

STATEMENT

by *Davaasuren Damdinsuren*,
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at the

Annual International Investment Agreements Conference:
Phase 2 of International Investment Agreement Reform

/9-11 October 2017, Palais des Nations, Geneva/

Mr. Chair,
Secretary General,
Honorable Delegates,
Ladies and Gentlemen,

It is a great honor and opportunity for me to attend this Conference and to share our International Investment Agreement reform experience.

At the outset, I wish to express my sincere gratitude to UNCTAD for organizing this important conference which serves as a platform to exchange views and explore new approaches and solutions to modernize the existing stock of “old-generation” investment treaties.

Since 1990, after its transition from centrally-planned economy to the market-oriented one, the Government of Mongolia has concluded 43 bilateral investment treaties to attract foreign investment. These BITs (Bilateral Investment Treaties) were concluded between 1991 and 2009. As a matter of fact, the treaties did not prove to deliver the expected economic benefits, instead they posed great financial risks to the government, not to mention their impact to sustainable development.

Mongolia is rich in mineral deposits such as gold, coal, and copper. 2/3 (two thirds) or a significant portion of foreign investment is made to the mining sector. And investors in the mining industries are the most frequent users of ISDS (Investor-State Dispute Settlement). Up to date, Mongolia has been a respondent to four investor-state dispute settlement proceedings. Three of them were related to mining industry. Two of them were resolved in favor of investors. Only one of these claims costs millions of dollars that amount to 16 percent of the national education budget.

In 2016, the Government of Mongolia set up a Working Group led by myself with a task to reform investment regime and draft a new Model Bilateral Investment Treaty in order to prevent “treaty shopping” and “cherry picking” activities of the so-called “mail box” companies,

to establish open, stable, predictable entry conditions for investors and to facilitate foreign investment capable of promoting sustainable development.

Following the UNCTAD's Road Map for IIA Reform, the Working Group has finalized the first draft of the Model Agreement which aims at balancing the rights and obligations of the State and investors, promoting responsible investment, corporate social responsibility, and improving existing dispute settlement mechanism. The draft Model Agreement specified investor-oriented preventive measures that prevent governmental authorities to unreasonably interfere in business activities through cancelation of licenses or imposition of undue economic hardships.

Once the Model Agreement is finalized, the Government intends to review the existing stock of bilateral investment treaties and hold consultations with our partners to identify possible options to modernize the treaty either through amending, renegotiating or terminating the agreement.

Finding an optimal solution that balances the rights and obligations of the State and investors is a challenging task. Creating favorable investment climate with attractive conditions while safeguarding the right to regulate in line with the new generation of investment policymaking is puzzling, particularly for the landlocked developing countries like Mongolia. More work is needed to be done in terms of an in-depth analysis on the economic and legal impact of the model agreement to host country. In addition, developing countries have a great need to build the negotiating capacity and skills to push forward the main principles of the investment agreements to its counterparts. We request UNCTAD to guide and assist us in this process.

Apart from investment promotion and protection agreements, we have other treaties with investment provisions. The Economic Partnership Agreement with Japan, the Trade and Investment Facilitation Agreement with the US both covered investment matters. Thus, investment agreement reform is also constructive in terms of contributing to the negotiations of other treaties with investment provisions, including regional trade agreements, in near future.

Additionally, besides the International Investment Agreement (IIA) reform, the Government of Mongolia is also taking substantial steps to improve transparency.

As part of the reform process, the Government of Mongolia established an 'Investment Protection Council' (IPC) in 2016 to protect the legitimate rights of investors, swiftly redress petitions and grievances related to government authorities and to take possible measures to reduce imminent risks faced by investors.

The Council is headed by the Minister and the Head of the Cabinet Secretariat and composed of 15 high-level representatives of 5 different ministries, high-ranking officials and representatives of the private sector. The Council is working not only to retain investment, but

also to generate more investors' confidence and attract new investment. While the Council was established only 6 months ago, it has already demonstrated that it is a very useful mechanism to address grievances of investors before they escalate into full-blown disputes.

The Law on Legislation and the General Administrative Law were adopted recently. These laws intend to prevent sudden legal or administrative decisions to be taken against investors and help provide stable and predictable legal environment for investors.

The Transparency Agreement signed between Mongolia and the US in matters related to international trade and investment entered into force this year. Under the agreement, the drafts of investment-related laws and regulations are required to be reviewed and discussed by public before their adoption by the parliament and the English translation of such bills shall be published online within 90 days of their adoption.

Mr. Chair,

At this juncture, I would like to recall that the 2030 Agenda for Sustainable Development highlighted that the open, non-discriminatory and equitable trading system is the main tool to boost growth, tackle poverty and promote sustainable development. The Agenda prioritized the increase of aid for trade, the implementation of the principle of special and differential treatment for developing countries with a view to significantly increasing exports of these countries.

I would also like to emphasize that developing countries, especially landlocked ones face enormous trade barriers, among all, tariff barriers and transit costs and, therefore, have a pressing need to improve and develop its legal environment, digital trade, road transport network, port operations and technology transfer. Support from international community is becoming even more crucial in the wake of sustainable development.

Finally, I would like to inform that Multilateral Agreement for the Establishment of an International Think Tank for Landlocked Developing Countries entered into force on October 6, 2017. The Think Tank was officially launched in Ulaanbaatar in 2009 to use top-quality research and advocacy to improve the ability of landlocked developing countries to build capacity with a view to benefiting from international trade including WTO negotiations, with the ultimate aim of raising human development and reducing poverty. There are 12 participating countries to the agreement.

As a host country, we invite all of you to collaborate with the International Think Tank for Landlocked Developing Countries.

Thank you for your kind attention.