Investment Facilitation: History and the latest developments in the structured discussions

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Presentation Overview

- Investment in the WTO Agreements
- Singapore: launch of working group discussions, including on investment
- Work in other forums and contexts (UNCTAD, OECD, Brazil)
- Investment facilitation work before Buenos Aires WTO Ministerial
- Structured discussions: 2018 - present
Investment in the WTO Agreements

- General Agreement on Trade in Services (GATS)
- Agreement on Trade-Related Investment Measures (TRIMS)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Government Procurement Agreement (GPA)

- Launch at Singapore Ministerial Conference in 1996 of working groups on investment, competition, trade facilitation, transparency in government procurement

- Paragraph 20 of Singapore Ministerial declaration:

  ◦ “Having regard to the existing WTO provisions on matters related to investment and competition policy and the built-in agenda in these areas, including under the TRIMs Agreement, and on the understanding that the work undertaken shall not prejudice whether negotiations will be initiated in the future, we also agree to: establish a working group to examine the relationship between trade and investment; and establish a working group to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.

  ◦ These groups shall draw upon each other’s work if necessary and also draw upon and be without prejudice to the work in UNCTAD and other appropriate intergovernmental fora. As regards UNCTAD, we welcome the work under way as provided for in the Midrand Declaration and the contribution it can make to the understanding of issues. In the conduct of the work of the working groups, we encourage cooperation with the above organizations to make the best use of available resources and to ensure that the development dimension is taken fully into account. The General Council will keep the work of each body under review, and will determine after two years how the work of each body should proceed. It is clearly understood that future negotiations, if any, regarding multilateral disciplines in these areas, will take place only after an explicit consensus decision is taken among WTO Members regarding such negotiations.”

- Doha Ministerial Conference in 2001: Decision that these groups would develop negotiating modalities ahead of Fifth Session

- Cancún Ministerial Conference in 2003: no consensus, next steps for Singapore issues in question

- General Council decision in 2004: trade facilitation integrated into Doha Round, other Singapore issues are not
Work in other forums

- UNCTAD Global Action Menu
- OECD Policy Framework for Investment
- Brazil introduces Cooperation and Facilitation Investment Agreements
Joint Statement: Lead-up to 2017 WTO Ministerial

- Nairobi Ministerial Declaration notes diverging opinions on the Doha Round, interest of some WTO Members to discuss other topics

- Friends of Investment Facilitation for Development (FIFD) and MIKTA group: 2017 workshops, high-level meetings

- Buenos Aires Ministerial Conference in 2017: launch of various joint statements by groups of WTO Members, including statements on investment facilitation, electronic commerce, domestic regulation in services, and micro, small, and medium-sized enterprises.
Joint Statement: Lead-up to 2017 WTO Ministerial

- IF joint statement, paragraph 4 on structured discussions’ objective:

  ◦ “These discussions shall seek to identify and develop the elements of a framework for facilitating foreign direct investments that would: improve the transparency and predictability of investment measures; streamline and speed up administrative procedures and requirements; and enhance international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention. These discussions shall also seek to clarify the framework’s relationship and interaction with existing WTO provisions, with current investment commitments among Members, and with the investment facilitation work of other international organizations. These discussions shall not address market access, investment protection, and Investor-State Dispute Settlement.”

  ◦ Paragraph 6: “We also agree that facilitating greater developing and least-developed Members' participation in global investment flows should constitute a core objective of the framework. Working in cooperation with relevant intergovernmental organizations, developing and least developed Members' requirements in implementing the multilateral framework shall be assessed, so that technical assistance and capacity building support can be made available to address these identified needs.”
2018 – present: Structured discussions

- Checklist of issues

- Compendium of text-based examples, drawing from BITs, FTAs/RTAs, WTO’s TFA, and other examples

- Elaboration of working document (July 2019)

- Discussions on working document from September-December 2019

- Shanghai mini-ministerial: expansion to 92 WTO Members
2018 – present: Structured discussions (cont.)

- Group’s expansion to 98 WTO Members as of late November 2019
- 2020 schedule and approach: streamlined text forthcoming,
- Expected switch to negotiating mode in first quarter of the year
- Group’s objective of “concrete outcome” for MC12