

Remarks at UNCTAD High Level IIA Conference
13 November 2019, Geneva
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“Opening plenary”

- We would like to thank UNCTAD for organising this high-level Conference. The EU regularly consults the various UNCTAD publications and materials which are most useful.
- As regards the issue of awareness and the importance of modernising old-generation treaties, the EU is very much aware of the importance of modernisation as half of the unreformed BITs are by EU Member States. As you know, Europe has seen a major public debate.
- In response, the EU’s investment policy has since 2015 undergone significant reforms to address the concerns expressed by focusing on clarifying the provisions on investment protection and investment dispute settlement to improve legal certainty and avoid abuses. Let me also stress that the policy continues to evolve.
- What can we do? When the EU negotiates at EU level with a third country, we replace the old-generation BITs by EU Members States at once with one single agreement. We have developed a reformed approach and a number of our reforms are among the UNCTAD policy options.
- The right to regulate has been at the centre of the debate. How do we draft new rules? On protection standards, we have clearly defined the meaning Fair and Equitable Treatment (FET) principle by listing its main elements in a closed list as well as of the concept of indirect expropriation through an annex with detailed guidance on how this concept should be interpreted. We have also prohibited "forum shopping" and have excluded "mailbox companies" from the benefits of our agreements.
- The EU has addressed all five areas of IIA reform in its recent agreements concluded with Canada, Singapore and Vietnam and also with Mexico. We are also pursuing our reformed approach to investment protection in ongoing negotiations with Indonesia, Tunisia and Chile.
- We have modernized and replaced old-generation bilateral BITs previously concluded by individual EU Member States by an EU level agreement thereby achieving regional consolidation. This ensures maximum legal certainty for investors and consistency.

Our agreement with Canada (CETA) replaces 8 old-style BITs concluded by EU Member States, the EU-Singapore agreement 12 BITs, the EU-Vietnam agreement 22 BITs and the EU-Mexico agreement 15 BITs.

- On dispute settlement, the EU and its Member States have advanced on renovating the stock of existing ISDS systems. This has been done in two ways:
- First, the EU's bilateral agreements (Canada, Singapore, Vietnam) replace the existing agreements containing ISDS with a modern court system (ICS) as a first step towards multilateral reform. That system follows one of the recommendations of UNCTAD, which is to establish a court which brings the lessons learned in our domestic and international legal systems to bear in the field of ISDS by ensuring the independence of adjudicators by breaking the link between arbitrators and the persons that appoint them. Second, the EU and other states are promoting the establishment of a multilateral investment court (MIC) in the UNCITRAL Working Group III. There will be a dedicated session on ISDS and the MIC later this morning. There will be an important discussion of MIC proposals in January next year. Importantly, the EU and its MS propose that the multilateral investment court should apply to the stock of 3000 existing treaties.
- The EU is also actively engaging in the process of modernisation of the Energy Charter Treaty (ECT) which contributes to phase 3 of IIA reform. This Treaty dates from the 1990s and contains outdated provisions, notably on investment protection and transit. For the EU, the aim of this process is to ensure that the ECT is not only coherent with recent developments on investment protection, but also with broader global policy evolutions such as climate change and the clean energy transition.
- Looking forward, we also see investment facilitation as an important means to realise sustainable development objectives, mobilise increased investment flows and underpin national investment law reforms. The EU is part of 92 signatories who recently issued a joint ministerial statement in the WTO reaffirming their support for a multilateral framework on investment facilitation for development. Signatories are committed to working towards an outcome at the 12th WTO ministerial conference in June 2020. UNCTAD also developed a very useful Global Action Menu Investment Facilitation in 2016. The resemblance between the UNCTAD action items proposed and the ongoing talks on a multilateral framework are striking.
- Let me conclude, by thanking the organizers of this event for their valuable support and we encourage UNCTAD to continue its work on IIA reform, which has proved very helpful for all involved. We look forward to enriching debates during the course of the day.