



30 October 2019

(19-7290)

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Original: English

## STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

MEETING OF 17 OCTOBER 2019

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

### 1 INTRODUCTION

1.1. An open-ended organizational meeting of the Structured Discussions on Investment Facilitation for Development was held on 17 October 2019, coordinated by H.E. Mr. Eduardo Gálvez (Chile). As indicated in the annotated agenda circulated by the Coordinator to all Members on 3 October 2019,<sup>2</sup> its main purpose was to address Sections II (Transparency and predictability of investment measures) and IV (Contact/focal point /Ombudsperson types of mechanisms, arrangements to enhance domestic coordination and cross-border cooperation) of the Working Document (INF/IFD/RD/39).

1.2 The meeting was well attended with many Members represented by capital-based representatives. The level of engagement and interaction at the meeting was high, with detailed and concrete views and suggestions on the different issues discussed.

### 2 GENERAL COMMENTS

2.1 Participating Members confirmed that the working document provided a good basis for keeping on developing the future investment facilitation framework. They exchanged concrete and detailed views and positions on the different elements/issues discussed, albeit a few participating delegations were not yet in a position to indicate their preferences on specific wording. Overall, the text-based discussion contributed to deepen participating Members' assessment of the elements and issues that could form part, or not, of a future investment facilitation framework. Some delegations indicated that they would submit written contributions/proposals later on.

2.2 Participating Members shared the view that it was important to keep consistency with WTO agreements, notably the GATS. The importance of keeping consistency with on-going discussions on domestic regulation was also stressed by delegations.

2.3 Many participating Members highlighted that it was important to consider, when developing the different elements of the framework, the possibility for developing and least developed country Members to implement the different provisions according to their particular situation, drawing on the Trade Facilitation Agreement (TFA), as well as the technical assistance and capacity building needed by those Members to implement more far-reaching obligations. The benefits accruing to developing and least-developed Members, including domestic investors, from investment facilitation were also highlighted by delegations.

2.4 A representative from an LDC Member pointed to the importance of counting with the views and ground level experience of domestic investment authorities/investment promotion agencies from LDCs and requested that the technical assistance needed to ensure their attendance at forthcoming meetings be made available. In this regard, some delegations highlighted the need to further involve

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<sup>1</sup> This summary, prepared and circulated under the Coordinator's responsibility, is being shared with a view to providing delegations with a record of the discussions and assisting them in reporting back to their capitals. It provides a non-exhaustive, illustrative review of the issues addressed by Members at the meeting.

<sup>2</sup> Document INF/IFD/W/9 dated 3 October.

developing and least-developed country Members. Other delegations emphasized the importance of multi-stakeholder involvement, including both governments and business/investors.

### **3 TRANSPARENCY AND PREDICTABILITY OF INVESTMENT MEASURES (SECTION II)**

3.1 The discussions on Section II of the working document proceeded on an element-by-element basis in the order in which the elements appear in the "Schedule of Meetings September – December 2019"<sup>3</sup>, namely:

- Publication and availability of measures and information
- Notification to the WTO
- Enquiry points
- Specific exceptions applicable to transparency requirements

3.2 Participating Members agreed that transparency and predictability of investment measures was at the core of any investment facilitation framework. In this connection, it was stressed that lack of information ranked top among regulatory obstacles faced by investors. The importance of enhanced transparency for providing a policy and regulatory environment that is hospitable to both traders and investors, including small and medium-sized enterprises (MSMEs), was also highlighted by delegations.

3.3 Delegations were of the view that the elements contained in paragraphs 3.1, 3.2 and 3.3 relating to the publication and availability of investment measures were pertinent for an investment facilitation framework. Many delegations highlighted that they commonly included those types of provisions in their regional trade agreements. Discussion among participating Members focused on the types of measures to be covered by each paragraph, particularly by paragraph 3.1, as well as on the appropriate flexibilities for Members based on the language contained in the different paragraphs. The importance of keeping consistency with the definition of "measure" in Article XXVIII a) of the GATS was stressed by delegations. One delegation sought further guidance on the meaning of the word "procedure".

3.4 Delegations saw value in including provisions aimed at taking advantage of information and communication technologies (ICTs) for facilitating access to and disseminating relevant investment measures and information. Delegations suggested using general terms to make the framework adaptive to technological developments.

3.5 A number of delegations indicated a preference for applying the requirements on publication and availability of investment measures of general application both at the federal/central and sub-federal/sub-central level. In this connection, several delegations highlighted the importance of catering for Members' different legal systems.

3.6 Regarding the publication of specific pieces of information relevant to investors or when an authorization is required to invest, participating Members' discussion focused on the different alternatives provided for the chapeau of paragraph 3.4, as well as on the non-exhaustive list of pieces of information to be published. The importance of considering the different stages of the investment cycle was highlighted by delegations. Some delegations suggested to merge some sub-paragraphs, while others suggested to consider pieces of information relevant to prospective investors (e.g. incentives available).

3.7 As to making certain information available through the Internet or "electronic means", some delegations pointed to the linkages between paragraph 3.5, which dealt among others, with the publication online of descriptions of relevant procedures in order to inform investors about the practical steps needed to invest, and other paragraphs of the working document that also referred to the use of electronic means of publication.

3.8 Participating Members considered that paragraph 3.8 relating to publication in advance and opportunity to comment on proposed measures was an important element to enhance the transparency and predictability of investment measures. At the same time, they were of the view that it was important to provide appropriate flexibilities for Members. Participating Members'

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<sup>3</sup> The latest version of the schedule is contained in document INF/IFD/W/8.

discussions focused on the types of measures subject to such a requirement and the different options for flexibility language in paragraph 3.8.

3.9 Participating Members discussed the different modalities of notification contained in paragraph 4.1 of the working document. Regarding the notification of measures, it was stated that it would be key to delimit the scope of measures to be notified or, instead, to focus on the other modalities of notification included in paragraph 4.1 (e.g. notification of official place(s) where relevant measures have been published or contact information of enquiry/contact/focal points).

3.10 In general, participating Members saw value in including provisions on enquiry points or "appropriate mechanisms" – term used by several delegations – to respond to enquiries from interested parties. It was pointed out that the provision at issue was largely modelled on paragraphs 3.1, 3.3 and 3.4 of the TFA. Participating Members highlighted the interlinkages between enquiry points and contact point/focal point types of mechanisms in Section IV of the working document.

3.11 Delegations discussed the exception to transparency requirements relating to the disclosure of confidential information contained in paragraph 6.1, which was based on a similar exception contained in Article *III* bis of the GATS. Participating Members indicated that they generally include a similar provision in their regional trade agreements. Besides, one delegation stated that it would be important in due time to consider this exception in light of the more general exceptions applicable to all the framework. Members were of the view that paragraphs 6.2 and 6.3 (which deal with treatment of confidential information and information requirements) did not correspond to specific exceptions to transparency requirements.

#### **4 CONTACT POINT/FOCAL POINT/OMBUDSPERSON – TYPES OF MECHANISMS, ARRANGEMENTS TO ENHANCE DOMESTIC COORDINATION AND CROSS-BORDER COOPERATION ON INVESTMENT FACILITATION (SECTION IV)**

4.1 As was the case with the section on transparency and predictability, the discussion of Section IV of the working document proceeded on an element-by-element basis, according to the order in which the elements appear in the Schedule of Meetings, namely:

- Contact point/focal point/Ombudsperson types of mechanisms
- Domestic coordination
- National Committee on Investment Facilitation
- Cross-border cooperation

4.2 Discussions among participating Members on contact point / focal point / Ombudsperson types of mechanisms focused on the possible functions of such a mechanism as contained in paragraph 18.1, sub-paragraphs a) to f), of the working document. Participating Members were of the view that the focus should be on how such functions contributed to facilitate investment, rather than on prescribing the form the mechanism should take.

4.3 Participating Members highlighted the importance that domestic arrangements to enhance domestic coordination will play in the successful implementation of the future investment facilitation framework. While interested in keeping them, participating Members stressed the non-mandatory nature of paragraphs 19.1 and 19.2. They also pointed out that some of the issues contained in paragraph 19.2 were linked to other paragraphs of the working document. It was noted that paragraph 20.1 on National Committee on Investment Facilitation was based on a similar provision of the TFA.

4.4 Finally, participating Members discussed the paragraphs on cross-border cooperation among Members on investment facilitation, which included a list of possible areas for cooperation.

## **5 ANY OTHER INVESTMENT FACILITATION-RELATED ISSUES**

5.1 No issue was raised under this agenda item.

## **6 CONCLUDING REMARKS**

6.1 The Coordinator stated that, as agreed at the organizational meeting, and based on the detailed views and positions presented by Members at this meeting, he would prepare a short summary of the meeting, as well as an assessment under his responsibility of the areas of convergence and of common interest emerging from the discussions as a way to start visualizing the possible future development of the elements of the framework.<sup>4</sup> Both the summary and assessment will be non-attributable and without prejudice to Members' positions and views.

## **7 OTHER BUSINESS**

7.1 No issue was raised under this agenda item.

## **8 NEXT MEETING**

8.1 The Coordinator informed all participating Members that the next substantive meeting will be held on 31 October - 1 November. It will focus on Section III of the working document devoted to "Streamlining and speeding up administrative procedures and requirements".

8.2 The Coordinator invited again all Members to provide their clear and concrete views, positions and text contributions on the working document – kindly reminding them to send any text contributions if possible 10 calendar days in advance of the meeting.

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<sup>4</sup> See paragraph 5 of the Annex of the Annotated Agenda (document INF/IFD/W/7) entitled "Proposed Working Methodology September – December 2019".