



World Investment Forum 2014 Investing in Sustainable Development

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Today's international investment law is composed of over 3,000 bilateral or regional treaties. It is a fragmented regime. Going through some of these treaties, it is not a surprise to find that many countries have gone through tremendous changes in their treaty practices. It is a regime subject to continued evolution and improvement.

UNCTAD World Investment Report 2014 highlighted the challenges for current IIA regime and identified certain practices to improve the regime. Neither maintaining status quo nor disengagement from the regime is preferred.

China is also in the process towards more comprehensive and balanced investment treaties beneficial to sustainable development. This is in line with China's reform objectives to provide a stable, transparent and predictable environment for foreign investment, and have Chinese enterprises be the decision-makers for their own outwards investment and enjoy treaty protection. To strike a balance between the protection of the interests of investors and the right to regulate for public policy purpose, it is necessary to clarify certain obligations in investment treaties, such as fair and equitable treatment and indirect expropriation, and to design applicable and appropriate exceptions to guarantee regulatory space for public policies, such as environment protection and prudential measures for financial sectors. To provide a predictable and stable environment for investors, it is necessary to introduce new elements in investment treaties, such as liberalization and transparency. China has decided to reform the foreign investment administration regime and explore giving foreign investor national treatment with respect to establishment and acquisition with listed reservations.

Reform of the investor-state dispute settlement system is an integral part of the improvement of IIA regime. Systematically, there are, at least, two important issues. First, there should be clear scope of who may bring what dispute to treaty-based investor-state arbitration. The system is originally designed to address infringement on an investor's assets by empowering an arbitral tribunal to award damages due to treaty breach. However, some recent IIAs introduce new obligations concerning competition condition, such as liberalization. It is necessary to carefully consider the appropriate remedy for breach of these obligations. Second, there should be enhanced consistency of arbitration awards to avoid damage to the predictability and credibility of the system. Existing treaty practice includes enhanced transparency and role of the Contracting Parties in interpreting the treaties. However, there are concerns about lack of remedy for an arbitral tribunal's error in its interpretation and application in a proceeding to decide on

state responsibility for breach of treaty obligation.

It is recognized that reform introduced in future investment treaties by individual country cannot address all the challenges posed by its existing treaties, as identified in World Investment Report 2014. In addition, potential systematic reform is more suitable to be discussed at appropriate multilateral platform. We appreciate UNCTAD's efforts in facilitating countries to face the current challenges and find ways to improve IIA regime. China remains committed to working together with UNCTAD and other countries in this process.