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MINISTRY OF COMMERCE, TRADE AND INDUSTRY

THE DEPARTMENT OF INDUSTRY

BRIEF FOR USE BY HON. FELIX C. MUTATI, MP AT THE MINISTERIAL ROUND TABLE OF THE WORLD INVESTMENT FORUM FROM 6TH TO 9TH SEPTEMBER, 2010, XIAMEN, CHINA.

EXCERPTS

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INTRODUCTION

The United Nations Conference for Trade and Development (UNCTAD) has organized a World Investment Forum scheduled to take place on from 6th to 9th September, 2010 in Xiamen, China.

Ministerial Round Table – Revisiting Investment Policies

This session will focus on the following issue:

- Which kind of regulatory and institutional frameworks are required to ensure that investment liberation generates a maximum of development enhancing effects?
- How can conflicts among national and international investment related policies be avoided and synergies enhanced to ensure that such policies contribute rather than undermine efforts towards achieving sustainable development?
- How can possible tendencies towards investment protectionism be effectively stemmed in the awake of the financial crisis?
- What positive and negative effects do international investment rules and policies have on domestic investment?

Regulatory and Institutional Frameworks for Investment:

In order to increase benefits of foreign investment, Zambia has put in place a favourable, transparent and stable legal, regulatory and institutional frame work that results into a mutual "win-win" situation for Zambia and the foreign investors.

The Zambia Development Act is the principal legal and regulatory framework that governs all investment related matters in Zambia. The act addresses, among others, protection of investment, incentives for investment in priority sectors, incentives for major investment and a validity period of incentives once accessed.

In addition, a Public Private Partnership (PPP) Act is in place to encourage both domestic and foreign investors to partner with Government in infrastructural works i.e. roads, rails, energy projects, health, and schools among others. Investment through PPP will have numerous trickle down benefits in form of attracting additional investment in the industrial sector, employment creation and increased revenue collections to Government.

It is worth noting that Zambia is currently reviewing its licensing regime to make it more effective by reducing the number of licenses required to run businesses in Zambia. 130 licenses have since been identified and are earmarked for elimination.

In order to accrue maximum benefits from FDI, Zambia has put in place framework to encourage local participation in the foreign firms. The Citizens Economic Empowerment Act was passed into law in 2007 which is a deliberate legislation that encourages foreign investors to reserve a certain percentage of shares or positions to the locals in order to access certain preference such as public tenders, among others.

Furthermore, Government has reduced corporate tax for all companies listed on the Lusaka Stock Exchange from 35% to 30%.

In order to stimulate competition in the economy, Government has put in place an institutional framework to deal with competition issues such as mergers and acquisitions. In addition, the Zambia Development Agency which acts as a one stop shop for investment related matters reduces the transaction costs associated with starting up a business and operating a business.

Avoiding conflicts among national and international investment related policies

In order to avoid investment related conflicts, countries have attempted to create a favorable investment environment by putting in place an investment legal regime which easy to interpret.

Zambia on the other hand has undertaken both wholesale and retail reforms to make the investment environment more predictable. Wholesale reforms includes; stabilization of the macro economic environment, good governance, improving infrastructure and access to incentives. Retail reforms consist of reduction of administration barriers to start a business; tax administration and simplifying property transfer.

Zambia also enters into bilateral investment treaties with strategic countries that protects the investor's interest such as expropriation without compensation, guaranteeing repatriation of profits, treatment of the foreign investors as domestic investors and investors from third party countries (with exemptions) and settling disputes in an amicable manner or through the international arbitration.

It is also important that international organizations play an active role in efforts to settle investment disputes, thus creating an environment where all parties are ready to play by the rules.

To date, Zambia has not recorded a single investment related dispute arising from the BITs or indeed any other IPPA signed with particular companies.

Stemming possible tendencies towards investment protectionism in the awake of the financial crisis:

Investment protectionism is one of the most serious risks to cross-border investment which lies in the emergence of new forms of discrimination that impede both outward and inward investment flows.

Pressures to protect employment and restore growth risk tempting governments into adopting discriminatory policies that ultimately hinder a return to growth.

Investment protectionism remains a threat. Over the last two years during the financial crisis, merger proposals have been turned down in many parts of the world (especially the developed countries). Acquisition deals have been blocked and laws on closer government scrutiny of foreign direct investment (FDI) passed.

It should be noted that FDI recipient countries genuinely want indeed, compete for foreign investment projects. They are reluctant to take protectionist measures that would undermine business confidence and several have recently taken steps to liberalise investment policies, Zambia inclusive.

Tougher FDI restrictions would mainly deter prospective investors, harming both the recipient country and the investor. Apart from selling portfolio assets such as government securities, countries can finance their current account deficits through cross-border mergers and acquisitions. More FDI restrictions would undoubtedly increase the costs, and do no good to financial stability.

In addition, excessive FDI restrictions would lead to retaliatory measures from other countries, dragging the world economy into a vicious circle. A subsequent drop in investment flows would hamper trade flows, which in turn would do great harm to the world's eventual full recovery from the crisis.

To stem the trend of investment protectionism, both the recipient and investor countries should play their due role.

For the recipient, it is important to accurately define the scale and scope of national security and refrain from intentionally expanding sensitive and critical sectors. Different Sovereign Wealth Funds (SWFs) should be treated with an equal footing.

For the investor, making thorough research and study of the recipient's investment policies always comes first. It should operate SWFs strictly in accordance to international regulations and the recipient country's laws, and launch effective dialogue and exchanges at all levels to enhance mutual trust.

In the post worldwide economic slump, it is more urgent than ever to think globally rather than locally. Only through demolishing trade barriers and encouraging foreign investment could prevent the world economy from experiencing the economic and financial crisis.

Positive and Negative effects of international investment rules and policies on domestic investment:

The basic framework of international investment treaties is seen as a key instrument to promote the flow of investment between countries party to these agreements. From a systemic point of view that sees foreign investment as a key component to promote growth and reduce poverty, bilateral investment treaties are agreed set of rules that serve to attract foreign investment by reducing the space of unprincipled and arbitrary actions of the host state and thus contribute to good governance, which is a necessary condition for achievement of economic progress in the host state.

Hence the positive effects of investment treaties are that they create a conducive investment environment for attracting FDI in a host country and as such, domestic investors tend to have opportunities to work with foreign investors through joint ventures and as suppliers of raw. and intermediate materials. In addition, foreign investors normally focus on their core competence and tend to delegate other activities to domestic investors such as services provision.

The negative aspects of FDI may include the tendency by some foreign investors to externalise not only profits but also their revenues. The tendency has contribute to the low levels of domestic savings which otherwise would have been used for public investments.

There have also been fears that foreign investment crowd out domestic investment. To this end, Government has been encouraging Joint venture partnership between foreign investors and domestic investors. Furthermore, Government is implementing a linkages programme where Multinational Corporations are linked to MSMEs for their input supplies.

International Investment Agreements Conference

The Minister will participate in the breakout session A to discuss particular the systemic evolution of International Investment Agreements (IIAs).

Systemic Evolution of IIAs:

The network of IIAs has expanded to encompass more than 5,980 different agreements, with almost every country in the world being part to at least one of the bilateral investment treaties, double taxation treaties and other international agreements with investment provisions (such as free trade agreements and economic cooperation agreements) that make up this system. The universe of IIAs has not only grown in numbers, but also in complexity. Agreements increasingly overlap, as they are concluded at the bilateral, regional, inter-regional, sectoral, plurilateral and multilateral level. And they become more multifaceted, as they cover not only investment issues per se, but also related issues such as trade, services, intellectual property, industrial policies, labour issues, movement of personnel, environmental concerns, and others.

In the absence of a global body administering the process, international investment rulemaking lacks system-wide coordination, and countries continue to conclude investment treaties on an individual basis. The first Bilateral Investment Treaty was signed in 1959 between Germany and Pakistan. Zambia signed its first BIT with Germany in 1966. To date Zambia has signed a total of twelve (12) BITs.

While the development of IIAs offer important opportunities, the increasingly complex and rapidly evolving IIA universe also poses major challenges for

States and firms alike. The challenges for firms include keeping track of latest developments in international investment rulemaking and effectively taking advantage of them in their business planning and operation, as well as in maintaining good relations with their host countries. The challenges for countries include keeping the treaty network consistent and transparent, and above all formulating the "right" agreements in terms of balancing the interests of host countries, home countries and foreign investors, as well as strengthening the development dimension.

Other challenges have to do with capacity and challenges of content. The extent to which the further evolution of the IIA universe can contribute to economic and social development and to a better integration of developing countries into the system crucially depends on whether appropriate responses to these challenges will be found.

Establishing and maintaining a coherent IIA policy remains a difficult task for most developing countries as long as they have to negotiate investment treaties individually with stronger partners as they mostly lack the resources to participate fully and effectively in the evolution of the IIA universe.

Bilateral Investment Treaties (BITs) were first introduced by capital exporting countries mainly to protect their investments with no development component. A critical issue, therefore, remains on how best to strengthen the development dimension of IIAs. Incorporating a proactive development dimension would require adding new kinds of provisions not often seen in IIAs, including home country measures. Such means could include a broad range of issues: (a) transparency and exchange of investment-related information; (b) fostering linkages between foreign investors and domestic companies; (c) capacity-building and technical assistance; (d) granting of investment insurance; (e) encouragement of transfer of technology; (f) easing informal investment obstacles; (g) joint investment promotion activities; and (h) access to capital.