Pursuing Social Justice and Economic Equity Within and Across Borders

WORLD INVESTMENT FORUM 2014

CUTS' Daily Bulletin

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REFORMING THE INTERNATIONAL INVESTMENT AGREEMENTS REGIME

IIA Conference

This session brought together a number of country's representatives and investment-development stakeholders to debate the key areas and pressing issues in International Investment Agreements (IIAs) and dispute settlement provisions that need to be addressed, as well as the possible mechanisms and platforms needed to facilitate the necessary reform.

In his opening remarks, the Director of Investment and Enterprise Division at UNCTAD, Mr James Zhan, noted that it is now time to move beyond words, and look for viable solutions towards a new global investment regime. He observed that UNCTAD in its last World Investment Report had taken stock of all issues at hand, but there is obviously need to do something, and that the session was an opportunity to hear from stakeholders on the possible way forward.

A number of countries, international business associations, civil society groups and other international organisations contributed to the ensuing discussion, where two main viewpoints were expressed. While it was generally agreed that foreign investment is critical for developing countries and more especially the small and least developed ones often lacking sufficient financial resources for development, most countries have not observed a correlation between IIAs or Bilateral Investment Treaties (BITs) and foreign direct investment (FDI) inflows, and yet the former come with provisions that hinder developing countries from designing appropriate policies for sustainable development.

Business associations on the other hand observed that investment protection is very important and that there has been a lot of misconceptions about the current investment regimes favouring investors at the cost of the countries they invest in. They are nevertheless willing and ready to engage in a discussion that would improve the investment regulatory regimes to the satisfaction of all stakeholders. Another view point from the business community was that BITs were now almost irrelevant given that most product value chains involve a number of countries thus making a bilateral investment agreement, which is limited in application, a non-issue. They hence called for global rules with wider application.

Many delegates from civil society groups and developing countries also felt that the investor state dispute settlement system was loaded against the host countries and hence investment regimes needed reforms to make them more balanced.

In a sharp intervention Mr Martin Khor, Executive Director of South Centre was very critical of the manner in which provisions in BITs are being misused by investors. Representatives of business countered his comments stating that data on disputes raised does not support his views.

CUTS International Secretary General Pradeep S. Mehta in his intervention observed that in this era of globalisation, it is essential for governments especially in developing and least developing countries to create jobs for their ever growing populations largely faced with unemployment. Most poor countries do not have the resources, hence need investment to generate economic opportunities, whether foreign or local. He stressed that such investments should take into account sustainable development issues and that there should be good regulatory regimes in place to ensure that they are in tune. Moreover such issues are not limited to the environment but include societal and economic needs. He strongly encouraged use of Alternative Dispute Resolutions (ADRs) and/or Ombudsmen as avenues of settling disputes rather than Arbitration Panels or Tribunals that are becoming increasingly controversial. Delegates from Thailand, The Netherlands, Mexico and others stressed on ADRs as a way forward.

The Bulletin

CUTS is partnering with UNCTAD to update you every day on this year's World Investment Forum in Geneva. This high-level multi-stakeholder gathering is designed to facilitate dialogue and action on the world's key emerging investment-related challenges.

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PRINCIPLES FOR RESPONSIBLE AGRICULTURE INVESTMENT

Inter-Agency Initiative

The session was conducted by the Inter-Agency Initiative constituted by UNCTAD, FAO, IFAD, and the World Bank, which developed a set of principles for responsible agriculture investments that respect rights, livelihoods and resources.

Presentations were made by select International agricultural investors in Africa and Asia, as well as experts from IISD, and other International organisations. At the outset it was noted that although feeding the world in light of the growing population, climate change and other factors were critical, investment in agriculture was still way behind the requisite half a trillion dollars per year.

In sharing their experiences, Mr. C.H. Bruhn a farmer and food processor from Germany recalled before going to Africa his view of the continent was the stereo type hunger, crime and disease ridden continent but to his pleasant surprise, upon landing in Zambia he realized a great potential on the continent. His company has since set-up large scale operations in partnership with local societies, models that have been replicated in Uganda and Zimbabwe. As opposed to the general outcry of land grabbing, the local communities in which they operate are most appreciative, with real rise in their annual incomes from as little as a thousand US dollars a year to over fifteen thousand dollars a year. Complementing this view point Mr. Kulkarni added that their investment initiatives in Malawi had provided an opportunity for the country to diversify from tobacco to other crops such as soya, ground nuts, sesame etc, of which there was no previous production due to uncertainty of market. Moreover a commodity exchange facility has been established that puts the smallholder farmer on the international market.

INVESTING IN SUSTAINABLE DEVELOPMENT

Dialogue with Parliamentarians

Dr. Mukhisa Kituyi, Secretary General, UNCTAD in his opening remarks informed the audience that Inter Parliamentary Union has signed a memorandum of understanding with UNCTAD to engage parliamentarians around the world on economic governance and create ownership of the sustainable development goals (SDGs). Parliamentarians have three roles to play: oversight, legislation and popular representation. However, he noted that there are a number of concerns especially on government agenda where there is limited interaction between international processes and national legislation agenda in the national parliaments for domestic processes for national actions. He advised that popular representation. Therefore, parliamentarians must work with governments for purposes of budgetary allocation, popular ownership and heeding the Sustainable Development Goals.

A.H. Amu, Minister of Industry, Bangaldesh in the same spirit emphasised promotion of dialogue, cooperation as well as public private partnership. Further engagement with governments to monitor the implementation of policies, effective governance to realise Post 2015 SDG goals with parliamentarians paying attention to the needs of the poor and marginalised, increase budgetary allocation and play an effective oversight in management.

The Parliamentarians present included D. Chidgey, M.P, United Kingdom; A.O. Al Mansory, U.A.E, Kenyan Senate Speaker Ekwe Ethuro and H. Lucks, Namibia. They noted a transition challenge in converting the Millennium Development Goals into Sustainable Development Goals since the process of legislation and law making takes time as well as involves use of resources in developing countries, there is information gap, the parliamentary challenge to conduct oversight, impact assessment and audit of the foreign aid that feeds into the national budgets. To overcome these challenges, they proposed deeper public private partnerships that will build strong physical and economic infrastructures for smooth transition to sustainable development goals. There is also need to strengthen the Inter Parliamentary Union through regular dialogues and information flow for parliamentarians to engage more meaningfully.

The private sector players present including Mr. R.P. Buholzer and A Meyer, SAP mentioned that there is a common learning process to create sustainability through the Sustainable Development Goals. What is most useful moving forward is increasing investment, common action, mobilising capital from private sector. There is further need for a strong regulatory framework, political consensus, and setting the right incentives for private sector to invest in sustainable development goals.

INVESTMENT IN LANDLOCKED DEVELOPING COUNTRIES

High-level Meeting

Foreign direct investment (FDI) to Land-locked Developing Countries (LLDCs) has been historically small but is on the rise with transnational corporations (TNCs) from the South continuing to be the main source. Many LLDCs have improved their investment climate and opened up sectors to foreign investment, but larger FDI inflows to LLDCs are mainly in the extractive sectors. In this session chaired by the Secretary-General of UNCTAD, Dr Mukhisa Kituyi, Ministers and high level officials from LLDCs presented the state of investment in their countries, reforms undertaken and challenges that remain to be addressed towards increasing the flow and impact of FDI to sustainable development in LLDCs.

Common challenges of investment in LLDCs included *inter alia* strong concentration on extractive industries (e.g. gold, uranium, wood); infrastructure problems, weak private sector in absence of business support structures, and political instability in some cases. Giving an example of infrastructure gaps, the Trade Minister of Lesotho Mr. Sekhulumi Ntsoaole noted that *"shipping goods from Lesotho to Durban costs as much as shipping from Durban to New York"*. Nevertheless, participants stressed that Africa is changing and transit systems are being improved especially in the context of regional integration and continental cooperation (e.g. holistic approach of the Africa Infrastructure Programme spanning transport, energy, water etc.). Importantly, it was pointed out that while challenges have been identified and policies developed in most LLDCs, the real challenge for attracting FDI lies in their weak implementation.

Most of the countries represented have undertaken investment reforms, recognising the importance of well-crafted policies and cooperation with neighbours as critical given their landlocked status. Besides regional efforts, domestic reforms have included single window clearance mechanisms, developing transport and energy infrastructure, establishing EPZs and special industrial zones to attract more investors, devising PPP regimes, favourable taxation etc. Public-Private Dialogue mechanisms have also been set up in several countries for purposes of monitoring reform implementation. There was a consensus that, if well utilised, FDI can help create jobs and promote sustainable development. In fact, FDI creates many opportunities (e.g. technology transfer) and this is why it needs to shift from extractive industries to sectors with more potential for value chains. For instance, investing in recycling would provide value chain opportunities for women and youth. Building soft infrastructure was also identified as critical, and the work of UNCTAD was welcomed in this regard.

Finally, several private sector representatives shared their experience and perspectives. It was emphasised that the private sector needs to be involved in policy development at an early stage, and be assured that rules are stable and enforced. The potential of broadband internet was also highlighted by since it creates well paid and highly skilled value added jobs for the youth, and also helps bypass the negative effects of autocratic hurdles.

POLICY UNCERTAINTY IMPEDING INVESTMENT

Side Event by CUTS International and IEA, Kenya

Evidence points to inverse relationship between policy uncertainty and the level of investment. While political and regional milieu play their part, policy and regulatory prescriptions at domestic and international levels substantially influence uncertainty, thus impacting investment. There is a need for country specific interventions with the objective to assist select low and middle income countries, specifically in South Asia and Sub-Saharan Africa to adopt and implement measures to reduce investment related policy uncertainty at domestic, bilateral and multilateral levels. The objective of this event was to help the stakeholders in developing an actionable programmatic agenda to work towards reducing uncertainty and reviving investment.

Pradeep S Mehta, Secretary General of CUTS International explained that the way the Trans Atlantic financial crisis spread like a wildfire, quickly engulfing the real sector, and breaching geographical boundaries, from US to EU to emerging economies. It brought with itself a heightened sense of distrust, insecurity and uncertainty. This increased the worldwide interest in relationship between uncertainty and investment and how one impacts other.

During the discussions and presentations, it was highlighted primarily that the causes for policy uncertainty can be found at domestic level (i.e. lack of transparency in rules and procedures; policy-confusion on allotment of natural or state resources; lack of coordination between different government departments/ministries on major policy issues; etc.), but also at international level (i.e. a backlash against the BIT regime; reliance on local judiciary is not an attractive proposition for many foreign investors …). Rajneesh Narula, Director, John H. Dunning Centre for International Business, Henley Business School, affirmed that high risk, high uncertainty and high instability lead to outward FDI, which is outward FDI that has the characteristics of 'flight capital'. Such activity has largely negative consequences for developing economies.

Some proposals were presented to the audience as ways to overcome policy uncertainty. According to Anca Radu, Policy Officer, Investment at the European Commission, solutions can be found through e.g. technical assistance or capacity building, ideally in a comprehensive, multi-annual programming framework (example: EU approach). Solutions could also be found through improving the international legal framework on investment (e.g. investment agreements with clearer provisions) and raising awareness in this respect. In fact, a major challenge is often represented by the insufficient awareness, among various levels of public administration in host countries, with regard to investment agreements and their consequences.

Addressing the causes of domestic uncertainty would normally represent a more sustainable option in attracting FDI, compared to solutions that only compensate for the effects of such uncertainty, through e.g. incentives or various guarantees. At the same time, however, it is often the most complex and challenging to implement. Ms Radu hence highlighted that is why initiatives such as the one proposed by CUTS deserve to be appreciated and encouraged.

Mr Mehta in his concluding remarks said that while foreign investors have the right to international dispute settlement, why is there discrimination against the domestic investor, as his recourse is only to the domestic courts.

FINANCING FOR THE SUSTAINABLE DEVELOPMENT GOALS

Ministerial Round Table

Dr Mukhisa Kituyi, Secretary General of UNCTAD, started the meeting by flagging the key issues which were discussed at the WIF 2014 such as creating an enabling environment to attract investment towards achieving the goals of SDGs; changing the business mindsets to attract investment in SDG-related investment; need for public investment to work closely with private investment.

It was noted that very little private investment goes towards SDGs because the private investment is weary of the risks involved or in certain circumstances countries might not be willing to let private investment in SDG-related sectors because of the sensitivities involved. There is a need to give big push to private investment in SDG-related sectors; and there is also need for developing countries to give a big push to investment by creating an enabling regulatory environment. The need to have good governance, credible institutions, maximise domestic revenue generation and having official development assistance for developing and poorer countries was emphasised.

The session witnessed ministers and officials from different countries such as Tunisia, Kyrgyzstan, Bangladesh, Costa Rica, Sri Lanka, Sudan, China, Bahamas, Croatia, South Africa, Bhutan, Dominican Republic, Ethiopia narrating major challenges faced by their economies and how foreign investment could play a critical role in sustainable development. The ministers and officials also laid down measures that their countries have adopted to attract foreign investment such as enabling regulatory environment, incentivising the role of private sector etc.

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