



STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION

COMMUNICATION FROM BRAZIL

The following communication, dated 31 January 2018, is being circulated at the request of the delegation of Brazil.

On 13 December 2017, on the margins of MC11, 70 Members circulated the Joint Ministerial Statement on Investment Facilitation for Development, calling for the beginning of "structured discussions with the aim of developing a multilateral framework on investment facilitation" (WT/MIN/(17)/59).

In order to contribute to this goal, Brazil submits the attached draft, which contains a concrete illustration of a possible WTO multilateral framework for this topic. This submission is not meant to be a negotiating proposal, but rather (i) a platform (among others) to promote more focused and text-based discussions, as well as (ii) a response to the call made in the Joint Ministerial Statement with regard to the "importance of continuous outreach to WTO Members, especially developing and least developed Members".

INVESTMENT FACILITATION AGREEMENT

Members,

Recognizing the importance of investment for the growth and development of the world economy;

Wishing to establish a multilateral framework of principles and rules for facilitating sustainable investment flows as a means of promoting the economic growth of all trading partners and the development of developing countries;

Recalling the importance of ensuring coherence regarding the legal framework applicable to the facilitation of investment in services and in non-services sectors;

Aiming to provide investors with a transparent, predictable and efficient regulatory and administrative framework;

Seeking to facilitate the dialogue between governments and investors on matters related to investments;

Recognizing that the provisions of this Agreement are intended to stimulate mutually-beneficial business activity;

Considering the particular needs of developing and especially least-developed countries and desiring to enhance assistance and support for capacity building in this area;

Desiring to facilitate the increasing participation of developing countries in investment flows including, inter alia, through the strengthening of their domestic regulatory environment and its efficiency and competitiveness;

Valuing the importance of voluntary corporate social responsibility principles and standards for investors;

Acknowledging the essential role of investment in the promotion of sustainable development, economic growth, poverty reduction, job creation, expansion of productive capacity and human development;

Aiming to increase investment, including investment in and by micro, small and medium enterprises; and

Reaffirming the importance of the 2030 Agenda for Sustainable Development of the United Nations;

Hereby agree as follows:

SECTION I
Scope and General Principles

Article 1
Scope

1. This Agreement applies to facilitation measures by Members affecting the admission, establishment, acquisition and expansion of investments in services and non-services sectors.
2. Facilitation measures by Members include those of general application and sector-specific that affect investors and their investment.
3. This Agreement does not apply to:
 - a. government procurement;
 - b. public concessions and the conditions thereby established, provided that the Agreement applies to investments made as a result of concessions. In case of inconsistencies between this Agreement and the terms of the concession, the latter shall prevail; and
 - c. market access and right to establish, provided that nothing in this Agreement shall be construed as to modify Members' obligations and commitments under the General Agreement on Trade in Services (GATS) in that regard.
4. This Agreement does not cover:
 - a. any dispute resolution procedure not foreseen under the Dispute Settlement Understanding, according to Article 20.6 of this Agreement; and
 - b. investment protection rules.
5. A Member's obligations under this Agreement shall apply to measures adopted or maintained by:
 - a. the national government of that Member; and
 - b. any entity, including a national state enterprise or any other national body, when it exercises any governmental authority delegated to it by the central government of that Member.
6. In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, including any entity referred to in paragraph 5 (b).

7. Regional and local governments and authorities are encouraged to comply with the measures of this Agreement.

Article 2

Most-Favoured-Nation Treatment

1. With respect to the implementation of this Agreement, each Member shall accord immediately and unconditionally to investors of any other Member and their investments treatment no less favourable than that it accords to investors of any Member and their investments.

2. The provisions of this Agreement shall not be construed as to prevent any Member from conferring or according advantages to investors of any other Member and their investments in the context of setting a common market or other forms of economic integration.

3. This Agreement does not replace and does not add to nor detract from existing rights and obligations of Members under bilateral or plurilateral investment agreements.

Article 3

Right to Regulate

1. Members shall retain the right to regulate in the public interest and to introduce new regulations within their territories so as to achieve legitimate public policy objectives.

Article 4

Electronic documents

1. For the purposes of this Agreement, electronic documents and electronic signatures shall produce the same legal effects as those of paper documents and handwritten signatures, subject to the Member's domestic laws and regulations on electronic documents and electronic signatures.

2. Members shall endeavour to reach the highest possible level of digitalization of procedures related to investments.

Article 5

Transparency

1. The development, application and review of policies and measures affecting investors and their investment shall be transparent, in a manner consistent with the provisions of this Agreement.

SECTION II
Institutional Governance

Article 6

National Focal Point

1. Each Member shall designate a National Focal Point, which shall have the following responsibilities:

- a. to provide investors with all relevant public information regarding: applicable domestic laws and regulations, legal competencies of government agencies or entities with delegated authority relevant to their investments, public policies, statistics and all other matters directly relevant to investment;
- b. to assist investors from any other Member in obtaining information from government agencies or entities with delegated authority relevant to their investments and, if applicable, subnational authorities;

- c. to assist investors from any other Member by seeking to resolve investment-related difficulties, in collaboration with government agencies, entities with delegated authority relevant to their investments, and, if applicable, with subnational authorities;
 - d. to address complaints or grievances regarding measures adopted or maintained by a Member affecting investors and their investments, whether in the form of law, regulation, rule, procedure, decision, administrative ruling, or any other form, in violation of the provisions of this Agreement, with a view to preventing disputes;
 - e. to recommend to the competent authorities, as appropriate, measures to improve the investment environment; and
 - f. to operate and maintain the Single Electronic Window provided for in Article 9.
2. Without prejudice to the designation of a National Focal Point, some of the responsibilities provided for in the previous paragraph might be fulfilled through the operation and maintenance of the Single Electronic Window.

Article 7

Cooperation among National Focal Points

1. National Focal Points shall cooperate with each other in matters related to investment facilitation.
2. Areas for cooperation include exchange of information on procedural requirements and documentation associated with investment decisions, sharing of experiences regarding implementation of this Agreement, best practices regarding collection and compilation of data relating to investment and technical assistance and capacity building for micro, small and medium enterprises.

Article 8

Notification

1. Each Member shall notify the Committee for Investment Facilitation established under Article 6 of:
 - a. the Uniform Resource Locators (URL) of the website referred to in Article 10; and
 - b. the contact information of the National Focal Point.

SECTION III
Electronic governance

Article 9

Single Electronic Window

1. The Single Electronic Window (SEW) shall constitute a single entry point for the submission of all documents required by the agencies or regulatory bodies involved in the admission, establishment, acquisition and expansion of investments. Documents uploaded through the SEW shall not be subsequently required by any agency or regulatory body by any other means, except in cases in which the authenticity of the electronic document cannot be established or ensured through electronic means alone.
2. The SEW website shall provide information regarding policy, laws and regulations relating to the admission, establishment, acquisition and expansion of investments. Members shall endeavour to include subnational information regarding policy, laws and regulations relating to the admission, establishment, acquisition and expansion of investments.
3. The SEW shall contain the information referred to in Section IV of this Agreement, and, to the extent possible, in one of the languages of the WTO.

4. The information provided by the SEW shall be sufficiently clear, precise and up-to-date so as to enable an investor, in a manner as simple as possible, to be informed of:
 - a. the agencies or regulatory bodies involved in the admission, establishment and expansion of any specific investment decision;
 - b. the documents required by each agency or regulatory body for specific investment decisions; and
 - c. the timeframe under applicable legislation within which each agency or regulatory body is required to process an application associated to any specific investment decision.
5. The SEW shall not add to nor detract from the competencies and responsibilities of agencies or regulatory bodies involved in the admission, establishment, acquisition and expansion of investments.
6. The SEW shall not prevent agencies or regulatory bodies from establishing requirements associated to the admission, establishment, acquisition and expansion of investments that cannot be met electronically.
7. The agencies and regulatory bodies connected to the SEW shall have access to the information uploaded to the SEW inasmuch as required by the fulfilment of their legal competencies and responsibilities.
8. All information provided by investors through the SEW shall be protected according to the provisions of the applicable national legislation.
9. Members shall endeavor to make it possible for investors to pay through the SEW all fees and taxes associated to the admission, establishment, maintenance, acquisition and expansion of investments.

SECTION IV Procedures

Article 10 Processing of Applications

1. Members may establish criteria for the admission, establishment, acquisition and expansion of investments in services and non-services sectors according to their national policies and to modify such criteria at any time, in accordance with the obligations established under relevant WTO Agreements and their international obligations.
2. If criteria are established, they shall be transparent and objective. No application shall be rejected based on the failure of the investor to fulfil criteria that the investor was not supposed to or could not know before the submission of the application.
3. If criteria are established, each Member shall ensure that competent authorities involved in the admission, establishment, acquisition and expansion of investments:
 - a. process, in a manner as expeditious as possible, all applications, including applications for investment screening, admission and licensing;
 - b. establish a timeframe for processing an application;
 - c. ascertain without undue delay the completeness of an application for processing under domestic laws and regulations;
 - d. inform the applicant of the decision concerning an application;

- e. at the request of the applicant, provide without undue delay information concerning the status of the application;
 - f. where authorization is required, the competent authorities of a Member shall permit an applicant to submit an application throughout the year and allow a reasonable period for the submission of an application where specific time periods for applications exist.
4. The obligation set out in paragraph 2 is met by the publication of the criteria.
 5. The assessment of an application based upon those criteria or the conclusion reached by the competent authorities regarding the application is not subject to the WTO Dispute Settlement Understanding.
 6. Criteria that might entail a subjective analysis by the competent authorities or that might be carried out under confidential terms are to be considered transparent and objective if the investor is aware beforehand that the investment will be required to fulfil those criteria.
 7. In case an application is considered incomplete, the applicant shall be:
 - a. informed without undue delay that the application is incomplete;
 - b. provided with an explanation of why the application is considered incomplete; and
 - c. provided with the opportunity to submit the information required to complete the application.
 8. In case an application is rejected, the agency or regulatory body shall inform the applicant of the reasons for rejection and, where applicable, the procedures for resubmission of an application. The reasons of rejection that are required to be provided under this paragraph encompass only the *unfulfillment of the criteria referred to in this article*.
 9. Any authorization, once granted, shall enter into effect without undue delay, subject to the applicable terms and conditions, and its duration shall not in itself restrict the investment.
 10. Each Member shall ensure that application fees charged by the competent authority are reasonable, transparent and do not in themselves restrict the investment. The requirement of guarantees before an authorization is granted shall not in themselves restrict the investment.

Article 11
Appeals and Review

1. Each Member shall provide that any person to whom a competent authority issues a decision has the right, within its territory, to:
 - a. an administrative appeal to or review by an administrative authority higher than or independent of the competent authority that issued the decision¹; and/or
 - b. a judicial appeal or review of the decision.
2. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.
3. Each Member shall ensure that the person referred to in paragraph 1(a) of this Article is provided with the reasons for the decision of the competent authority so as to enable such a person to have recourse to procedures for appeal or review where necessary.

¹ In situations in which a decision is issued at a ministerial level or higher, the decision shall be subject to a request for reconsideration by the same competent authorities.

SECTION V
Regulatory Environment

Article 12
Prior Comment

1. Each Member shall, in a manner consistent with its domestic laws and regulations, provide opportunities and an appropriate time period to investors and other interested parties to comment on proposed regulations affecting the admission, establishment, acquisition and expansion of investments².
2. Each Member shall, in a manner consistent with its domestic laws and regulations, seek to ensure that new or amended regulations affecting the admission, establishment, acquisition and expansion of investments are published and made electronically available as early as possible before their entry into force.

Article 13
Publication

1. Each Member shall promptly publish the following information in an easily accessible manner and, to the extent possible, in one of the languages of the WTO:
 - a. laws and other regulations of general application affecting investments;
 - b. texts or abstracts of public policies that may affect investments and investors; and
 - c. fees and charges imposed by agencies or regulatory bodies on or in connection with foreign investors and their investments.
2. Where a Member requires authorization for the admission, establishment, acquisition and expansion of investments, it shall publish the information necessary for the investor to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, *inter alia*, where it exists and applicable:
 - a. the requirements and procedures;
 - b. contact information of relevant competent authorities;
 - c. fees;
 - d. technical standards;
 - e. procedures for appeal or review of decisions concerning applications;
 - f. procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
 - g. opportunities for the involvement of investors in policy and rulemaking, such as through hearings or comments; and
 - h. time frames for the processing of an application.

² The submission of suggestions or comments does not oblige the agency or regulatory body to accept them, in whole or in part. All suggestions and comments received shall be analysed and do not require any individualized response or reaction. The agency or regulatory body is solely responsible for deciding whether any or all of the suggestions or comments received shall be used in full or in part.

**SECTION VI
Implementation**

Article 14
Schedule of Implementation

1. The provisions of this Agreement shall be implemented upon entry into force, except for the provisions in Section III, which shall be implemented within 3(three) years of entry into force.
2. Notwithstanding the exception provided for in paragraph 1, Members shall strive for early implementation of the provisions of Section III and, should they not be in a position to do so, seek to implement such provisions in a progressive and scheduled manner in the transition to electronic procedures only.

**SUBSECTION I
Special and Differential Treatment Provisions**

Article 15
General Principles

1. The provisions contained in Articles 1 to 14 of this Agreement shall apply to developing and least-developed country Members in accordance with this Subsection.
2. Least-developed country Members shall not be required to implement the provisions of Sections III, IV and V of this Agreement. Least-developed country Members are nonetheless encouraged to implement these provisions to the extent compatible with their special economic situation and their development, trade and financial needs. Upon graduation from least-developed country status, the schedule of implementation of the provisions of this Agreement established under Article 16 shall apply to the graduated Member.
3. Where circumstances allow for the phased introduction of new requirements, procedures, standards and measures relevant to investment, Members shall consider longer phase-in period for the applicability of such measures in sectors of export interest to developing country Members, and in particular to least-developed country Members.

Article 16
Schedule of Implementation for developing and least-developed country Members

1. Provisions under Sections I and II of this Agreement shall be implemented upon entry into force of this Agreement;
2. Provisions under Sections IV and V of this Agreement shall be implemented within 4 (four) years after the entry into force of this Agreement; and
3. Provisions under Section III of this Agreement shall be implemented within 8 (eight) years after the entry into force of this Agreement.
4. Notwithstanding the implementation period specified above, developing country Members shall strive for early implementation of provisions and, should they not be in a position to do so, seek to implement such provisions in a progressive and scheduled manner in the transition to electronic procedures only.
5. Developing country Members in a position to fulfil the provisions under sections III, IV and V in a shorter timeframe shall notify the Committee referred to in article 6 the revised timeframes for the implementation of the provisions.

Article 17
Technical Assistance

1. Developed country Members, and to the extent possible, developing country Members in a position to do so, shall provide technical assistance to developing country Members and in particular to least-developed country Members, upon request and on mutually agreed terms and conditions.
2. Technical assistance shall be aimed, *inter alia*, at developing and strengthening the capacities needed to fully implement the obligations arising under this Agreement.

SECTION VII
Corporate Social Responsibility

Article 18
Corporate Social Responsibility

1. Investors and their investments shall strive to achieve the highest possible level of contribution to the sustainable development of the host Member and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles and standards set out in this Article and internal policies, such as statements of principle.
2. Investors and their investments shall endeavour to comply with the following voluntary principles and standards of corporate social responsibility, in accordance with the laws adopted by the host Member and with Members' international commitments on this matter:
 - a. Respecting the protection of the environment and sustainable development and encouraging the use of technologies that do not harm the environment, in accordance with the national policies of Members, in a way that incentivizes economic, social and environmental progress;
 - b. Respecting human rights of those involved in the activities of the companies, consistent with the international obligations and commitments of the host Member;
 - c. Stimulating the strengthening of local capacities through close cooperation with the local community;
 - d. Incentivizing the formation of human capital, particularly creating job opportunities and facilitating the access of workers to professional qualification;
 - e. Abstaining from seeking or accepting exemptions other than those established in the law of the host Member with respect to the environment, health, safety, labour, financial incentives or other matters;
 - f. Supporting and maintaining principles of sound corporate governance, as well as developing and applying good practices in corporate governance;
 - g. Developing and applying effective self-regulated practices and management systems that foster a relationship of mutual trust between the enterprises and the societies in which they carry out their operations;
 - h. Promoting the knowledge of workers regarding company policies through the appropriate publication of these policies, including through recourse to professional capacity building programs;
 - i. Abstaining from discriminatory or disciplinary actions against workers who report severe occurrences to the management or, when appropriate, to the competent public authorities, of practices in breach of the law or standards of sound corporate governance to which the enterprise is subjected;

- j. Encouraging, whenever possible, the business partners, including suppliers and outsourced services, to apply principles of business conduct consistent with the principles provided for in this Article; and
 - k. Respecting local political processes and activities.
3. Investors are invited to keep the National Focal Point informed about their internal corporate social responsibility policies and practices.

SECTION VIII
Institutional Framework

Article 19

WTO Committee on Investment Facilitation

1. A Committee on Investment Facilitation is hereby established.
2. The Committee shall be open for participation by all Members and shall elect its own Chairperson.
3. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than twice a year, for the purpose of affording Members the opportunity to raise any matters related to the implementation of this Agreement or the furtherance of its objectives.
4. The Committee shall establish its own rules of procedure.
5. It shall be open to any Member to suggest items related to the implementation of this Agreement for inclusion in the agenda of any Committee's meeting.
6. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members, such as:
 - a. follow the implementation of this Agreement;
 - b. discuss issues related to investment facilitation of general interest;
 - c. propose cooperation and facilitation agendas, which may include issues such as: transfer of funds, personnel mobility and logistical matters, among others;
 - d. exchange experiences in investment facilitation;
 - e. discuss views and requests from investors and other relevant stakeholders, when applicable, on specific issues related to the work of the Committee; and
 - f. compile and disseminate international best practices.
7. Subsidiary bodies focused on specific issues may be established.
8. The Committee may develop procedures for Members to share relevant information and best practices.
9. The Committee shall maintain close contact with other international organizations in the field of investment facilitation, such as UNCTAD, World Bank and the OECD, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to avoid duplication of efforts. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:
 - a. attend meetings of the Committee; and

b. discuss specific matters related to the implementation of this Agreement.

10. The Committee shall review the operation and implementation of this Agreement five years from its entry into force, and periodically thereafter. Recommendations arising from the review shall be presented to the General Council.

11. The Committee may establish open-ended working-groups to discuss specific issues pertinent to the implementation of this Agreement. Any conclusion shall be reported to the Committee.

SECTION IX Final Provisions

Article 20 Final Provisions

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.

2. All provisions of this Agreement are binding on all Members.

3. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under this Agreement including through the establishment and use of regional bodies.

4. Notwithstanding the general interpretative note to Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994 and GATS. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Trade-Related Investment Measures.

5. All exceptions and exemptions under the GATT 1994 shall apply to the provisions of this Agreement. Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement Establishing the World Trade Organization and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.

6. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.

7. Article 22.3(c) of the Dispute Settlement Understanding shall not apply.

8. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.
