

*Please Check against Delivery*

**Remarks at UNCTAD High Level IIA Conference  
13 November 2019, Geneva  
Dinesh Bhattarai, Ministry of Industry, Commerce and Supplies of Nepal**

**Breakout Session: Regional investment policy processes and their contribution to Phases 1  
and 2 of SD-oriented IIA reforms “Developing countries: Asia”**

Thank you, co-chair, for giving me the floor,

1. It gives me immense pleasure to participate in this Asia break-out session today. We feel honored to share our views initiations in IIA reforms at this important event. Let me thank UNCTAD for organizing this session and inviting Nepal as a speaker.
2. We believe that international investment agreement are important tools for both investors and the governments. In course of implementation countries have experienced disputes which have generated a debate over the countries right to regulate. Nepal firmly believes that an agreement should protect investment balancing with its the right to regulate. The old generation treaties lack clarity and create ambiguity in interpretation. Though Nepal has very few investment treaties, we are also facing investment disputes.
3. These investor-state dispute raises questions on the agreement provisions and their interpretations. Tribunals decisions are final and no appeal mechanism is in place. These tribunals do not have precedents system which always creates uncertainty. The high cost of arbitration is another concern especially for small economies. We are concerned on the availability of arbitrator locally or regionally and also to the issue of arbitrators showing pro-investor biasedness. The dispute settlement system itself is a concern where the tribunals are undermining the sovereignty of a country by overriding the supreme court's decisions or by limiting the parliaments for enactment of new policy or law.
4. Defining clearly, direct and indirect expropriation is yet another challenge. Similarly, it will be very difficult for any government to cover the high claims and awards in the form of compensation. Small economies are the most vulnerable to such phenomenon. There are questions whether territorial laws such as the tax law should be subject to tribunal's scrutiny or not. Investors, on the other hand are expected to be engaged in responsible investment. On this background, Government of Nepal is trying to safeguard its right to regulate while protecting investment.

5. Nepal is reforming its investment policy which is in line with the phase II reform prescribed by UNCTAD. These reforms are based on such core principles as: policy coherence with overall development strategy; involvement of stakeholders, predictability and transparency; confirming dynamism with regular review and update for effectiveness and relevance; balanced rights and obligations of both the state and the investors; compatible to international commitments and mitigating negative effects; open, stable and predictable entry conditions for investment; non-discriminatory treatment; aligned with SDGs and designed to minimize the risk of harmful competition; compliance with best international practices of CSR, good corporate governance and responsibility.
6. Based on these core principles, Nepal's international investment agreement's model text is almost finalized. The model text includes clarifications of treaty language, interpretative statements, general and specific exceptions, reservations, conditions precedent to consent to arbitration, standards of review. It has provisions of national treatment, responsible investment, remedies etc. as well. It also provides elaborative definition and scope of investment, fair and equitable treatment, conditions of direct and indirect expropriations, pre-establishment rights etc. The MFN clauses are excluded now. The management of survival clauses and the existing Investor-state disputes is well under discussion. All stakeholders are requested to provide comments and feedback on the proposed draft which is published in the Ministry's website.
7. Let me conclude by extending our gratitude to the secretariat for providing this forum to share our opinions and the current development in IIA reform going on in Nepal.

I Thank you.