



**United Nations
Economic Commission for Africa**

Talking Points

**David Luke, Coordinator, African Trade Policy Center
Regional Integration and Trade Division
United Nations Economic Commission for Africa**

**At the UNCTAD 2019 High Level IIA Conference
Breakout Session “Multilateral Processes and their contribution to Phases
1 and 2 of SD-oriented IIA reforms”**

Date, Time and Venue

**Wednesday 13 November 2019 at 11:30 am
Room XVII, Building E, Palais de Nations, Geneva**

“Multilateral Processes and their contribution to Phases 1 and 2 of SD-oriented IIA reforms: Ensuring Responsible Investment”

Ladies and Gentlemen,

Let me start by thanking UNCTAD for inviting ECA to this year’s International Investment Agreements (IIA) Conference. As in previous years, where ECA has participated in the IIA and WIF Conferences, we continue to see the value in our partnership by sharing an African regional perspective in this important forum.

I am now going to provide highlights of the opportunities for responsible investment that we as ECA see ahead of us, and against the backdrop of the investment prospects Africa is facing.

Amidst subdued global FDI prospects, Africa reversed the downward trend of falling FDI in 2018

There is no doubt that FDI remains one of the main sources of development finance and Africa needs to expand its absorptive capacities for investment in order to close its large financing gap. In order for the continent to achieve its goal of structural transformation and given the underperformance of domestic financial resources mobilization in many Africa countries, a boost in investment flows is necessary to adequately finance Agenda 2030 and Africa’s Agenda 2063.

Amid a lot of global uncertainty during 2018, and falling FDI in other world regions, Africa managed to reverse the trend of falling FDI in 2016 and 2017,

registering an 11 per cent increase in FDI to the tune of USD 45.9 billion. Despite these positive trends, highlighted in the World Investment Report 2019 (WIR 2019), Africa's global FDI share only marginally improved from 2.8 per cent in 2017 to 3.5 per cent in 2018.

Moving forward, the continent needs to do more to diversify investment in to achieve a meaningful impact

Regional distribution clearly show that Africa's FDI is only concentrated in a handful of countries. Egypt, South Africa, Congo, Ethiopia and Morocco concentrated just over half of African FDI inflows in 2018, jointly registering USD 23.3 billion, leaving the remaining 49 countries with the other half of FDI inflows.

The sectoral distribution of announced greenfield investment projects, which totaled USD 75 billion in 2018, pointed to renewed interest in primary sector activities, which increased by more than half from the previous year, but also in manufacturing. These developments largely respond to growing demand for some commodities, anticipated new discoveries of natural resources and continued interest in the manufacturing sector of some economies in North, East and Southern Africa. In terms of shares, manufacturing took the lead in 2018, attracting 44 per cent of greenfield projects, followed by services (34 per cent) and the primary sector (22 per cent).

These investments have not reported the development gains that may have been expected, as the continent still struggles with critical development challenges

such as lifting its population out of poverty and generating jobs and income for the majority.

More than ever, amidst subdued global prospects, the continent can expect stiffer competition in attracting FDI in the times to come, and will need to double up efforts to attract greater and more qualitative investment flows

Ensuring responsible investments that create jobs, generate taxes that improve resource mobilization and opportunities to reinvest in the local economy, and that are compliant with domestic regulations and promote corporate social responsibility are therefore more than ever needed to catalyze Africa's development.

Business as usual will not work. ECA is undertaking several activities in the form of **investment facilitation and promotion**, as well as supporting the development of policies regulations and laws that may shift the incentive structure in Africa's investment markets towards more meaningful and qualitative investments.

On **investment facilitation and promotion**, since 2017 when the ECA started working on the electronic investment guides "iGuides" with UNCTAD. We have collaborated with investment promotion agencies or designed Ministries in seven of our member States (Malawi, Zambia, Republic of the Congo, Nigeria, Madagascar, Mauritania and Ethiopia).

We see the iGuides platform as a modern digital solution to promote productive and responsible investment to catalyse regional integration and trade, poverty

reduction and structural transformation on the African continent. The platform does not seek to paint a rosy picture but to provide reliable and up-to-date information that boosts investors' confidence and makes them cognizant of the rules they ought to respect when they enter the country.

Ultimately, the iGuide is an information tool. It reflects the laws and regulations that are in force and can significantly amplify the message that African countries wish to send out to investors about the opportunities and type of responsible investments and investors they wish to attract and receive.
<http://www.theiguide.org/>

With regard to supporting member States in **developing policies, regulation and standards** that may enable them to attract greater quality and responsible investment, ECA has been at the forefront of supporting soft law to help regulate public private partnerships in the areas of trans-boundary infrastructure. In the context of the Program for Infrastructure Development in Africa (PIDA) and the 2014 Dakar Financing Summit 16 projects aiming for PPP financing having been comprehensively mapped for risk. Furthermore, thanks to ECA efforts, there is now a **continental model law in Africa** which addresses some of the concerns of foreign investors seeking to invest in such infrastructure. The final draft of the Model Law on Transboundary Infrastructure was endorsed by the African Heads of States in 2017 and is currently it is going through the domestication process for final adoption.

Lastly, another area where ECA support is being delivered and which will be the focus of my intervention of this afternoon in the regional breakout session for

Africa, relates to the operationalization of the African Continental Free Trade Area (AfCFTA).

ECA is supporting the development of AfCFTA national strategies in 16 countries, including Togo, Zimbabwe and Zambia. ECA has also organized regional, sub-regional and national awareness forums on the AfCFTA, to discuss critical issues of trade and investment as the AfCFTA moves towards implementation. As efforts double up to negotiate the second round issues, which include the negotiation of an investment protocol, there will be opportunities for further consultation and mainstreaming of investment into broader AfCFTA national strategies. ECA will continue to support these efforts with a view to promote common rules on investment that benefit Africans by levelling the playing field for investment that generates jobs, allows countries to retain the proceeds from such investment and mobilizes additional resources for the continent's transformation.

I would like to thank you all for your kind attention.



**United Nations
Economic Commission for Africa**

Talking Points

**David Luke, Coordinator, African Trade Policy Center
Regional Integration and Trade Division
United Nations Economic Commission for Africa**

**At the UNCTAD 2019 High Level IIA Conference
Breakout Session “Regional Investment Policy Processes and their
contribution to Phases 1 and 2 of SD-oriented IIA reform – Africa”**

Date, Time and Venue

**Wednesday 13 November 2019 at 15:00 am
Room XIV, Building E, Palais de Nations, Geneva**

Regional Investment Policy Processes and their contribution to Phases 1 and 2 of SD-oriented IIA reform – Africa

Ladies and Gentlemen,

During the morning breakout session on “Ensuring Responsible Investment”, I raised the issue that Africa can expect to face stiffer competition in attracting FDI due to subdued global prospects. I also pointed to the need to double up efforts to attract greater and more qualitative investment flows. This would require actions that are game changing.

I am now going to provide highlights of current regional investment policy processes in the continent that are indeed innovative and can be disruptive and in particular, the African Continental Free Trade Area (AfCFTA), and how this can contribute to IIA reforms that are meaningful and lasting for Africa’s sustainable development going forward.

Phase 1 and 2 – “Designing Development oriented new treaties” and “Modernizing the existing stock of old-generation treaties”

The investment regulatory landscape in Africa has been marked by a proliferation of bilateral investment treaties (BITs). Currently, Africa has 842 BITs,¹ of which 157 are intra-African. These treaties have often added an additional regulatory

¹ Terminated treaties are included. Original and renegotiated treaties are considered as one.

layer, created an unlevelled playing field among different types of investors and undermined the policy space of host economies.

African experience to counter this “spaghetti bowl” of investment treaties has taken several approaches in recent years under Phase 1 and 2 of IIA reforms.

At the unilateral and bilateral level, countries have also been quite prolific in undertaking Phase 1 reforms, as is the case of the 2016 Nigeria-Morocco BIT, with two African countries taking the initiative to develop their own rules with a development perspective, and unilaterally, initiatives such as that of South Africa to terminate existing bilateral investment treaties and level the policy field by reforming its domestic legal and regulatory frameworks, with its Protection of Investment Act enacted last year.

At a subregional level, the East African Community has developed a new draft Investment Policy that would streamline and harmonise the existing investment regimes and other regional economic communities have indeed also made strides in this area through the consolidation of existing regulation, notably through the recent series of binding protocols and non-binding model BITs formulated by some of the RECs (e.g. ECOWAS, EAC, SADC, COMESA, AMU).

A continent-wide approach spearheaded by the African Union, has been the Pan African Investment Code (PAIC) adopted in 2017 as a non-binding instrument, with a set of investment rules that are balanced, innovative and forward looking. At ECA, we supported this process, with a view to rebalance the right and obligations of states and investors, whilst seeking to integrate sustainable

development in investment law. The PAIC has set the stage and provided the inspiration for Africa-wide regulatory IIA reform in the context of the African Continental Free Trade Area (AfCFTA).

Moving to Phase 3 of IIA Reform “Promoting Coherence”

I have mentioned earlier that the myriad of existing agreements not only clutter with layers of regulation, but also put some (domestic) investors at a disadvantage, especially when affording other investors better treatment or through regulatory loopholes.

Against this backdrop, and despite the effort of phase 1 and 2 reform, investment law in Africa remains fragmented. Going forward, IIA reform needs to seek ways in which there is a level playing field for all investors. This can only happen if we have instruments that are truly disruptive. At ECA, we are of the view that the African Continental Free Trade Area (AfCFTA) is such a gamechanger.

We have supported and welcomed the significant progress made towards the operationalization of the African Continental Free Trade Area (AfCFTA). The AfCFTA Agreement has been signed by Heads of State and of Government of 54 African countries, who launched the operation phase of the AfCFTA on July 4th this year, during the AU Extraordinary Summit held in Niamey. So far 28 countries have ratified the Agreement which entered into force on 30 May this year when the minimum 22 ratifications for entry into force were attained.

The next round of the AfCFTA negotiations represents a unique opportunity to advance coherence on the continent, a Phase 3 of IIA. The second round of the AfCFTA encompasses investment, intellectual property and competition with the prospect of alignment among these issues as well as with trade in goods and services, which are already covered in the current AfCFTA Agreement. These second round issues are critical for investors to have confidence in a future common investment area under the AfCFTA. They constitute an important step towards the harmonisation of investment-related rules among African countries

The AfCFTA is a unique opportunity to harness more FDI through targeted investment promotion and investment facilitation. This calls for a phase 3 reform

At ECA, we support a Phase 3 of IIA reform. In collaboration with the African Union Commission, the African Development Bank and UNCTAD, we have published the ninth edition of the Assessing Regional Integration in Africa report. The report provides the groundwork for building consensus on key issues with options for policy harmonisation through the Investment Protocol of the AfCFTA. In addition, we stand ready to provide advisory services to member States and RECs during the AfCFTA second round negotiations.

The objective of the AfCFTA is to achieve an integrated African market where goods, services, people and capital circulate freely and complement regional integration efforts that benefit 1.2 billion Africans.

Opportunities to harness the potential of the continent to attract more and better investment in our countries abound, and investment promotion and facilitation efforts more than ever need to uncap these opportunities of the continental market.

We at ECA see the AfCFTA as a platform to set the prerequisites for a continental market where **investments can flow freely across the continent. If coupled with the dismantling of barriers that impede the flow of capital across the continent, the AfCFTA could effectively contribute to generate much needed financial resources.**

Furthermore, the AfCFTA, through its infrastructure and industrialization pillar has the potential to unleash the productive capacity of African countries to trade more with each other. Investment for transboundary infrastructure, can help the continent take advantage of regional value chains (RVCs). ECA research on FDI drivers demonstrates strong evidence supporting the notion that **greater trade in value-added goods further attracts investment, thereby promoting opportunities for stronger participation in value chains. This research further suggests that boosting investment, especially in the industrial sector, can promote regional and global value chains** in a way that takes into account the differing development stages and productive capacities of our countries.

As I conclude, let me emphasize that the AfCFTA is marching full speed ahead as a strategy for the continent's development and structural transformation. It offers a unique opportunity for IIA reform in which Africa seeks to capitalize greater investment in the context of a common investment area. Our expectation is that we can build on phase I and II of IIA reform to set the stage for phase 3 reform for greater coherence to generate productive and sustainable investment in the African continental market that we are creating.

I would like to thank you all for your kind attention.