

**IV Annual Forum for Developing Country  
Investment Negotiators  
New Delhi, October 27, 2010, 9:00 a.m.**

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**Inaugural Address  
Mr. R.P. Singh, Secretary,  
Department of Industrial Policy & Promotion**

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1. Ms. Nathalie Bernasconi, Chair, representing the IISD; Mr. V.K. Topa, Managing Director, Invest India; Mr. Offah Obale, from the South Centre; representatives from UNCTAD and from the World Association of Investment Promotion Agencies (WAIPA) and distinguished colleagues: I welcome all of you to India, to attend the 4<sup>th</sup> Annual Forum of Developing Country Investment Negotiators.
2. The Department of Industrial Policy & Promotion (DIPP) of the Government of India and “Invest India” are, together, privileged to host this forum, in partnership with the IISD and the South Centre.
3. I am, indeed, happy to note that 2010 marks the 20th anniversary of the International Institute for Sustainable Development (IISD). As a non-partisan organization specializing in policy research, analysis and information exchange, the IISD has put in sustained work in the areas of environment, trade and sustainable development. This work has involved a great deal of innovation, research, which has been of immense utility to decision-makers in business, government, non-government organizations and other segments of civil society.
4. Our other partner for the forum, the South Centre, has carried out very significant work on a wide range of issues, relevant not only to the countries of the South but also to the global community in general. This work, involving technical analysis, based upon a political message of South-South solidarity and a justice-based ideology, has been carried out with a view to offering alternative options, in various forums, such as the WTO and WIPO, as well as alternatives to the current development paradigm. It has justifiably led to the recognition of the South Centre as an important forum for developing points of view on major policy issues about the South and for generating ideas, as well as action-oriented proposals, for consideration by various stakeholders, such as the South governments, institutions of South-South co-operation, inter-governmental organizations of the South and non-governmental organizations.
5. The earlier meetings of the forum, held at Singapore, Marrakech (Morocco) and Quito (Ecuador) have covered a number of issues that are of immense importance to investment negotiators from developing countries, including developments in investment laws, the option of opting out of ICSID and international arbitration, the option of a different model, optimizing of investment negotiations, ensuring development policy space for host countries, impact of investment agreements on FDI, etc. It is heartening to note that the discussions have constantly centred around issues that are specifically being faced by developing countries today.

6. Should developing countries enter into agreements on investment at all? This is a question many developing countries face today. It is interesting to note that there are some countries that have chosen to consciously “opt out.” On the other hand, there are countries that see agreements on investment as a reality that they are compelled to recognize. They may perceive such agreements to be an important component in the process of economic integration and globalization. To be able to answer this question in a satisfactory manner, there is a need to ensure consolidation of international experience with regard to such agreements and I would like to compliment the IISD and the South Centre for organizing this forum, which would go a long way in this regard. The agenda for the conference is both-extensive and intensive. I would like to raise four issues which, I am sure, would be adequately addressed during this forum.
7. In India, as in a number of other countries, we have two kinds of investment agreements. The first are the Bilateral Investment Promotion & Protection Agreements (BIPAs), which offer a number of protections to investors, in terms of post-establishment national treatment, without entering into issues of market access. The second are the more comprehensive agreements on investment, which are generally entered into as part of the more comprehensive economic cooperation and partnership agreements, and which additionally offer guarantees on market access, through pre-establishment national treatment. The first issue that I would like to raise is that of the interplay between BIPAs and the more comprehensive agreements on investment. What are the circumstances under which a comprehensive agreement on investment may be entered into, as compared to a BIPA? Do the current and expected future levels of investment activity between two countries really comprise a satisfactory reply to this question? Are there other factors that should form a part of this analysis?
8. A related issue is whether we see BIPAs as independent legal mechanisms, or as a necessary precursor to more comprehensive agreements on investment that incorporate guarantees on market access, or whether there are circumstances that would justify the economic relationship between two countries to directly proceed to a comprehensive agreement on investment, without first going through a BIPA, which has only “protection” elements.
9. The second is the nature and scope of Comprehensive Agreements on Investment. These Agreements, which, in India, go well beyond the Bilateral Investment Promotion & Protection Agreements, by offering guarantees on market access, may also aim to achieve certainty in investment policy environment. For many countries, which have open economies and investment regimes that have stabilized, this may be a preferred option.

However, in many developing countries, investment regimes are still evolving and there may be a need to ensure an element of policy flexibility, to cater to possible future changes in regimes and for new and emerging sectors that may open up in the future. This is a challenge for many countries like India and it is an issue that needs careful examination. What model is appropriate to developing economies? How should the balance be struck between the objective of ensuring a stable investment regime and the need to retain policy flexibility?

10. A third issue is the impact of such agreements on the host countries. Agreements on investment are structured to provide a secure investment climate, by offering legal guarantees to investors, on investment protection, market access or both. The ultimate aim is to promote a number of national policy objectives, including the goals of development and inclusive growth, as well as the sub-goals of growth in manufacturing activity, increased competition, lower prices, improved quality and better managerial and governance practices, through enhanced FDI inflows. To what extent have these agreements achieved the intended benefits? At this juncture, when most countries are increasingly using such agreements as a vehicle for achieving a bouquet of intended benefits, is it important to take a step back and analyze the actual effect of such agreements on host economies and the extent to which the intended economic and policy objectives are actually being achieved? Are any changes required make such agreements, in order to achieve such objectives? These are some of the questions that require answers.
11. The fourth issue is whether it is possible to arrive at a consensus on standard templates of model investment agreements, based upon extant practice and currently available jurisprudence, which could find acceptability across countries that are similarly placed in terms of economic development. This would be of special relevance to a number of developing countries, many of which face very similar challenges, in terms of institutional capacity and trained human resources. To this extent, I would like to mention the more pragmatic issue of the “size” of our investment agreements. Is it possible to try and simplify our model investment agreements? Is it necessary for all issues—whether related to protection, or to market access—to be incorporated in a single comprehensive agreement? Is it possible to look at templates that only look at market access issues, with the rest being covered by BIPAs?
12. In this context, it is important to consider the coverage of the investment agreements being entered into, in the context of our institutional capacities. An interesting case in question is that of the lawsuit filed by Philip Morris International against Uruguay. In this case, Uruguay has implemented laws relating to public health and the company, with its headquarters in New York, but with an operations centre in Switzerland, has filed the lawsuit against

Uruguay, under a bilateral investment treaty between Uruguay and Switzerland, stating that the laws on branding of cigarette boxes, to be implemented by Uruguay, infringe on its intellectual property rights. This is despite the fact that Switzerland itself has implemented similar strict laws recently. This case has important repercussions for many developing countries, as it has brought to fore the ability of large corporations from developed countries to take advantage of investor protections that are available under trade agreements and bilateral investment treaties. It highlights the limitations on policy space that countries may be entering into through these treaties, without full awareness of the implications.

13. The other significant issue this case has brought to light is the increasing emphasis on intellectual property rights by large corporate entities, now that the advantages offered by the developing world, in terms of gains from productivity and labour and returns on capital, are increasingly getting highlighted. There is immense pressure on developing countries for inclusion of IPR provisions in trade agreements, including within the chapters on investment. Should IPRs be totally excluded from the scope of trade and investment agreements?
14. I shall certainly be grateful if the deliberations at the forum could also try and examine these four issues, which are certainly of immense relevance to many developing countries like India.
15. There can be no doubt that institutional capacities for dealing with agreements on investment need to be enhanced, keeping in mind the numerous and rapid developments in jurisprudence in this regard. To that end, I would like to invite all industry chambers and organizations present, to jointly or individually, consider setting up a dedicated institutional mechanism, within any existing institution, for the purpose of study and analysis of such investment-related issues. I can assure that government would be willing to offer its full support in this regard.
16. I extend my best wishes for successful deliberations at this forum and do hope that the work of the forum does not prevent you from seeing, at least some of Delhi's many historical venues, post the working hours.
17. Thank you.