



## World Investment Forum 2014: Investing in Sustainable Development

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Thanks to UNCTAD for convening such an impressive panel on this important issue. For my remarks today, I would like to focus on the balance struck in the U.S. model bilateral investment treaty (BIT) text.

The United States places a high value on high-quality investment agreements. These agreements support open investment climates, characterized by investor protection, transparency, and impartial mechanisms to resolve investment disputes. They contribute to a healthy investment environment. And investment supports economic growth and prosperity, competitiveness, and innovation – which are all important for investment in support of sustainable development.

We acknowledge that concerns have been raised about the operation of investment agreements, and investor-State dispute settlement in particular. We have considered concerns in this area, including in the context of our model BIT reviews, most recently, in the review that was initiated in 2009 and concluded in 2012. The State Department and USTR co-led that review. Its results were informed by the views of a broad range of stakeholders, and by a careful review of the operation of investment agreements, including in investor-State arbitration.

We believe it is possible, indeed critical, to seek new, high quality investment treaties that both provide important protections to investors, and ensure that governments can engage in *bona fide* regulation in the public interest. Striking the right balance was of paramount importance to us in the most recent review of our model BIT.

I would like to stress, first, that it is critical for investment agreements to be high quality ones, with high standards of treatment for investment. Key areas of coverage in the U.S. model BIT include:

- strong investor protections,
- market access provisions, characterized by both pre-establishment and post-establishment coverage, with narrow lists of exceptions as part of a “negative list” of exceptions, and
- investor-State dispute settlement.

Second, we include a number of provisions in our model to help ensure governments have the ability to regulate in the public interest in *bona fide* ways, to eliminate and deter frivolous claims, and to make the

arbitration process more transparent. These provisions represent an evolution compared to our early investment treaty practice.

Some of the important provisions along these lines are as follows:

- We provide detailed guidance on interpretation of key obligations, in particular relating to the minimum standard of treatment (“fair and equitable treatment”) and expropriation. These are two of the most litigated obligations in ISDS cases.
- We include provisions that allow tribunals to dismiss frivolous claims early in proceedings.
- We also provide additional provisions to help ensure that treaty provisions are interpreted properly, including the ability of the Parties to issue binding interpretations of the treaty, and the right of a Party to make non-disputing Party submissions to tribunals.
- In addition, we have enhanced the transparency of arbitration proceedings by requiring that key documents be made publicly available, and that hearings be open to the public. Also related to public participation, we provide that tribunals may allow non-party “amicus curiae” submissions.

Another important innovation in our 2012 model BIT was to augment provisions on labor and the environment. These provisions contribute to sustainable development and are part of an overall balanced package of provisions.

We support a fact-based dialogue on the operation of investment agreements and options for improving the system. And we welcome dialogue with stakeholders in forums such as this one.

Thank you.