

**Remarks at UNCTAD High Level IIA Conference  
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**Breakout Session: Multilateral Processes and their contribution to Phases 1 and 2  
of SD-oriented IIA reforms "Reforming investment dispute settlement"**

**Honorable Chair and Distinguished Representatives,  
Ladies and Gentlemen,**

It is my great pleasure to attend this conference. I'd like to start by thanking the UNCTAD for organizing this conference and the invitation to the Chinese government.

Now, I hope to share some thoughts on reforming the Investment Dispute Settlement regime from the perspective of the Chinese government.

**First, do we need ISDS?**

ISDS mechanism has been the target of strong criticisms in recent years. Some countries believe that the investment arbitrations unduly protect the investors at the expense of the right of the host states to regulate in the public interest.

ISDS has been and will continue to be a controversial topic. Some countries have withdrawn from the ICSID Convention; some suggest state-state dispute settlement (the "SSDS") instead; some support exhaustion of local remedy, which requires investors to pursue their claim first through domestic courts before resorting to ISDS. In some recent treaty practices, ISDS will no longer be available for the "new investments" or ISDS provisions have to be pending upon second stage negotiations.

In our opinion, however, the ISDS plays an important role in protecting the rights and interests of foreign investors and in promoting cross-border investment. It helps to build the rule of law into international investment governance and to prevent economic disputes between investors and host countries from escalating into political conflicts between states. We believe the ISDS mechanism is valuable and should not be abandoned with haste.

**Second, do we need to reform ISDS?**

Despite the positive role of ISDS, we should not neglect the deficiencies of investment arbitration.

To address the problems, UNCITRAL, with a broad mandate, entrust its Working Group III to commence a reform process on ISDS in 2017.

After two years of discussion and deliberation, the Working Group has collected the concerns raised by the UNCITRAL Member States. They include, in particular and

among others:

- *Inconsistency of arbitral awards;*
- *The limited systemic checks on correctness;*
- *Issues relating to arbitrators, such as the qualifications of arbitrators, “double hatting”; and*
- *Other procedural concerns, including the duration and cost, third party funding, frivolous claims, parallel proceedings, dispute prevention and alternative dispute resolutions.*

Meanwhile, The improvements of ICSID Arbitration Rules are also under heated discussion.

### **Third, do we need to reform ISDS in a systemic way?**

It appears that countries have very diverging views on the impact of the problems and potential solutions. Some believe that the current ISDS is functioning well, and only needs some minor procedural changes; while some prefer a more systemic reform towards a standing adjudicating body to ensure the consistency and correctness of the awards.

Despite such a variety of views, we see opportunities hidden behind the crisis. We believe that we are at a crossroad for the reconstruction of multilateral ISDS rules. If we manage to move forward, there will ultimately be significant improvement of global governance on investment; but if we don't, the ISDS regime will stay fragmented as it is, leaving investors and host states with very uncertain legal environment.

### **Finally, China's proposal and the way forward**

China supports the systemic reform of ISDS to improve the international investment governance. We want to build a balanced dispute resolution mechanism together with all other countries. With the right balance, it protects investors, reduces costs and improves efficiency; and it also speaks for the legitimate right of the host states to regulate in the interest of the public.

With these principles, in China's recent treaty practice, we tend to adopt a so-called “comprehensive approach” by negotiating more comprehensive dispute settlement section so that more concrete procedural rules could be incorporated in the treaty text. Under the framework or UNCITRAL discussion, China submitted its written proposal on ISDS reform to UNCITRAL Working Group III this July where several recommendations are proposed:

One, China supports establishing an appellate mechanism to address the major problems in the current ISDS regime. Establishing such a mechanism would help

improve error-correction and enhance legal certainty.

Two, China proposes to improve disciplines on arbitrator qualifications. Arbitrators should be expert of public international law or international economic law. We also suggest establishing disciplines to avoid potential conflict of interests of arbitrators.

Three, China suggests developing a voluntary mediation mechanism. It could offer investors and host states more flexibility to settle their disputes.

Four, China recommends the inclusion of procedure for mandatory pre-arbitration consultation between investors and host states.

Five, China also supports to introduce proper disciplines to regulate third-party funding.

Ladies and gentlemen,

I would like to conclude by noting again, that the Chinese government will continue to work with all parties to contribute to the success of this much-needed reform, towards the common target of a better, balanced and effective ISDS regime.

Thank you all!