prepared under his responsibility on a without prejudice basis, in order to facilitate negotiations among participating Members. The Easter Text brings together, in one 'single text', the two working documents used to date in the negotiations, namely: (i) the 'Revised draft text' circulated to all Members and discussed by participating Members at least once at a meeting; and (ii) for those sections and provisions where no 'Revised draft text' exists, the 'Informal consolidated text', which includes both the 'Streamlined Text' (in black) and the text proposals submitted by Members to date (in blue) – as well as text contributions by discussion/small groups discussed at the plenary. Consequently, the Easter Text includes two types of provisions: on the one hand, those where 'convergence text' exists, which appear in 'plain text' (outside text boxes); and, on the other, those sections and provisions for which no 'convergence text' exists and where further work is needed (these are included in text boxes). The Coordinator explained that the aim of the 'text boxes' was to help focus participating Members' attention on those issues that required further work in the upcoming months.

1.2. Participating Members strongly welcomed the Easter Text, which they considered as an important milestone, and endorsed it as the basis for the negotiations in the upcoming months. It was highlighted that the Easter Text reflected the progress made by the joint initiative so far and that it outlined – with its seven sections and 36 provisions – the possible contours of the future IFD Agreement, while clearly bringing out those areas where further work was required.

1.3. With an aim to making as much progress as possible in the coming months, the Coordinator proposed a work plan<sup>4</sup> which identified and prioritized work areas for the period of April - July 2021,

<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/32 dated 13 April 2021.

<sup>3</sup> Consolidated Document by the Coordinator ('Easter Text') prepared pursuant to the work plan endorsed by participating Members at the meeting held on 25-26 January 2021, circulated to all Members in document INF/IFD/RD/74 dated 12 April 2021.

<sup>4</sup> Priority work areas for April - July 2021 sent to all Members on 22 April 2021.

focusing notably on those areas lacking common ground, for which further discussions were needed to identify possible 'landing zones'. He also presented a schedule of meetings<sup>5</sup> for the second part of the year in order to plan ahead and continue working constructively towards MC12. Both documents were well received and endorsed by delegations.

## 2 REPORTS BY SMALL/DISCUSSION GROUPS

2.1. The facilitators of the discussion groups respectively on 'Scope' and on the 'Facilitation of the Entry and Temporary Stay of Business Persons for Investment Purposes' (Movement of Business Persons - MBP) informed participants about their ongoing and future work. The Group on 'Scope' had held two meetings, on 19 March and 15 April 2021, and was working on possible landing zones regarding the *chapeau* of the 'Scope' provision. The facilitator of the Group on MBP informed that she had started informal bilateral consultations with interested Members and that the Group would hold its first meeting on 30 April 2021. Both groups are open to all interested WTO Members.

## 3 TRANSPARENCY OF INVESTMENT MEASURES (SECTION II OF THE 'EASTER TEXT')

3.1. Under this agenda item, participants discussed specific transparency provisions based on a proposal submitted by a Member.<sup>6</sup> The Member who submitted the proposal explained that it was the result of informal discussions with eight other delegations and that it had taken the 'Revised draft text' by the Coordinator as a basis. The proposal aimed at improving the overall consistency, streamlining and fine-tuning some of the language contained in specific provisions of Section II of the Easter Text – notably regarding the provisions on "publication and availability of measures and information", "information to be made publicly available if authorization is required for an investment", and "single information portal". A number of delegations supported the proposal – considering that it reinforced the internal coherence of the text and accommodated concerns expressed in the past meetings while providing flexibility where needed. While many of the participants favoured incorporating the proposal into the 'Easter Text', views still diverged notably on the 'single information portal' – preventing such incorporation at this point of time.

## 4 INFORMAL DISCUSSION ON A 'MOST-FAVoured NATION' TREATMENT CLAUSE

4.1. Participating Members held a rich conceptual discussion on the inclusion of a Most-Favoured Nation (MFN) treatment clause in the future IFD Agreement based on guiding questions prepared by the Coordinator and circulated in advance of the meeting.<sup>7</sup> The discussion showed a high level of engagement of participating Members, clarifying views held on this important issue. While many Members saw value in, and supported, the inclusion of a carefully defined MFN treatment clause, some delegations questioned the need and value-added of including such a clause in the future Agreement notably given the fact that most of its provisions would anyhow apply on an MFN/*erga omnes* basis given the nature of the provisions (notably transparency).

4.2. Based on the guiding questions, participants exchanged views on the different elements of an MFN treatment clause, including: its possible scope (how to define 'treatment' under the clause in order to circumscribe it to 'treatment' explicitly prescribed by the Agreement); the beneficiaries (all WTO Members or only the parties to the future Agreement); and exceptions to the MFN obligation. Most delegations who intervened stated that, under their domestic legal system, most of the measures and procedures to be included under a future IFD Agreement, in practice applied on an '*erga omnes*'/MFN basis already. Regarding the possible scope of the MFN clause, many delegations stressed the importance of limiting its scope only to the treatment explicitly prescribed in the future IFD Agreement and of clarifying the beneficiaries of the MFN treatment.

4.3. On the question of possible exceptions to the MFN treatment obligation, participating Members mentioned the need for an exception for economic integration agreements (notably free trade areas, customs unions) as well as for measures providing for recognition (e.g. autonomous or mutual recognition of qualifications and prudential requirements). Many delegations stated that these exceptions would be necessary for them if an MFN treatment clause was to be included. The treatment of special economic zones and of incentives (or other preferential conditions) applying differently across sub-federal entities were also mentioned as issues needing further analysis. It was

<sup>5</sup> Document INF/IFD/W/29/Rev.2 dated 22 April 2021.

<sup>6</sup> Document INF/IFD/RD/73 dated 7 April 2021.

<sup>7</sup> Guiding questions by the Coordinator sent to all Members on 14 April 2021

observed that, ultimately, any MFN exceptions would need to be drafted in light of the final wording of the future Agreement's substantive obligations. Some delegations reiterated the importance of a non-importation clause (firewall provision) in the MFN context. A delegation announced that it would submit a proposal on the MFN provision.

## **5 DEBRIEFING SESSION FOR INTERNATIONAL ORGANIZATIONS**

5.1. Following an invitation by the Coordinator, six international organizations, namely the International Trade Centre (ITC), International Monetary Fund (IMF), Organisation for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), World Bank Group, and Asia-Pacific Economic Cooperation (APEC) Secretariat participated in the debriefing session held in the margins of the negotiating meeting. The Coordinator updated the participating international organizations on the state-of-play of the ongoing IFD negotiations, while the international organizations presented their ongoing work and activities on investment facilitation related matters. The session generated a rich discussion among participants and showed great interest by both, the international organizations and participating WTO Members, to enhance cooperation in order to maximize synergies.<sup>8</sup>

5.2. Several delegations expressed their appreciation for this session and viewed the information provided by the international organizations' representatives as a great contribution to the future work of the initiative, notably regarding the implementation of the future Agreement and sustainable investment. The Coordinator announced that he would organize a dedicated session with leading international organizations (IOs) focusing on implementation and special and differential treatment (S&DT) provisions later this semester. The aim of this session would be to learn more about the IOs' technical assistance and capacity building activities in relation to IFD and to identify possible areas of cooperation in light of upcoming discussions on the special and differential treatment (S&DT), technical assistance and capacity-building provisions in the future agreement.

## **6 NEXT MEETING**

6.1. The Coordinator informed participating Members that an intersessional meeting would be held on 30 April 2021. Its main purpose would be to address certain provisions of the Easter Text (notably responsible business conduct and domestic supplier databases), as well as the financial exceptions (prudential carve-out).

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<sup>8</sup> The presentations provided by UNCTAD is available [here](#) and by World Bank Group is available [here](#). The publication on Investment Facilitation for Development by ITC is available [here](#).