



World Investment Forum 2014: Investing in Sustainable Development

IIA Conference - 16 October 2014

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Let me begin by thanking UNCTAD for organizing this timely conference on International Investment Agreements (IIAs) in the margins of the World Investment Forum 2014. The conference is very timely for the Pacific Island Countries as they are currently engaged in comprehensive trade and investment negotiations with Australia and New Zealand. For the majority of them, this is the first time that they are negotiating an international investment agreement. Out of the fourteen Pacific Island Countries, only three are signatories to an international investment agreement. As such, they are keen to learn from the experiences of other countries, particularly developing countries which have concluded trade and investment agreements with developed countries. They would be interested in knowing, for example, how portfolio investments and state-owned enterprises have been dealt in contemporary IIAs so as to make appropriate decisions in the context of the PACER Plus negotiations.

In recent years, the proliferation of free trade agreements has been matched by a corresponding increase in the number of IIAs. Indeed, the two have moved *in tandem* with comprehensive trade negotiations such as the Trans-Pacific Partnership Agreement (TPP), Transatlantic Trade and Investment Partnership Agreement (TTIP), Regional Comprehensive Economic Partnership Agreement (RCEP) and the Pacific Agreement on Closer Economic Relations Plus Agreement (PACER Plus) which would have a robust Investment Chapter considering the inextricable link between trade and investment. Unlike bilateral investment treaties (BITs), trade agreements with investment chapters tend to be more focussed and deal with elements of importance to the participating countries. Given the trend towards such agreements and the significant ramifications they could have only for their signatories but also for third countries, it is important for them to be monitored as closely as possible so as to draw on the best practices which could be important lessons for countries wishing to conclude trade agreements with investment chapters. It would be useful to have focal points for these mega-regionals – they could be regional secretariats or designated countries. These focal points could report on best practices which would serve as a critical input in reforming the IIA regime for the benefit of all countries.

As a newcomer to the field of investment, it is obvious that the IIA regime needs to be reformed for the benefit of all countries, particularly least-developed and small-island developing countries. The recent demonstrations around the world, especially in capital exporting countries, about IIA-based investment dispute settlement mechanisms, the perceived imbalance between the rights and obligations of investors and broadly drafted provisions that increase legal uncertainty as to the precise meaning and scope of obligations underscore the urgency of undertaking this exercise to create a more balanced framework

which would inspire confidence and promote greater investment flows for the benefit of host and home countries.

UNCTAD is well-positioned to support the efforts of countries to reform the IIA regime. There could be a road-map or guiding principles, building on the four options floated by UNCTAD, to reform the IIA regime in a gradual and holistic manner with a view towards reaching consensus on a coherent and development-oriented regime. The road-map could identify possible ways for creating a framework for the re-negotiations of existing IIAs that would not be conflictual or controversial and involve all relevant stakeholders, develop commonalities, and identify areas of agreement and disagreement among countries and eventually lay down the ground work for comprehensive reform to achieve the overarching objective.

The Pacific Island Countries have been fortunate to have benefitted from the technical assistance provided by UNCTAD. Last year, UNCTAD teamed up with the International Institute for Sustainable Development (IISD) to organise a seminar on investment issues for the Pacific Island Countries in the margins of an IISD Conference in Jakarta last year. This was followed by a dedicated workshop on investment issues in Auckland. These training workshops were successful, as they enhanced the knowledge of Pacific Trade and Investment officials about complex and diverse investment issues and enabled them to negotiate effectively with Australia and New Zealand. The Chapter will be unique in the sense the Parties have agreed not to have a conventional investor-state dispute settlement mechanism and to resolve investment disputes between foreign investors and governments in national courts or through a mechanism mutually agreed by the Parties.

UNCTAD's role as a multilateral focal point for consensus building activities related to IIAs should be reinforced so as to enable it to provide cutting-edge assistance to developing countries. A number of developing countries have already benefitted from its general backstopping and analytical support, with evidence-based policy analysis and system-wide information to provide a global picture and bridge the information gap among stakeholders. UNCTAD should strengthen its technical assistance programmes, particularly for low-income and vulnerable developing countries (including LDCs, LLDCs and SIDS) that face a myriad of challenges when it comes to the negotiation and implementation of IIAs. The Pacific Island Countries hope that they can continue to benefit from the technical assistance activities of UNCTAD as the negotiations of the investment chapter in PACER Plus enters its final phase.

Thank you.