

Statement by
H.E. Mr. Thani Thongphakdi
Ambassador and Permanent Representative of Thailand
at the 4th Session of the Multi-Year Expert Meeting on Investment, Innovation
and Entrepreneurship for Productive Capacity-Building and Sustainable Development
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Mr. Chairperson,

It is an honour for me to have been given this opportunity to discuss Thailand's experiences, concerns and future direction with regard to our foreign investment policy and sustainable development objectives.

Before proceeding though let me commend UNCTAD for organising this event and, more generally, for its valuable contribution over the years to the global policy climate for cross-border investment. Thailand has greatly benefited from UNCTAD's excellent work in this area, including the Investment Policy Framework for Sustainable Development (IPFSD) report.

From our experience, Mr. Chairperson, international investment agreements (IIAs) can be a double-edged sword. On the one hand, IIAs can attract foreign investment. But on the other hand, IIAs may contain investment protection provisions that constrain host States' abilities to implement policies aimed at fostering development.

Thailand would therefore like to urge the international community to step up its efforts to strengthen the development dimension of IIAs, rather than using sustainable development as merely a label.

On our part, we have drawn on the IPFSD report as a framework for fine-tuning Thailand's Model Bilateral Investment Treaty (Model BIT 2015) to give more visibility to societal interests that need to be balanced with investment protection. Although there is no one-size-fits-all solution, we would like to share five key modifications we have made that we believe are best suited to our specific needs and circumstances.

At the outset, let me address concerns related to the right to regulate. First, Thailand's Model BIT emphasises in the preamble section the Contracting Parties' right to regulate to achieve public policy objectives and to adopt measures to ensure that these objectives are appropriately protected. Even though the preamble does not impose a legally binding obligation, it can play a significant role in how the substantive provisions within the treaty are interpreted.

Second, we clarified the content and the meaning of expropriation by explicitly distinguishing between expropriation and non-discriminatory good faith regulation in pursuing public policy objectives that do not require compensation.

Turning now to balancing between the rights and obligations of States and investors, the third key modification we made is to tailor the definition of investment to exclude short-term, speculative financial transactions by including the "purpose to establish lasting economic relations" as a separate criterion for the purpose of qualifying as a protected investment.

Fourth, Thailand's Model BIT includes a provision to encourage compliance with the international corporate social responsibility (CSR) standards, which underpin the concept of sustainable development.

With regards to reforming investor-state dispute settlement procedure, the fifth key modification we made is to improve the arbitration process by including mandatory consultation, a recourse to alternative dispute resolution (ADR) and a mechanism for early dismissal of manifestly unmeritorious claims.

I wish to note here, however, that Thailand's efforts at negotiating detailed ADR clauses have not been met with much success in practice as there are doubts among different stakeholders as to its practicability and cost-effectiveness. There is a further issue for less developed countries with limited resources and expertise in assessing the merit of a case to justify the terms of settlement.

Thailand therefore urges UNCTAD to continue formulating ways to facilitate settlement and to provide capacity-building and legal assistance to less developed countries, particularly in the area of dispute resolution.

Mr. Chairperson,

Let me now touch upon another facet of the overarching principles of sustainable development, namely the connection between international investment policy framework and the overall national development strategy. As recognised by the Addis Ababa Action Agenda (AAAA), direct investment, including foreign direct investment, can make an important contribution to sustainable development, particularly when projects are aligned with national and regional sustainable development strategies.

In this connection, Thailand will be hosting the "G-77 Meeting on Investment for Sustainable Development" on 4-5 May 2016 where international organizations such as UNCTAD and OECD along with investment experts from New York, Geneva and G77 member countries can exchange views and come up with recommendations on key issues such as, (1) challenges and constraints in mobilizing funds for SDGs, (2) policy framework to promote investment in sustainable development, (3) a holistic approach to promote responsible and sustainable investment and (4) international efforts towards investment policy reform.

International organizations and G77 members are all invited to participate in this meeting. More details will be circulated in due course and we are looking forward to working with you to promote international investment regime that answers to the sustainable development agenda.

Thailand aims to submit the outcome of this meeting to UNCTAD XIV as a G77 contribution to the global effort to implement the Addis Ababa Action Agenda.

I thank you.
