STATEMENT

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The Netherlands is fully committed to implementing the 2030 Agenda for Sustainable Development, which aims to address the most important economic, social and environmental challenges of our time.

This commitment not only demands that we implement reforms and increase investments on a national level. It also challenges us to stimulate international public – private partnerships to ensure worldwide sustainable, responsible and inclusive economic growth. Fostering such partnerships is therefore one of the backbones of the Netherlands' aid, trade and investment policy.

As UNCTAD has calculated, in order to achieve the Sustainable Development Goals we would need to close a 2.5 trillion US dollar investment gap. This amount surely cannot – and should not – be delivered through traditional ODA alone.

As highlighted in the third finance for development summit in Addis Ababa, private investment must play a critical role to address this global challenge. However, these investments should not only increase in quantity. They also have to become more responsible and more effective.

Governments have a pivotal role in enabling and stimulating investment, for example by ensuring a stable and attractive investment climate. After all, in many cases, governments cannot achieve public goals without private funding.

This means that they need to carefully balance their duty to protect the public interest with their responsibility to act responsibly and reliably vis-à-vis investors.
This challenge lies at the heart of the many debates on investment treaty reform which are currently taking place in over 50 countries, including in The Netherlands.

The Netherlands is home to many investors and we are currently placed at number 8 in the world concerning outgoing FDI. This strong position has many benefits to our economy, but it also entails many difficult tasks and responsibilities. To address these, from 2014 onward the Netherlands engaged in a detailed review of its policy on investment treaties and its mechanism for investment protection. This review involved the national, European and multilateral dimensions.

Let me start with the **national dimension**, where the inclusion of an investment chapter in the Transatlantic Trade and Investment Partnership between the EU and the US (TTIP) ignited and fueled a debate in the Netherlands on the relationship between (a) the current international investment protection regime, (b) our own model text, and (c) our portfolio of bilateral investment treaties.
In this debate, concerns particularly focus on (1) the need of rebalancing the State's right to regulate in the public interest; (2) the need to protect investors; and (3) how to ensure a fair mechanism to settle disputes.
The Netherlands government then commissioned a number of expert studies to assess its current investment policy and to suggest improvements:

1. A first study focused on the impact of bilateral investment treaties (BITs) on investment flows. We believe that investment agreements provide a legal framework that offers investors stability, which in turn is one of the considerations for investors when deciding whether or not to invest. However, this premise seemed to be contested by others. Research by the Netherlands Bureau for Economic Policy Analysis confirmed our analysis and concluded that, even though the effects differ by income group, BITs increase bilateral FDI stocks on average by 35% compared to FDI stocks of countries without an investment treaty into force.

2. A second study by UNCTAD provided an overview of treaty-based ISDS cases brought under Dutch IIA's. It showed that a clear majority of ISDS cases initiated from the Netherlands are brought by companies which don't have substantial economic activities in the Netherlands.

3. A third study particularly focused on the impact of ISDS in TTIP, the Transatlantic Trade and Investment Partnership between the EU and the US. It pointed out 14 areas of attention and indicated clear areas for reform.

These studies served as basis for a period of careful national reflection with the involvement of stakeholders and parliament which has led the Dutch government to identify four areas for reform:

1. To have a clear reaffirmation of the right to regulate: States should have the right to regulate for legitimate public policy purposes without the public interest being jeopardized by ISDS claims.

2. To limit access to the dispute resolution mechanism: make exceptions for prudential measures, disallow parallel claims and forum shopping, and prevent frivolous claims.

3. To improve the transparency of the dispute resolution mechanism, with a code of conduct for members of the tribunal, a fixed list of judges, an appeals mechanism and the possibility to introduce binding interpretations by the Contracting Parties.

4. To clarify the scope of investment protection: with a denial of access for mailbox companies and clearer substantive standards providing better guidance on the interpretation.

The government subsequently decided to revise all of the Netherlands (91) BITs and to put ongoing negotiations 'on hold' for the time being.

This revision consists of three steps.

1. We will first develop a new model text subject to consultations with concerned stakeholders. And here I would like to underline that this public consultation is open for all stakeholders and I would particularly encourage my colleagues here to participate.

2. The second step will be to ask for the authorization of the European Commission.

3. And finally, we will start renegotiations with our BIT-partners and reopen ongoing negotiations that were put on hold. The purpose of this whole exercise is to bring our bilateral investment treaties in line with our sustainable development oriented IIA-policy.

One thing is certain: this new model text will limit its scope only to those companies with a substantial business activity in the Netherlands. And there's another certainty: transparency in dispute settlement will be enhanced.

In that light, we're pleased to announce that on the 18th of May of this year the Netherlands signed the UNCITRAL Transparency Convention. As soon as we have completed the ratification process, the UNCITRAL transparency rules will directly apply to all our existing BITs.

Then, for the **European dimension**, we have actively conveyed our vision on reforms in the context of negotiations at EU-level with third countries. By doing so, we have successfully managed to ensure that our vison has been incorporated in the new EU approach for investment protection.
The Netherlands is a strong supporter of this EU approach, which also includes the establishment of a new Investment Court System and which has already been applied in the recently concluded trade agreements with Canada and Vietnam. We strongly believe that it should also form the basis for future EU negotiations and should be developed into a clear, strong and fair multilateral dispute resolution mechanism.

Which, naturally and finally, leads me to the **multilateral dimension**.

Considering the fragmented nature of the international investment agreements landscape, a multilateral dispute resolution mechanism could address many of current challenges.

It could be the start of more efforts which are needed to structure and manage multilateral investment policies, both through formalized and non-formalized means, especially with a view to the ambitions that we laid down in Agenda 2030.

I was therefore pleased to see that two weeks ago the G20 adopted the non-binding Guiding Principles for Investment Policymaking, which might signal the beginning of a new multilateral approach to stimulate and ensure sustainable and responsible investment.

In conclusion, even though we have identified areas of reform, we have started to implement a new approach to investment policy, and we can enjoy support on the highest political levels to move forward in a more positive, more stable, and fairer manner, we recognize that we are still at the starting point of this process.

We therefore very much welcome this high level meeting which not only underlines the broad interest for this important issue, but also allows us to learn from the experience and best practices of others, which will serve as an important inspiration.

We thank UNCTAD of making this event possible, as well as for its work and support over the past years.