The Commission (COM) opened the meeting by welcoming the presence of the civil society representatives and stressing the importance of discussing the developments in the World Trade Organization (WTO) on Investment Facilitation and Domestic Regulation in services at this forum.

COM recalled the progress made so far with regard to the investment facilitation initiative, which has switched gear recently, since the stocktaking meeting on 12 December 2019 in Geneva where participating Members agreed to move towards negotiations. Additionally, COM explained the potential elements of a future investment facilitation framework. COM listed objectives and measures under discussion while also clarifying which elements were outside of the scope, such as market access, investment protection and ISDS. Lastly, COM presented the outlook for the 12th WTO Ministerial Conference (MC12) such as a likelihood of having a consolidated negotiating text by the time of MC12.

COM then addressed the state of play regarding the Joint Statement on Services Domestic Regulation. In May 2019, 60 WTO Members issued the Joint Statement of Paris, welcoming the progress made since MC11 and committing themselves to work further on the outstanding issues, with the desire to conclude the negotiations by MC12. COM explained that the negotiated disciplines will be included in a reference paper that Members can include in their GATS Schedules of Specific Commitments. The additional commitments would be applicable to all WTO Members in line with the Most Favoured Nation principle. COM concluded by outlining further steps leading to MC12, notably, 3 to 6 additional rounds of negotiations in order to finalise the negotiations on the text of the Reference Paper and the Schedules of Specific Commitments.

Discussion Highlights / Questions and Replies

A member of the European Economic and Social Committee (EESC) asked COM to clarify its position regarding the rise of so-called “phantom investment” and its eventual endorsement/fostering through the Joint Statement Initiative on Investment Facilitation. The concern was rooted in a report of the International Monetary Fund assessing that 40% of FDI is directed or passed by companies without any economic activity constituted to avoid tax payment and 85% of this FDI goes to European Countries.

COM affirmed its awareness of the “phantom investment” and its concern with regard to the size of this phenomenon. However, COM firstly underlined that it was well known that official
FDI statistics do not always reflect reality. In particular, COM is aware that statistics do not consider that a lot of capital flows are due to companies that structure their assets in a way to minimise the amount of tax that the group pays. Secondly, the EU was at the forefront of the international initiatives to combat tax evasion. Having said that, the objective of the investment facilitation framework was not to facilitate phantom investment, but to maximise the capacity of countries to attract real investments that establish economic activities on the ground and bring much needed jobs and capital. COM highlighted that Investment Facilitation would improve conditions for foreign investors in host states through transparency rules and good governance practices and would also improve the capacity of governments to attract FDI. COM agreed that host states would need to act in accordance with international instruments aimed at fighting tax avoidance.

**Koepel van de Vlaamse Noord-Zuidbeweging 11.11.11** acknowledged the integration of TSD priorities in the initiative. However, they asked for clarification on the implementation of these priorities in the context of an equally applicable investment facilitation framework also for companies from the extractive business. Also, they underlined the necessity to address sustainable development through stronger instruments and commitments. In addition, they inquired about the application of transparency requirements to the private sector and the possible inclusion of a necessity test in the domestic regulation text. Moreover, they questioned why the US was not supporting these negotiations.

**COM** affirmed the efforts of the European Union to facilitate sustainable development, highlighting, however, the difference between funding initiatives in sustainable development (e.g. through Development Assistance or the European Investment Bank) and initiatives for the improvement of investment conditions. As the framework for investment facilitation would not touch upon market access issues, it would not aim to impose on governments a change in their policy either. In addition, COM underlined that open consultations were a basic principle of good governance and that the possibility for stakeholder involvement in the shaping of the regulatory framework was a usual practice that existed in the European Union for a long time already. COM highlighted that there is currently less support for the idea of including a necessity test in the domestic regulation text than there was in the past. COM confirmed that the US did not formally sign up to the Joint Statements of Buenos Aires and Paris.

Another member of the **EESC** asked whether the result of the Joint Statement negotiations on domestic regulation would include any new elements compared to previous WTO negotiations.

**COM** recalled that past negotiations on domestic regulation in the WTO often showed strongly opposing positions amongst the Membership. The current joint statement discussions clearly show more willingness amongst the participants to find compromise solutions for long standing issues. The current negotiations cover some new elements both in terms of substance and form (e.g. the use of a reference paper approach).

A third member of the **EESC** mentioned the importance of creating better conditions for EU SMEs outside the borders. However, the member stressed that these conditions should be maintained during the whole lifetime of the investment and not only during the establishment phase. The member referred to forced technology transfer in China as an example for such concerns. Also, the member inquired about the inclusion of corruption-related language references to existing anti-corruption conventions such as under the OECD.

**COM** confirmed that the Investment Facilitation framework was aiming to look at the whole lifetime of investments. Also, COM clarified that forced technology transfer was not an issue...
that could be solved through this framework. There were other channels to address this issue such as the ongoing negotiations of a bilateral investment agreement with China. Regarding the question of corruption, COM shared the EESC’s concern about a lack of rules or criteria for administrative decisions. COM confirmed that transparency was a way to fight corruption and considered links to relevant international instruments as a useful approach. COM further underlined the existence of some provisions relevant to the matter (e.g. fees should be transparent and based on objective criteria).

The Lithuanian Investors Association raised the question whether the new framework could lead to a parallel system overlapping with existing international rules, such as the Basel banking rules, and their final purpose.

COM clarified that the existing rules, such as the Basel banking rules, were very specific in their scope of application. The future framework on investment facilitation would contain general rules for FDI that did not exist for now. Similarly, the current domestic regulation rules included in the General Agreement on Trade in Services (GATS) are rather general. The rules that are currently being negotiated are much more detailed and contain elements that many WTO Members (including the EU) already include in their FTAs.