Brief Statement by Ms. Xiaohong Xue at High -Level IIAs Conference

Thanks for giving me the floor. I am from the Department of Treaty and Law of the Ministry of Commerce of China. First of all, China appreciates UNCTAD's long-standing commitment to reform efforts aimed at building a sustainable and coherent international investment regime. Today, I would like to briefly share our understanding and treaty practice concerning this topic.

1. Since signing our first BIT with Sweden in 1982, the Chinese mainland has concluded 111 BITs that are currently in force, as well as 13 FTAs containing substantive investment Chapters. Most of these BITs and FTAs contain investment protection provisions and ISDS mechanism. Moreover, China has constructively engaged in the ISDS reform discussions under UNCITRAL WG3, and supports the establishment of a permanent appeal mechanism for resolving the main problems in the current ISDS regime. China submitted the paper on recommendations regarding ISDS reform in 2019, and jointly organized intersessional meetings and seminars in Hong Kong and Chengdu in collaboration with the UNCITRAL Secretariat. China also supports the reform process of WG3 in delivering outcomes such as mediation and the code of conduct for arbitrators.

2. In recent years, China has made efforts to upgrade the old BITs. We refine the substantive disciplines in BITs, such as offering an annex on indirect expropriation, clarifying FET standard, preferring in-built exceptions in specific provisions, and incorporating clauses on green and sustainable development. On procedural disciplines, we refine the scope of our consent to ISDS and integrate improvements to the ISDS process as well, including transparency, the avoidance of parallel proceedings, a limitation period for ISDS claims, the prevention of frivolous claims, and joint interpretations etc.

3.What's next for IIAs? On the one hand, investment facilitation content in IIAs has achieved encouraging progress at the bilateral, regional and multilateral levels. The share of sustainable development and responsible business conduct provisions are increasingly being incorporated into IIAs. On the other hand, IIAs with investment protection standard and ISDS mechanism has declined moderately. Moreover, IIAs increasingly include provisions aimed at preserving policy space for States to regulate in the public interest. But can a host State be exempted from treaty obligations simply by invoking national security or public interest?

China maintains that the evolution of international investment rules must stay anchored to its founding objectives. Protecting the legitimate rights and interests of foreign investors is the an inherent element and fundamental purpose of IIAs. ISDS mechanism is one that is worth maintaining to avoid economic disputes between investors and host countries escalating into political conflicts. We must strike an appropriate balance between investment protection with regulatory flexibility, avoiding overemphasis on one side at the expense of the other.