Remarks at UNCTAD High Level IIA Conference
13 November 2019, Geneva
Patricia Holmes, Deputy Permanent Representative, Permanent Mission to the WTO

Breakout Session: Regional investment policy processes and their contribution to Phases 1 and 2 of SD-oriented IIA reforms "Developed countries"

Australia is actively involved in investor-state dispute settlement (ISDS) reform efforts both bilaterally and multilaterally.

- We have made considerable progress in Phase 2, the modernization of the existing stock of old-generation treaties. Like most counties, Australia's investment treaty practice has significantly evolved since these old-generation treaties were signed, largely in the 1990s.
- We consider that ISDS reform is important in terms of
    - providing greater certainty for investors and government
    - addressing concerns expressed by certain stakeholders regarding ISDS
    - maintaining the ongoing legitimacy of ISDS.
- In the past year, Australia has commenced and also concluded negotiations for free trade agreements (FTAs) with a number of treaty partners.
- When negotiating FTAs, Australia's general policy has been to replace our first generation bilateral investment treaties (BITs) with comprehensive investment chapters in FTAs:
    - for example, as a result of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) entering into force with Mexico and Vietnam, the BITs with those countries have now been terminated;
    - Australia and Peru have also agreed to terminate their BIT upon entry into force of the Peru-Australia FTA, or the entry into force of the CPTPP for Peru, subject to transitional arrangements;
    - and the Hong Kong BIT is also being dealt with as part of the Australia-Hong Kong FTA package.
- As a result of such negotiations, the provisions in these broadly-drafted older style BITs will be replaced with detailed modern FTA investment chapters.
- For those trading partners with whom we are not currently negotiating an FTA, where appropriate, Australia considers renegotiating the older-style BITs to update their provisions.
- Australia recently successfully concluded a pilot project to update the 2002 Agreement between Australia and Uruguay on the Promotion and Protection of Investments. We signed an updated BIT with Uruguay on 5 April 2019 and are working to bring it into force. It improves on the existing 2002 BIT and replaces older-style provisions with more detailed modern investment provisions containing explicit procedural and substantive safeguards.

- The approaches we have taken to reforming our network of investment agreements are reflected in UNCTAD's ten options for reform, in particular
    - amending treaty provisions
    - replacing 'outdated treaties', and
    - engaging multilaterally.
- On the multilateral front, Australia signed the Mauritius Convention on Transparency and is working hard to bring it into force, hopefully next year. This provides greater transparency in ISDS proceedings and reflects the approach in Australia's more recent FTAs.
- Australia is also actively engaged in other multilateral reform efforts on ISDS, not only in UNCTAD, but in other relevant bodies such as at ICSID, the OECD, APEC and UNCITRAL
- This week, in Washington, we are participating in the third meeting of Member States as part of the ICSID Rules Review, and in UNCITRAL Working Group III we are championing the development of a multilateral convention on ISDS procedural reform which could efficiently update countries' networks of older-style BITs.
- In relation to Phase 3, promoting coherence (between IIAs, national and international and between investment and other policies), Australia has taken steps to ensure coherence with national investment policies and increase awareness of international investment obligations.
- We hold regular interdepartmental committee meetings at the Federal level, and engage in regular dialogue with our State and Territory governments to advise and assist with their management of investment issues.
- Australia has also funded APEC to engage an expert to produce a 'Handbook on Obligations in International Investment Treaties'. The handbook will assist line ministries and state governments in APEC economies understand some of their international investment obligations. We will be hosting a lunchtime session today to share information about the Handbook.
- Thank you.