



Note

Investment Facilitation Joint Statement Meetings in the WTO (2018-2019)

By Katya Garcia-Israel

Summary

At the 11th WTO ministerial conference, a group of 70 members issued a Joint Statement announcing their intention to pursue structured discussions with the aim of developing a multilateral framework on investment facilitation. This note provides an overview of the group and the work undertaken in meetings since 2018.

Introduction

The Joint Investment Statement for Investment Facilitation was presented at the 11th WTO Ministerial Conference in Buenos Aires, on 13 December 2017¹, but unstructured discussions regarding trade facilitation had already been occurring prior to this date, in the Informal Dialogue on Investment Facilitation for Development, which was established in April 2017.² The joint statement referenced this group, stating that the work done previously by members in 2017 and at the High-Level Forum in Abuja would be a basis for the structured discussions towards which they are aiming.³ The group of members in the joint statement is referred to in WTO documents as the Structured Discussions on Investment Facilitation for Development. According to a speech made by the Director-General, members of the group intend to continue these discussions in their 2019 meetings and decide what steps to take during the MC12 in 2020.⁴

Group Composition and Membership

Group Coordinator: Ambassador Juan Carlos González (Colombia)

Number of Members: 70⁵

LDC members: 7 (Benin, Cambodia, Guinea, Lao PDR, Liberia, Myanmar, and Togo)

Number of meetings: 8 in 2018, 6 scheduled for 2019

Timeline and Themes of meetings: Eight meetings occurred in 2018, which included expert presentations from the ITC, OECD, UNCTAD, and World Bank, non-paper submissions, and Members' issues and elements to include in discussion. Six meetings were planned for 2019⁶.

Table 1: Least Developed Countries in the Investment Facilitation Joint Statement:

LDCs in the Joint Statement on Investment Facilitation for Development
Benin
Cambodia
Guinea
Lao People's Democratic Republic
Liberia
Myanmar
Togo

¹ WT/MIN(17)/59

²

https://www.wto.org/english/thewto_e/acc_e/ifd_feb2019_v1.pdf

³ JOB/GC/159

⁴

https://www.wto.org/english/news_e/spra_e/spra250_e.htm

⁵ As of 17 December 2017

⁶

https://www.wto.org/english/thewto_e/acc_e/ifd_feb2019_v1.pdf

Table 2: Developing Countries and LDCs in the Investment Facilitation Joint Statement (by region)⁷

Africa	Asia	Central America and Mexico	South America
Benin*	Cambodia*	Costa Rica	Argentina
Guinea*	China	El Salvador	Brazil
Liberia*	Hong Kong	Guatemala	Chile
Nigeria	Kuwait	Honduras	Colombia
Togo*	Lao PDR*	Mexico	Paraguay
	Macao, China	Nicaragua	Uruguay
	Malaysia	Panama	
	Myanmar*		
	Pakistan		
	Qatar		
	Republic of Korea		
	Singapore		

*indicates LDC status

Table 3: Emerging Economies in the Investment Facilitation Joint Statement⁸

Emerging Economies in the Joint Statement
Argentina
Brazil
China
Republic of Korea
Mexico

Table 4: Economies in Transition Present in the Investment Facilitation Joint Statement

Economies in Transition in Joint Statement
Kazakhstan
Kyrgyzstan
Montenegro
Republic of Moldova
Russian Federation
Tajikistan

⁷ Country classifications based on UN 2014 country tables

⁸ Proxy for “emerging economies” is the developing countries in the G20 (<http://q20.org.tr/about-q20/q20-members/>)

Table 5: Developed Countries Not Present in the Investment Facilitation Joint Statement

Developed Countries Not in Joint Statement
Iceland
Norway
United States

Membership Patterns

There are twenty-three developing country members in the joint statement for investment facilitation, and seven least-developed countries (Benin, Guinea, Liberia, Togo, Cambodia, Lao PDR, and Myanmar). Most of the developing country members are from Asia. Central America has the highest rate of participation, with all the countries in the region present in the joint statement. Only five of the members are from Africa, and no countries from the Caribbean are present in the joint statement. Five of the countries known as ‘emerging economies’⁹ are part of this group, as well as six of the twelve countries called ‘economies in transition.’¹⁰

All developed countries participated in this joint statement except for three: Iceland, Norway, and the United States.

Meetings and Issues Discussed

2019 meetings schedule and topics^{11,12}

January 30: Organizational meeting

March 4-5 - "Transparency and predictability of investment measures": Topics of discussion included publication of measures, notification to the WTO, transparency obligations and exceptions, and enquiry points.

April 11-12 — “Streamlining and speeding up administration procedures and requirements (APRs)”: (i) ePing SPS and TBT notifications platforms presented by Secretariat¹³; (ii) administrative and documentation measures; (iii) administrative procedures’ time limits; (iv) procedure for incomplete applications; (v) fees and charges; (vi) APRs review; (vii) ICT e-government use; (viii) single window implementation; (ix) points of contact etc.

May 16¹⁴—“International Cooperation, information sharing, exchange of best practices; Development dimension”: (i) international cooperation through Members’ competent authorities and a WTO committee for investment-facilitation cooperation; (ii) LDCs and developing countries’ challenges; (iii) best practices for global benchmarks; (iv) differential treatment; (v) technical assistance and capacity building; and (vi) other issues.¹⁵

June 24-25 — Other cross-cutting issues: (i) domestic institutional arrangements to enhance

⁹ The developing countries in the G20 group

¹⁰ From UN Classification Tables 2014

¹¹

https://www.wto.org/english/thewto_e/acc_e/ifd_feb2019_v1.pdf

¹² INF/IFD/W/3

¹³ INF/IFD/RD/12

¹⁴ INF/IFD/R/1

¹⁵ INF/IFD/W/3

communication and coordination among relevant authorities at different levels of government; (ii) multilateral framework scope; (iii) non-discrimination; (iv) best-endeavors language; (v) combating corruption; (vi) MSMEs; (vii) encouraging social responsibility and women's empowerment.

July 18 — Any other related issues

Key Issues

Key issues emerging from discussions include improving transparency of investment, developing cooperation and information sharing between nations, expanding capacity-building and technical assistance, “streamlining and speeding up administrative procedures and requirements” and addressing unique problems faced by small businesses.¹⁶ Members agreed that the joint statement structured discussions will not cover topics of market access, investment protection, and Investor-State Dispute Settlement.¹⁷ Corporate social responsibility and challenges of developing and LDC members were also highlighted as important topics of discussion.

Under the issues of transparency and predictability of investment, members agreed that the importance of SMEs should be emphasized, and that review and appeal procedures should be agreed upon. To make investment measures publicly available, members proposed using ICT as an information platform and supported the use of a single electronic window for information access.¹⁸

They also maintained that specific exceptions to transparency should be decided upon for the protection of confidential information, especially in cases of security, law enforcement, and furthering “the public interest.”¹⁹

Concerning the topic of “streamlining and speeding up administrative procedures and requirements,” members submitted text-based examples from existing treaties and documents that cover the issues of transparency and predictability of investment measures, administrative procedures and requirements, fees and charges, contact points, and use of ICT (e-government). These examples addressed the importance of clear timeframes, transparent procedures, contact points, nonrestrictive fees, prompt communication of application status, and acceptance of electronic documents.

Way Forward

The group on Structured Discussions on Investment Facilitation for Development is working towards a framework through which to begin negotiations in the WTO. They scheduled their 2019 meetings with the goal of accessing members' needs and evaluating input on the best way to structure such negotiations. Members have been invited to share text-based examples from existing documents of the issues that should be included in the future negotiations framework. A compendium with detailed mapping of the country text-based examples is available on the WTO documents website.²⁰

¹⁶ https://www.wto.org/english/thewto_e/acc_e/ifd_feb2019_v1.pdf

¹⁷ WT/MIN (17)/59

¹⁸ INF/IFD/R/1

¹⁹ INF/IFD/R/1

²⁰ INF/IFD/RD/5

Annex 1: Discussion points prior to text-based examples

Table 1: Issues discussed by joint statement members prior to text-based examples (by country)

	Brazil ²¹	Kazakhstan ²²
Transparency and Predictability of investment measures	<ul style="list-style-type: none"> • Members should provide the information regarding their National Focal Points to the relevant committee • Single Electronic Window (SEW) will be the single place where required regulatory documents for investment are submitted, and the place for all relevant information regarding laws and regulations • Members should allow relevant stakeholders a time for prior comment before implementing investment regulations. New investment regulations and laws should be published electronically at the earliest time that is feasible. • Members are called upon to publish their current laws and regulations that relate to investment, clearly stating all required procedures, fees, standards, time frames, enforcement issues, and compliance regulations 	
Administrative procedures and requirements	<ul style="list-style-type: none"> • National Focal point • Transparent criteria for the processing of investment applications • All applications should be processed in a timely manner with a previously-established timeframe, “without undue delay,” and provide relevant information to the applicant 	<ul style="list-style-type: none"> • Based on their country experience, Kazakhstan recommends others to have a “one-stop shop for investors” to encourage entry in investment and avoid bureaucratic challenges • This “one stop shop” should include assistance and access to electronic statements, signatures, visa support, and other documents
Role of government officials	<ul style="list-style-type: none"> • An authority should be assigned by the government to handle cases of administrative reviews and judicial procedures and given the relevant resources to perform these functions 	<ul style="list-style-type: none"> • The government of Kazakhstan appointed an Investment Ombudsman to assist in judiciary issues of investment and in forming legislation that is conducive to export-oriented investment
International cooperation and information sharing	<ul style="list-style-type: none"> • “facilitate dialogue between governments and investors” • Cooperation among all the National Focal Points 	
Capacity building and technical assistance	<ul style="list-style-type: none"> • Members from developed and some developing countries should assist developing and LDC members with regards to technical assistance “upon 	<ul style="list-style-type: none"> • 19 services centers have been established within Kazakhstan to assist investors

²¹ JOB/GC/169

²² JOB/GC/197

	request and on mutually agreed terms and conditions” ²³	
Challenges of developing countries	<ul style="list-style-type: none"> • “Consider needs” of the least-developed and developing countries • Promote participation and competition of developing countries in investment flows • Special and differential treatment provisions: LDC members should be exempt from establishing the single electronic window, meeting all the administration and reviews procedures, the prior comment and the publication demands. However, LDC members are encouraged to participate in these actions. 	
Challenges faced by MSMEs	<ul style="list-style-type: none"> • Investing in MSMEs and aiding them to invest 	
Corporate Social Responsibility by Investors	<ul style="list-style-type: none"> • Acknowledge the importance of investors having social responsibility standards • Investors should contribute to their host country’s sustainable development • Natural resources, environmental protection, human rights, local capacities, human capital, and best safety practices should be respected and strengthened • Fair treatment of workers, including “abstaining from discriminatory or disciplinary actions against workers who report severe occurrences” and keeping the workers informed about company policies²⁴ 	

²³ INF/IFD/W/1 Article 17

²⁴ INF/IFD/W/1 Article 18

Annex II: Tables of text-based examples from existing country documents

Table 2. Text-based Examples from Developing countries

	Brazil ²⁵	China ²⁶	Guatemala ²⁷	Hong Kong ²⁸	Mauritius ²⁹	Mexico ³⁰
Transparency and Predictability of investment measures		<ul style="list-style-type: none"> Members should clearly state the sectors where foreign investment is encouraged or forbidden 		<ul style="list-style-type: none"> authorization decisions should be conducted in a “reasonable, objective and impartial manner” estimated timeframes for application processing should be given all information that suppliers need for an application should be made publicly available 		
Administrative procedures and requirements	<ul style="list-style-type: none"> Applications should be processed as quickly as possible Timeframes for applications should be established no undue delays for processed authorizations Applicants should be informed as to the status of their 	<ul style="list-style-type: none"> Applicants should be informed of the status of their application within a reasonable time frame and allowed to resubmit applications if rejected Applicants should be allowed to “request licensing without individual invitation” 	<ul style="list-style-type: none"> Simplification of documentation procedures Notice of proceedings shall be given to all involved parties Applicants should be given updates of their application status “without undue delay” 	<ul style="list-style-type: none"> Licensing procedures should not be “in themselves a restriction on the supply of the service” Transparent administrative criteria Applicants should be informed of the status of their application “without undue delay” 		

²⁵ INF/IFD/RD/8

²⁶ INF/IFD/RD/3

²⁷ INF/IFD/RD/7

²⁸ INF/IFD/RD/2

²⁹ INF/IFD/RD/19

³⁰ INF/IFD/RD/13

	Brazil ²⁵	China ²⁶	Guatemala ²⁷	Hong Kong ²⁸	Mauritius ²⁹	Mexico ³⁰
	<p>application “without undue delay”</p> <ul style="list-style-type: none"> • Applicants should be informed in a timely manner of the reason for rejection and offered an opportunity for resubmission 	<ul style="list-style-type: none"> • Applicants should be given time to complete applications and updated on reason for rejection in the case of rejected applications 		<ul style="list-style-type: none"> • Investment authorization should “enter into effect without undue delay” • Applicants should be given the opportunity to fix incomplete applications, resubmit rejected applications, and be informed of the reason for rejection 		
Fees and Charges	<ul style="list-style-type: none"> • Application fees should be “reasonable, transparent” and nonrestrictive 	<ul style="list-style-type: none"> • Any fees and charges associated with administrative procedures should be proportional to processing costs 	<ul style="list-style-type: none"> • Administrative fees and charges should be made publicly available through the internet • Fees should be reduced where possible 	<ul style="list-style-type: none"> • Fees should be transparent and nonrestrictive in themselves 		
(Appeals and decisions)	<ul style="list-style-type: none"> • Applicants should have the right to non-discriminatory judicial appeal of the decision 					
Contact points/ One stop shop/single window information source				<ul style="list-style-type: none"> • Contact information and procedures for applications should be made available 		<ul style="list-style-type: none"> • SAJIE website for completing necessary procedures
Use of ICT (e-government)	<ul style="list-style-type: none"> • A single electronic window should be used for all investment document submission and when possible, fee payments 		<ul style="list-style-type: none"> • Documents with electronic signatures should be accepted and held by the Commercial Registry 	<ul style="list-style-type: none"> • Authorities should accept electronic applications when possible • parties of an electronic transaction should be allowed to “mutually determine the appropriate 		<ul style="list-style-type: none"> • “government agencies must accept e-documentation” • Electronic signatures will be received legally just as handwritten signatures

	Brazil ²⁵	China ²⁶	Guatemala ²⁷	Hong Kong ²⁸	Mauritius ²⁹	Mexico ³⁰
	<ul style="list-style-type: none"> When possible, the single electronic window should have one of the WTO languages 			authentication methods for that transaction”		
Enhancing Cooperation	<ul style="list-style-type: none"> Cooperation between National Focal Points, especially regarding requirements, procedures, and documentation³¹ 	<ul style="list-style-type: none"> National enquiry points for investment facilitation should communicate with one another regularly³² Members should consider establishing an investment facilitation fund to “encourage and manage the contributions that Members voluntarily provide to the WTO, with the aim of assisting developing members”³³ 		<ul style="list-style-type: none"> Parties should cooperate through “promoting business matching events”, supporting seminars regarding investment procedures, and exchanging information³⁴ 	<ul style="list-style-type: none"> International cooperation should include information exchange, investment and technology promotion events, and details regarding national contact points³⁵ National committees on investment facilitation should be established to aid coordination 	
Best practices exchange	<ul style="list-style-type: none"> National focal points should exchange practices regarding data collection as well as technical assistance for MSMEs³⁶ 				<ul style="list-style-type: none"> Members should share best practices with the goal of “establishing globally acceptable benchmarks” for 	

³¹ RD 18

³² INF/IFD/RD/17

³³ RD 17

³⁴ RD 15

³⁵ RD 19

³⁶ RD 18

	Brazil ²⁵	China ²⁶	Guatemala ²⁷	Hong Kong ²⁸	Mauritius ²⁹	Mexico ³⁰
					investment facilitation ³⁷	
Development Dimension	<ul style="list-style-type: none"> Members should recognize the role of investment in development and will “enhance assistance and support for capacity building” for developing members and LDCs³⁸ Special and differential treatment provisions include exempting least-developed countries from having to implement all the provisions in the agreement³⁹ 	<ul style="list-style-type: none"> Special and differential treatment for developing and LDC members, based on the example of the Trade Facilitation Agreement⁴⁰ Capacity building and technical assistance plans should be made⁴¹ 		<ul style="list-style-type: none"> Special and differential treatment, technical assistance and informational access should be given to developing and LDC members⁴² 	<ul style="list-style-type: none"> Technical assistance and capacity building should be available for developing and LDC members Developing and LDC members who do not have the capacity for implementing all provisions in the framework will be exempt until they are able to do so Article 16 of the Trade Facilitation Agreement should guide implementation for developing and LDC members as they designate what provisions they are including and on what basis⁴³ 	
Investment Facilitation	<ul style="list-style-type: none"> A Committee on Investment 	<ul style="list-style-type: none"> “A Committee on Investment 			<ul style="list-style-type: none"> A WTO Committee on Investment 	

³⁷ RD/19

³⁸ RD 18

³⁹ RD 18

⁴⁰ INF/IFD/RD/17

⁴¹ RD 17

⁴² RD/15

⁴³ RD 19

	Brazil ²⁵	China ²⁶	Guatemala ²⁷	Hong Kong ²⁸	Mauritius ²⁹	Mexico ³⁰
Committee	Facilitation should be established, and “open for participation by all Members” ⁴⁴	Facilitation shall be established in the WTO ⁴⁵ to and annually report information			Facilitation should be established	
Other		<ul style="list-style-type: none"> • Investment-related travel should be encouraged (but will not apply to any “nationality, residence, or employment on a permanent basis”)⁴⁶ • Investors should receive “non-discriminatory access to public infrastructure”⁴⁷ 				

⁴⁴ RD 18

⁴⁵ RD/17

⁴⁶ RD/3

⁴⁷ RD/3

Table 3. Text-based Examples from Developed Countries and Economies in Transition

	Australia ⁴⁸	Canada ⁴⁹	European Union ⁵⁰	Switzerland ⁵¹	Russian Federation ⁵²
Transparency and Predictability of investment measures	<ul style="list-style-type: none"> Measures should be reviewed periodically to ensure their effectiveness 		<ul style="list-style-type: none"> Minimize complexity of “import and export formalities” 	<ul style="list-style-type: none"> Licensing measures should be clear and transparent 	<ul style="list-style-type: none"> All application measures to be established in a “reasonable, objective and impartial manner”
Administrative procedures and requirements	<ul style="list-style-type: none"> Measures should be written clearly and understandably Applicants should be informed of rejected applications and “to the extent practicable” be allowed to fix errors for resubmission 	<ul style="list-style-type: none"> Administrative procedures should not contain undue delays that impede the investment, and should be conducted “within a reasonable timeframe”⁵³ Applicants should be informed of incomplete applications and allowed to fix any issues Applicants should be informed of the rejection of their application “in writing and without undue delay,” given the reason for their rejection and allowed to resubmit 	<ul style="list-style-type: none"> “authenticated copies should be accepted whenever possible” Information regarding time frames for application processing should be provided Applicants should be informed of their application’s status “without undue delay” In the case of incomplete applications, the applicant should be informed and allowed to correct resubmit Impact assessments of the regulatory measures should be conducted 	<ul style="list-style-type: none"> Documents should be limited in number in order to simplify procedures Formalities should be “applied with a view to a rapid release and a clearance of goods” Applicants should be informed of incomplete applications “without undue delay” and given the opportunity to resubmit Applicants should not require personal invitation to request licensing All authorization decisions should be 	<ul style="list-style-type: none"> Customs formalities shall be limited Authorization for licenses should be completed “without undue delay” Applicants shall be informed of incomplete applications and given the opportunity to complete the information The regulatory authority shall inform the applicant of the reason for rejection if the applicant submits a written request, except in the cases “where that disclosure would impede law enforcement” or go

⁴⁸ INF/IFD/RD/11

⁴⁹ INF/IFD/RD/4

⁵⁰ INF/IFD/RD/1

⁵¹ INF/IFD/RD/10

⁵² INF/IFD/RD/9

⁵³ INF/IFD/RD/4

	Australia ⁴⁸	Canada ⁴⁹	European Union ⁵⁰	Switzerland ⁵¹	Russian Federation ⁵²
				made in a timely manner	against public or security interests
Fees and Charges		<ul style="list-style-type: none"> A fee should not be restrictive within itself “Authorization fees do not include payments for auction, use of natural resources, royalties, or tendering” 	<ul style="list-style-type: none"> Fees should be “limited in amount to the approximate cost of the services rendered” Fees should be “reasonable, transparent”, based on measures and nonrestrictive “an adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances” 	<ul style="list-style-type: none"> Fees should be proportionate to the application’s processing and administrative cost Information regarding fees and charges should be posted on the internet 	<ul style="list-style-type: none"> Fees should be nonrestrictive in themselves Fees should reflect the “approximate cost of services rendered” Fees shall be reviewed periodically “with a view to reducing their number and diversity”
Contact points/ One stop shop/single window information source	<ul style="list-style-type: none"> Make available contact information of relevant authorities 		<ul style="list-style-type: none"> Applicants should be able to only go to one authority for authorization, when possible 	<ul style="list-style-type: none"> “establish enquiry points for customs” Respond to English enquiries in English 	<ul style="list-style-type: none"> “one or more enquiry points to answer reasonable enquiries” shall be established Maintenance of a single window through which applicants may submit documents and receive notices
Use of ICT (e-government)	<ul style="list-style-type: none"> Electronic applications are accepted when possible Authenticated copies of documents shall be accepted when 	<ul style="list-style-type: none"> Electronic applications should be accepted Authenticated copies may be accepted where appropriate 	<ul style="list-style-type: none"> Authorities should “endeavor to accept applications in electronic format” 	<ul style="list-style-type: none"> Parties should “provide for advance electronic submission” prior to arrival of goods and “provide for the possibility of electronic payment” 	<ul style="list-style-type: none"> Information regarding applications will be electronically available Electronic copies of documents shall be

	Australia ⁴⁸	Canada ⁴⁹	European Union ⁵⁰	Switzerland ⁵¹	Russian Federation ⁵²
	parties “deem appropriate”				accepted when possible
Enhancing Cooperation	<ul style="list-style-type: none"> Parties should maintain designated contact points for facilitating cooperation⁵⁴ 	<ul style="list-style-type: none"> Some FTAs include the establishment of a Committee on Investment⁵⁵ 			<ul style="list-style-type: none"> The Committee on Investment facilitation should be established to “propose cooperation and facilitation agendas” “the committee shall maintain close contact with...UNCTAD, World Bank, and the OECD”⁵⁶
Best Practices Exchange					
Development Dimension					
Investment Facilitation Committee					
Other					

⁵⁴ INF/IFD/RD/20

⁵⁵ INF/IFD/RD/21

⁵⁶ INF/IFD/RD/14



CUTS International, Geneva

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, Ghana and Washington have made our footprints in the realm of economic governance across the developing world.

© 2019. CUTS International, Geneva.

This note is authored by Katya Garcia-Israel. CUTS' notes are to inform, educate and provoke debate on specific issues. Readers are encouraged to quote or reproduce material from this paper for their own use, provided due acknowledgement of the source is made.

37-39, Rue de Vermont, 1202 Geneva, Switzerland

geneva@cuts.org • www.cuts-geneva.org

Ph: +41 (0) 22 734 60 80 | Fax:+41 (0) 22 734 39 14 | Skype: cuts.grc