World Investment Forum 2014: Investing in Sustainable Development

IIA Conference - 16 October 2014

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USCIB's Foreign Direct Investment Policy Agenda
Investment drives economic growth, innovation, international trade, competition, job creation and prosperity in any economy. It is also a fundamental vehicle for advancing and resourcing sustainable and inclusive development. Foreign direct investment (FDI) is a vital pillar and enabling framework in the U.S. and successful economies around the world, especially in today's world of global value chains and heightened global competition. Countries that have pro-investment, pro-business policies and established rule-of-law systems attract more and higher-quality FDI, and their economies, environments, workers, and citizens reap significant additional benefits. USCIB, working through its Trade and Investment Committee, has adopted nine policy pillars to guide the organization's activities and advocacy in the investment field.

I. Successful Government Policies Attract Successful Investors: Nations and sub-central governmental units with clear and well-implemented policies on taxation, protection of property (including intellectual property) rights, common sense laws and regulations (including labor and liability issues), and clean government create a climate that nurtures private investment, including FDI. A strong investment climate is much more important than investment incentives in attracting FDI.

II. Strong Investment Agreements Are More Important than Ever: International investment agreements protect investors who put their capital, intellectual property, management resources, and reputation at risk outside the comfort and security of their home markets. Strong Bilateral Investment Treaties (BITs) and Investment chapters in bilateral or regional Free Trade Agreements (FTAs) are important tools to facilitate and protect FDI flows. We strongly support the ongoing efforts of the U.S. Government to negotiate the TransPacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), as well as gold standard BITs with key partner countries, including advanced developing countries.

III. Gold Standard BITs Require Three Strong Investment Protections: Strong, enforceable investment protections are what can turn a potential investor into an on-the-ground operator and employer. There are three key elements in a strong 21st century BIT: 1) core investor protections including fair, equitable and non-discriminatory treatment, protection against expropriation and "localization" requirements, and free transfers of capital and earnings; 2) "market access" or "pre-establishment" scope for those protections; and 3) direct access to independent and effective dispute settlement to resolve disputes with the host government, typically through an "Investor-State Dispute Settlement" (ISDS) system for independent arbitration. Investment protections under BITs and Investment chapters must continue to be available to all sectors and to all investors. Proposals to deny investment protections or access to ISDS procedures for some black-listed sectors or industries are unjustified and set a troubling precedent.

IV. The Investor-State Dispute Settlement System Works: Experience has shown that a strong ISDS system plays a key role in promoting and protecting investments and in resolving knotty disputes through the arbitration process or through negotiations against the backdrop of a possible arbitration. ISDS assures access to a non-political, neutral forum for dispute resolution by recognized independent and impartial arbitrators. ISDS provisions do not undermine host government regulation.

V. Emerging SOE Issues Deserve Greater Attention: State-Owned Enterprises can enjoy a range of preferential benefits and advantages when competing with private firms for investment opportunities. SOEs may benefit from direct or indirect subsidies, favorable tax treatment, preferential treatment, government-directed procurement, oligopoly or monopoly power, exemption from regulations applied to private investors, or may even act as the regulator within a sector. We encourage governments and international organizations to devote greater attention to SOEs, and support inclusion of strong SOE chapters in TPP, TTIP and BIT negotiations to level the playing field.

VI. A Multilateral Investment Agreement?: Some commentators have explored and promoted the idea of a multilateral investment agreement, which could perhaps be affiliated with the World Trade Organization, UNCTAD or the OECD, or perhaps a new international bureaucracy would need to be created. While we remain open to debating a multilateral investment agreement and institution as a way to bolster international investment, any new entity must meet the current high standard of investment protections and market opening like in U.S. BITs. We reject the premise that the international investment regime is in crisis, is fundamentally flawed, or in need of radical revisions.

VII. Complement the SelectUSA Program with Support for Outward Investment: The Obama Administration has enthusiastically embraced inward FDI, bolstering the “SelectUSA” program at the Department of Commerce to strengthen America’s attractiveness for FDI and hosting the 2013 Investment Summit, where President Obama and multiple senior government and business leaders highlighted our new national priority on inward FDI. USCIB enthusiastically welcomes this strong push on behalf of inward FDI. USCIB also encourages the Administration to publicly recognize the important benefits of outward FDI in driving U.S. economic growth and competitiveness in today’s and tomorrow’s globalized economy.

VIII. National Security Reviews of FDI are a Fact of Life: We at USCIB will continue to speak out for common sense approaches in CFIUS and other national security reviews around the world to ensure that such reviews of FDI cases are, indeed, focused in a limited and very rigorous way on legitimate national security concerns. We will speak out emphatically in the case of any governmental abuses of essential security provisions in disguised discrimination or protectionism.

IX. Leveraging USCIB’s Unique Role: The USCIB Trade and Investment Committee will work with key U.S. Government agencies, and advocate in Washington and to international audiences on investment policy issues. We will also actively use our unique international networks as the U.S. affiliate of the OECD’s Business and Industry Advisory Committee, the International Chamber of Commerce, and the International Organization of Employers to the ILO.

For more information on USCIB’s investment policy work, see our full policy pillars paper; our blogs on TTIP, China, SelectUSA and TPP; our submission to the European Union consultation on ISDS; an op-ed on TTIP, and the USCIB Trade and Investment Committee webpage.