



UNCTAD High-level International Investment Agreements (IIA) Conference 2018

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I thank UNCTAD for organising this International Investment Agreement Conference.

We are pleased to be at this Conference, and to be given the opportunity to offer a South African Government Policy perspective on how to ensure that investment policies are coherent with and supportive of other public policies. This Conference marks another example of the unique leadership UNCTAD provides in development policy thinking on a range of issues, including on sustainable investment.

Countries have taken steps to formulate a new generation of sustainable development oriented IIAs. Ensuring policy space and reaffirming state control over the system are core policy objectives of current reform efforts. Options for the way forward range from countries reviewing their treaty networks and revising their treaty models in line with UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD) and Reform Package for the International Investment Regime.

Progress has been made on the above, but more needs to be done. This includes the difficult challenge of defining sustainability characteristics of international and domestic investments. An indicative list of foreign direct investment (FDI) characteristics can be utilised by interested governments to attract sustainable FDI.

Additionally, discussions on ISDS have begun at the United Nations Conference on International Trade Law (UNCITRAL), where possibilities are being explored of reforming the ISDS regime. This is an indication that improving the investment regime has become a matter of urgency. The current debates illustrate a growing consensus on the need to reform the ISDS system. Yet, despite the growing consensus about the need for ISDS reform, the scope and modalities of, and strategies for, that reform remain contested.

It is further increasingly evident that only systemic reform will allow addressing concerns with ISDS in a comprehensive fashion. South Africa agrees with the need for an alternative to the traditional ISDS in the form of a more modern and structured dispute settlement process - one that is better adapted to investment disputes that involve sustainable development and public policy issues and a range of different stakeholders and interests.

South Africa is taking part in the discussions on ISDS and its challenges in a constructive manner and has argued that the debate should be structured beyond ISDS to include other options for dispute settlement. Additionally, any discussion on dispute settlement must also be located in the wider context and dialogue on the reform of the terms of the underlying treaties. Any ISDS discussions must also be aimed at promoting the much-needed development of a comprehensive and inclusive investment-related dispute alternative.

South Africa has engaged in a process of socio-economic transformation as entailed in the National Development Plan, New Growth Path, National Industrial Policy Framework, Trade Policy and Strategic Framework (TPSF) and Protection of Investment of Act (PIA). Implementation of this ambitious development agenda required the development of new policies and regulations, including a review of South Africa's Bilateral Investment Treaties, resulting in the adoption of a new investment policy framework, while ensuring South Africa remains open to foreign investment and trade. Through this process, South Africa has ensured that its investment policy is part of the broader development objectives of government and is aligned to other developmental policies and the Constitution.

South Africa's investment policy framework follows an investment for sustainable development approach, which recognises that while FDI can make a positive contribution to sustainable development, the benefits to host countries are not automatic. Instead, regulations are needed to balance the economic interests and ensure investments make a positive contribution to sustainable development, as any associated benefits of investment need to be purposefully built into the investment regime and development agenda.

I further want to remind us all that the Sustainable Development Goals (SDGs) provide an agenda for development to 2030, and stress the need for coherent policies across sectors. For many countries, in particular developing countries, realising coherence is a challenge, given the various barriers, which often stem from: institutional arrangements and processes, including limited capacity, competition for sectoral budgets and silo approaches of government departments towards policymaking, where some departments work as competitors rather than collaborators or implementing partners.

The need for coherent action through mutually supportive policies is integral to the SDGs. A failure to coordinate the development of policies across sectors will lead to ineffective policy

design and create barriers to enabling efficient implementation. These barriers vary and can include lack of buy-in, conflicting mandates, misallocation of limited resources, and mixed signals for investment or action.

To improve overall investment policy coherence and to meet the challenge of sustainable development, governments need to design effective policies that avoid impacts with adverse effects on the development prospects of countries. At the same time, governments need to enhance their capacities to exploit synergies across different policy areas with important cross-border dimensions, such as trade, investment, agriculture, health, education, environment, and development to create environments conducive to development. Achieving sustainable development requires policies that are closely aligned across sectors and with international commitments.

From this perspective, what is required is a coherent policy approach that will enable developing country exports to have greater access to markets, while also helping them boost their export supply capacity. Countries must adopt, develop or design coherence processes that are suited to its specific circumstances, with the following common elements in mind:

- Political commitment and leadership to guide government-wide commitment to translate and align SDGs into measurable.
- Creating multi-level mechanisms and legal frameworks to resolve conflicts or inconsistencies between departments or implementing agencies.
- Multi-stakeholder involvement and inclusive policy dialogue - the involvement of civil society organisations, as well as the private sector and development institutions is critical. Civil society organisations make a valuable contribution to public policy-making processes and in making sure that government at all level and business act responsibly. The private sector has a central role in advancing innovation, creating wealth and mobilising jobs. All these must input into policy development and facilitate support, finance and implementation. Involving all these players in inclusive dialogue on policy coherence issues is fundamental for inclusion, building common ground, ownership and informed input to policy development and implementation, and making coherent and effective collective efforts in key areas.
- Having an integrated approach to implementation, focusing on fostering positive synergies between policies and across sectors to create win-win scenarios and engaging other policy actors beyond those involved in development.

- Moving from sectoral approaches to cross-sectoral approaches – coherence has to exist within policies and strategies across all relevant sectors. A broad approach is needed to understand the many dimensions of development challenges in the context of multi-sector value chains and structural transformations in the global economy. A cross-sectoral approach recognises trade-offs interlinkages and opportunities within and between sectors.
- Fostering an informed process of policy formulation and implementation at all levels of government and focus on common challenges, such as improving framework conditions for job creation or reduction of poverty.
- Monitoring and reporting promote adaptive management and keep abreast of developments.

South Africa believes that these key components can help create enabling environments at national and global levels that support the transformation needed for sustainable, inclusive growth and development. Addressing these challenges successfully is an important step on the road towards coherence. It requires identifying policy examples that undermine development objectives, as well as examples that show how policy coherence can foster development. It also requires being more specific about what it is we want to measure and why, and then agreeing on how to measure it. Work needs to be undertaken aimed at understanding the effect of inconsistent policies and the policy actions needed to resolve them.

UNCTAD's record on investment places it at the forefront of the global debate and UNCTAD has a particular role to play in improving policy coherence through its ability to provide evidence to inform policy-making and address cross-sectoral issues. UNCTAD's multi-disciplinary expertise assists governments to improve public policies based on guidelines and reform options developed by it and shared experience supported by evidence-based analysis and dialogue. This provides UNCTAD a unique overview and understanding of the linkages and dimensions of investment and sustainable development and the opportunities for creating synergies between them.