



10 December 2021

(21-9272)

Page: 1/4

Original: English

WTO STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

NEGOTIATING MEETING HELD ON 2 AND 3 NOVEMBER 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 2 and 3 November 2021. As indicated in the annotated agenda circulated to all WTO Members ahead of the meeting², the objectives of the meeting were to: (a) have a conversation on participating Members' plans and expectations for MC12; (b) discuss provision 31 on 'Measures Against Corruption' based on 'Draft Text' prepared by the Coordinator; (c) continue discussing provision 4 ('Most-Favoured Nation (MFN) Treatment') based on 'Text' prepared by the Coordinator, previously discussed at the meeting on 15-16 June 2021, an alternative text proposal by a Member on 'Non-Discrimination', and the proposals contained in the 'Easter Text (Rev.2)'; (d) discuss paragraph 2 regarding 'non-violation complaints' of provision 35 on 'Dispute Settlement' based on a proposal by a Member discussed at the meeting on 7-8 September 2021; (e) continue discussing a text contribution submitted jointly by six Members on provisions 29 ('Provision of Assistance and Support for Capacity Building') and 30 ('Information on Assistance and Support for Capacity Building to be submitted to the Committee'), as well as a joint communication submitted by two Members on Investment Facilitation Needs Assessments; and (f) hear the report of the Facilitator of the Discussion Group on 'Scope'. In addition, a Member presented a table regarding the Movement of Business Persons (MBP) comparing provisions in this Member's text proposal on this matter, the GATS and a selection of regional trade agreements.

1 PARTICIPATING MEMBERS' PLANS AND EXPECTATIONS FOR MC12

1.1. The Coordinator informed the plenary about his recent informal bilateral consultations with interested Members on their **plans and expectations for MC12**, more specifically on the type of ministerial meeting participants would favour, the format of the text to be presented to ministers, and the presentation of those proposals that have not gained traction. He reported that participants saw MC12 as an important opportunity for Ministers to take stock and welcome the progress achieved in the negotiations and to provide political guidance for a timely conclusion of the text negotiations, at the latest by the end of 2022. Participants did not consider useful to have ministers discussing the substance of certain issues.

1.2. Participating Members concurred to present an 'as clean as possible text' to Ministers based on a revised and updated version of the 'Easter Text' that would incorporate the many areas where convergence text could be achieved while highlighting areas where further discussion was needed – on the understanding that 'plain' unbracketed text did not indicate agreement to, or conclusion of, such text. Participants expressed diverging views on how to proceed with the text proposals that are still in 'text boxes'. Members also discussed the possibility for the Joint Ministerial Statement (JMS) to refer to the latest revision of the 'Easter Text', which would not be physically attached to the Joint Ministerial Statement, nor be made publicly available given that the text was still under negotiation. Participating Members highlighted that many provisions and even sections of the text were fairly 'stabilized'. At the same time, some participants wished to revert to specific issues or provisions after MC12. In this regard, the Coordinator indicated that the whole text remained under negotiation or as negotiators liked to say, 'nothing is agreed until everything is agreed'. The Coordinator

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/39 dated 29 October 2021.

announced that he would circulate the third revision of the 'Easter Text' ahead of the next plenary meeting, scheduled for 16-17 November.

1.3. China, on behalf of the 'Friends of Investment Facilitation for Development' (FIFD)³, presented a proposed **draft Joint Ministerial Statement (JMS) on IFD**. The draft included end-2022 as target date to conclude the text negotiations, and reaffirmed participants' determination to continue and further intensify their outreach efforts, notably towards non-participating Members. The proponents underlined that the draft statement reiterated the importance of developing and least-developed country Members' participation in global investment flows and stressed the need of technical assistance and capacity building to help them implement the future IFD Agreement. The draft JMS was overall well received by participating Members, while some made specific drafting suggestions. Participants also highlighted the importance of transparency in the drafting process. The Coordinator invited delegations to send their comments on the draft to China as soon as possible. On the basis of this discussion, China informed that it would further consult with interested participants with a view to presenting a revised draft JMS for discussion at the next plenary meeting on 16-17 November.

2 DISCUSSION ON PROVISION 31 ON 'MEASURES AGAINST CORRUPTION'

2.1. At the outset of the discussion, the proponent of a text proposal on 'Measures Against Corruption' following the 'detailed approach' withdrew its proposal to allow the discussion to move forward, indicating that he expected similar flexibility from other delegations on issues without much support. Participants acknowledged and welcomed the flexibility shown.

2.2. The Coordinator introduced '**Draft Text** on provision 31 (**'Measures Against Corruption'**)', streamlining existing proposals following the 'general approach' (i.e., a general provision referring to internationally recognized instruments) and incorporating views previously expressed by participants, which was well received by participating Members. A participant questioned the value-added of such provision, arguing that this topic was usually not covered in the WTO and such a provision would not be enforceable under the DSU. While some questioned the inclusion of 'money laundering' in this provision, others supported addressing this matter, considering it particularly linked to anti-corruption.

3 DISCUSSION ON PROVISION 4 ON 'MOST-FAVoured NATION (MFN) TREATMENT'

3.1. Participants discussed two alternative approaches for **provision 4 on 'Most-Favoured Nation Treatment'**: on the one hand, a 'traditional' MFN treatment provision based on a proposal by a Member and 'Text' proposed by the Coordinator and, on the other, an alternative 'Non-discrimination' provision based on a text proposal by another Member. Most participants supported the inclusion of an MFN provision in the future IFD Agreement, many seeing an explicit MFN obligation as important for the Agreement's incorporation in the WTO legal structure, including some initially reluctant to including such provision. Although some reiterated their position against including an MFN provision, they nevertheless constructively engaged in the discussions on this topic. A few participating Members considered the 'Non-discrimination' proposal to be a good basis for continuing discussions on this matter. However, most participants favoured the inclusion of a 'traditional' MFN provision, considering that the text by the Coordinator provided a good basis in this regard. The proponent of the 'Non-discrimination' text proposal indicated its flexibility and readiness to continue discussions on the basis of either of the two alternatives.

4 DISCUSSION ON PARAGRAPH 2 REGARDING 'NON-VIOLATION COMPLAINTS' OF PROVISION 35 ON 'DISPUTE SETTLEMENT'

4.1. Participants discussed **paragraph 2 of provision 35 on 'Dispute Settlement'** proposed by a Member, which would exclude non-violation complaints from the future IFD Agreement (Articles XXIII:1(b) and (c) of the GATT 1994 and Article 26 of the DSU). Several delegations questioned the need for such exclusion, although some mentioned that they were still analysing it. In addition, a participant suggested to exclude Article 22.3 c) of the DSU, which allows for cross-retaliation between other sectors within the same agreement, or alternatively under other WTO covered agreements, arguing that the future IFD Agreement did not cover market access. A number of

³ A group constituted by 18 developing Members, namely Argentina, Brazil, Chile, China, Colombia, Gambia, Guatemala, Hong Kong China, Kazakhstan, Republic of Korea, Liberia, Mauritania, Mexico, Nigeria, Pakistan, Qatar, Turkey and Uruguay.

participating Members advocated caution in 'cherry-picking' elements of the DSU to apply, or not, to the future IFD Agreement as it could set a precedent and have systemic implications.

5 DISCUSSION ON COMMUNICATIONS UNDER SECTION V ON 'SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING AND LEAST-DEVELOPED COUNTRY MEMBERS'

5.1. Participants discussed a **revised text contribution on provisions 29** ('Provision of Assistance and Support for Capacity Building') **and 30** ('Information on Assistance and Support for Capacity Building to be submitted to the Committee') submitted jointly by the six proponents of text proposals under Section V ('Special and Differential Treatment for Developing and Least-Developed Country Members'), including both developed and developing country Members. Participating Members overall welcomed this revised joint contribution. Some participants reiterated their preference to keep the text formulation as close as possible to the Trade Facilitation Agreement (TFA). On provision 29, participants considered that the text contribution could be further streamlined, notably regarding two distinct paragraphs addressing potential areas for technical assistance. In relation to one of those two provisions, a few participants sought clarification on the meaning of the term 'regulatory feasibility studies'. Provision 30 did not give rise to many comments, with most participants noting that it was derived from the TFA. Based on this discussion, the proponents stated that they would circulate a revised version of their joint text contribution before the next plenary meeting on 16-17 November, taking into account the comments and suggestions expressed by Members.

5.2. Participating Members also discussed a **Communication on Investment Facilitation Needs Assessments** submitted jointly by two Members, with some supporting the call for holding a dedicated session on needs assessment ideally early next year.

6 THE REPORT OF THE FACILITATOR OF THE DISCUSSION GROUP ON 'SCOPE'

6.1. The Facilitator of the **Discussion Group on 'Scope'** (Colombia) informed participants that the Group met on 2 November to continue the discussion on the definition of 'investor of another Member' but had not been able to agree on a landing zone yet. Particularly, the group discussed the approach to adopt in this context, namely either incorporating the relevant concepts from the GATS *mutatis mutandis* ('incorporation by reference' approach) or including those concepts directly into the text of the IFD Agreement, adjusting the provisions as needed ('textual' approach). The facilitator reported that the discussion notably focused on whether to include in the definition of 'investor of another Member' a person who "seeks to make (...) an investment". In this context, two participating Members considered that the scope of the future IFD Agreement should cover only the post-establishment phase.

7 DISCUSSION ON THE MOVEMENT OF BUSINESS PERSONS FOR INVESTMENT PURPOSES (MBP)

7.1. One of the two proponents of a joint text proposal on **Movement of Business Persons (MBP)** for investment purposes presented a table comparing provisions concerning MPB-related aspects of administrative procedures as included in: the joint text proposal; Section III ('Streamlining and Speeding up Administrative Procedures') of the 'Easter Text'; GATS; Services Domestic Regulation Reference Paper; and some regional trade agreements (i.e., the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); and the Regional Comprehensive Economic Partnership (RCEP)). This Member explained that this comparative table was submitted with a view to better understand Members' sensitivities on this issue. Several participants reiterated their reluctance to discuss anything beyond the transparency aspect of MBP measures, highlighting that regional trade agreements were of a different nature and that provisions agreed among a limited number of partners as part of a broader negotiation and cooperation process could not be transposed into a multilateral agreement on investment facilitation. Some others however stated that they were open to discuss other aspects of the joint proposal.

8 NEXT MEETING

8.1. The Coordinator informed participating Members that, as foreseen in the 'Schedule of Meetings April – MC12',⁴ the next intersessional meeting would take place on 16-17 November 2021. At that

⁴ Document INF/IFD/W/29/Rev.2 dated 22 April 2021.

meeting, participants will review the third revision of the 'Easter Text (Rev.3)' as a whole, with a view to preparing an 'as clean as possible' text ahead of MC12.
