
STATEMENT

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Co-Chairs,

Distinguished Guests,

Ladies and Gentlemen,

1. I would like to join my colleagues in thanking UNCTAD for organizing this event, and also for the support and technical assistance UNCTAD has given Thailand over the years in the efforts to reform our international investment protection framework.
2. I am delighted for the opportunity today to share Thailand's experiences in relation to IIA reforms.

Recent developments in the international investment regime

3. Thailand has drawn from UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD) report as a basis to refine our Model Bilateral Investment Treaty (Model BIT) in order to rebalance investment protection and the right to regulate in pursuit of the public interest. Our reform has particularly focused on modernising the investment protection scheme and improving the efficiency of the ISDS mechanism.
4. In the process of reviewing our Model BIT, Thailand has paid close attention to the latest trends and developments in the international investment regime in order to reflect on our own progress.
5. Despite the fact that countries have built a general consensus on the need for IIA reforms and there has been a worldwide convergence towards sustainable development objectives (e.g. 2030 Agenda for Sustainable Development, ASEAN Community Vision 2025), we acknowledge that the global efforts continue to lack a harmonious and coherent approach to reforms.

6. While most countries continue to see the merits of traditional investment protection and Investor-State Dispute Settlement (ISDS), there are some countries (e.g. Brazil) that have resorted to a different approach by giving priority to investment promotion and facilitation, dispute prevention and alternatives to arbitration.
7. The fragmented nature of the international investment regime is further complicated by different mandates of the IIA parties on the scope of protection. While most developed countries seek to provide a broad-based definition of investment, many developing countries prefer to protect investment that is conducive to economic development, while choosing to exclude portfolio investment. This has led to different levels of the scope of protection in current IIAs and at the same time constitutes a major roadblock in the negotiation of new IIAs.
8. In my perspective, these systemic issues highlight an asymmetry of knowledge and capacity between IIA parties. It is, therefore, timely for us to discuss how to tackle these challenges. I seek UNCTAD's consideration for action on the following areas:

Portfolio investment

9. First, many IIAs attempt to draw a line between direct investment and portfolio investment, but no comprehensive criteria for the term has been established. In this regard, Thailand would like to call for UNCTAD to conduct an in-depth study leading towards a policy discussion on this topic, especially on how to define such a term and what type of portfolio investment should be protected under IIAs.

Capacity-building

10. Second, recognising that countries participating in the negotiations of new generation IIAs are at different stages of development, we request UNCTAD to address this disparity by assisting developing countries and least-developed countries in capacity-building, especially the capacity to understand technical issues, the capacity to negotiate and the capacity to implement IIA obligations through internal policy coordination.

Assistance in the area of dispute resolution

11. Third, we believe it would be beneficial for countries with limited resources and expertise, if UNCTAD, or others, could establish a legal advisory agency for the use of alternative dispute resolution and IIA-based investor-state arbitration. This form of assistance could be modeled after the very successful Advisory Centre on WTO Law (ACWL) which offers free legal advice and training on WTO laws and provides support to WTO dispute settlement proceedings at discount rates to developing and less developed countries.

Establishing norms for inclusive and responsible investment

12. Finally, we are of the view that any future steps taken to carry IIA reforms to the next phase should be guided by the principles of sustainable development. We, therefore, urge UNCTAD to continue facilitating the process of creating norms for inclusive and responsible investment at the multi-lateral level. This may not necessarily have to be incorporated into the IIAs, but could be promulgated through other initiatives, such as targeted investment promotion and facilitation policies.
13. It is also apparent that a Model IIA with commentaries would play an important role at every level of reform. Therefore, Thailand would like to urge UNCTAD to play a leading role in the drafting process.
14. Thank you.
