Short courses for Permanent Missions in Geneva

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Geneva, Switzerland

International Investment Agreements: Challenges and implications

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UNCTAD
The International Legal Framework for International Investment

- Absence of a **multilateral agreement on investment** (unlike trade, services, IPR)
- International investment rulemaking lacks **system-wide coordination**
- Countries conclude **investment treaties at the bilateral and regional levels**
The network of IIA\$s consists of…

- Bilateral investment treaties (BITs)
- Free trade agreements/economic partnership agreements with investment provisions (FTAs/EPAs)
- Regional integration agreements (REIOs) (EU, CARICOM, MERCOSUR, COMESA CIA, SADC investment protocol, Arab investment agreement, ASEAN etc)
Core elements in International Investment Agreements (IIAs)

- Preamble
- Definitions (investment/investor)
- Core standards of protection:
  - Principle of fair and equitable treatment
  - Principle of non-discrimination (NT/MFN)
  - Expropriation
- Transfer of funds
- Investor-State dispute settlement
Recent Developments: The Numbers
The IIA universe continues to grow

Annual number of IIAs

- Annual BITs
- Annual TIPs
- Cumulative all IIAs

Cumulative number of IIAs: 3328

Source: © UNCTAD, ISDS Navigator
Investor-State dispute settlement (ISDS) cases

Known ISDS cases, annual and cumulative, 1987-2015

Cumulative number of known ISDS cases 767

Source: © UNCTAD, ISDS Navigator
Argentina, Venezuela, and the Czech Republic, have been the most frequent respondent States.

Most frequent respondent States, total as of end 2015 (Number of known cases)


Source: © UNCTAD, ISDS Navigator
The United States, the Netherlands, and the United Kingdom, have been the most frequent home States of investors bringing ISDS claims.

Most frequent home States of claimants, total as of end 2015 (Number of known cases)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>United States</td>
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<tr>
<td>Cyprus</td>
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<td>18</td>
</tr>
</tbody>
</table>

Source: © UNCTAD, ISDS Navigator
Considerations in ISDS cases

• The amount claimed ranges from $8 million to about $2.5 billion

• Most of the cases are brought by investors from developed countries

• Developed-country investors – in particular, those from the United States, Canada and a few EU countries – have been the main ISDS users, responsible for over 80 per cent of all claims
ISDS Cases by Economic Sector

Total as end 2014 (Per Cent)

- Waste collection, treatment and disposal (3 per cent)
- Transportation and storage (3 per cent)
- Manufacture of food products (4 per cent)
- Real estate activities (4 per cent)
- Telecommunications (6 per cent)
- Construction (8 per cent)
- Financial and insurance services (9 per cent)
- Mining, including oil and gas (16 per cent)
- Supply of electricity and gas (19 per cent)
- Other (28 per cent)

Source: © UNCTAD, ISDS Navigator
IIA Reform: Taking Stock and Charting the Way Forward
UNCTAD Roadmap for IIA Reform (WIR 2015)

- There is a pressing need for systematic reform of the global IIA regime
- Need for reform is evident from the heated public debate and parliamentary hearing processes in many countries and regions
- The question is not whether or not to reform, but about the what, how and extent of such reform
- World Investment Report 2015 (WIR15) offers an action menu for such reform
INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

NEW GENERATION INVESTMENT POLICIES
PRINCIPLES FOR INVESTMENT POLICYMAKING
NATIONAL INVESTMENT POLICY GUIDANCE
GUIDANCE FOR INVESTMENT TREATIES
ACTION MENU FOR INVESTMENT IN SDGs
THE WAY FORWARD

**UNCTAD Investment Policy Framework 2015: A New Generation of Investment Policies**

### Core Principles

“Design criteria” for investment strategies, policies and treaties

<table>
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<th>National investment policy guidelines</th>
<th>IIA guidance: policy options</th>
<th>Action Menu: promoting investment in sustainable development</th>
<th>Global Action Menu for Investment Facilitation</th>
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<tr>
<td>Concrete guidance on how to formulate investment policies and ensure their effectiveness</td>
<td>Framework and toolkit for designing and negotiating international investment treaties</td>
<td>Strategic initiatives to mobilize funds and channel investment towards sectors key for sustainable development</td>
<td>10 Action Lines for policymakers to adapt and adopt for facilitating investment and benefitting from it</td>
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THANK YOU!

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