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Presentation of the report of the E15 Task Force on Investment Policy:

“The evolving international investment law and policy regime: Ways forward. Policy options paper”

by

Karl P. Sauvant, Theme Leader, E15 Task Force on Investment Policy and Resident Senior Fellow, Columbia Center on Sustainable Investment

Thank you very much, Mr. Chairman, and good morning ladies and gentlemen.

I appreciate this opportunity to brief the Investment Committee about the report of the E15 Task Force on Investment Policy, organized jointly by the International Centre for Trade and Sustainable Development and the World Economic Forum. The report -- “The evolving international investment law and policy regime: Ways forward. Policy options paper”¹ -- is the result of a collective process involving all members of the Task Force who came from various stakeholder groups. But it reflects my own views as the Theme Leader of the Task Force, based on the discussions of that Task Force; it does therefore not represent a consensus view among Task Force members.

Mr. Rick Samans will brief the Committee about the broader context in which the Investment Task Force met.

Mr. Chairman,

The Task Force met in the context of a general discussion of how the international investment law and policy regime can be improved within the next 5-10 years. Accordingly, the policy options that were identified are wide-ranging. The principal ones deal with:

- The need to update the **purpose** of the investment regime, which ought to be broadened to encourage the flow of sustainable FDI for sustainable development.
- The question of a **plurilateral or multilateral framework** on investment, which would be desirable.

¹ Available at

http://www3.weforum.org/docs/E15/WEF_Investment_Law_Policy_regime_report_2015_1401.pdf and

http://www.ictsd.org/sites/default/files/research/WEF_Investment_Law_Policy_regime_report_2015_1401.pdf.

- The challenge of **preventing, managing and resolving disputes**, which requires a dispute-settlement mechanism that is beyond reproach, e.g., based on the proposal of the European Commission.
- Related to dispute-settlement: the need for an **Advisory Centre on International Investment Law**, to assist under-resourced governments to deal with investment disputes. And
- The desirability of an **International Support Programme for Sustainable Investment Facilitation**.

Given our limited time, let me focus on two of these policy options, namely the desirability of an International Support Programme for Sustainable Investment Facilitation and the need for an Advisory Centre on International Investment Law. Let me begin with:

1. The desirability of an International Support Programme for Sustainable Investment Facilitation

Mr. Chairman, the world's investment needs to meet the challenges of the future are tremendous: Meeting the SDGs alone requires trillions of extra investment dollars, not to speak about our broader desire to spur growth and development in general. FDI can make an important contribution to meeting these investment needs. But to make a real difference, FDI flows would have to increase significantly. Last year, they were close to US\$ 2 trillion – but there is no reason why they could not be double or triple that amount.

That raises the question of how to increase FDI flows substantially, and investment facilitation plays a key role in this respect.

But – **and this is an important “but”** – the issue is not only **more FDI, but sustainable FDI**, i.e., investment that has certain sustainability characteristics. In other words, sustainable FDI for sustainable development.

The problem is, of course, that many countries – and not only the LDCs – have very limited capabilities to compete successfully in the highly competitive world FDI market. They need help.

Hence the idea – proposed and elaborated in the E15 report – of an International Support Programme for Sustainable Investment Facilitation. The idea is **not** just to augment the various technical assistance programmes being undertaken by various international organizations, **but rather to have a systematic integrated international programme**, perhaps along the lines of the WTO's Trade Facilitation Agreement approach.

In fact, in a world of global value chains, the TFA addresses one side of the GVC equation, namely trade. An investment facilitation programme would address the other side of the equation, namely investment.

This raises immediately two questions. The first one is: What should be the substantive content of an investment facilitation programme? The key here is to strengthen the capacity of IPAs to attract FDI and benefit from it as much as possible.

The second issue concerns the question of how to bring about an investment facilitation support programme. There are several options. Let me mention three:

- The **first** one is to **extend the Aid-for-Trade initiative to cover investment fully, so that it becomes an Aid-for-Investment-and-Trade initiative**. If this were done in the WTO, one could build on the GATS and, in particular, its Mode 3 (commercial presence), keeping in mind that some two-thirds of world FDI is in the services sector. If one wanted to pursue this approach, this could be done quite rapidly -- after all, the institutional infrastructure is already in place.
- A **second** option is to **expand the Trade Facilitation Agreement** to cover investment. However, the TFA is not yet in force, and countries might want to gather some experience with its operation before expanding it.
- A **third** option is to **launch an International Support Programme for Sustainable Investment Facilitation** as a stand-alone practical initiative. Like the TFA, it would focus entirely on technical matters related to attracting FDI and benefitting from it as much as possible. In this context, it is encouraging that India has just submitted a proposal in the WTO that calls for an Agreement on Trade Facilitation in Services. Interestingly, this proposal explicitly covers facilitation regarding Mode 3 (commercial presence), covering in this manner about two-thirds of world FDI as I mentioned before. Perhaps such an Agreement on Trade Facilitation in Services could become a stepping-stone for a broader International Support Programme for Sustainable Investment Facilitation.

Given the urgency to meet the world's investment needs, it would be highly desirable to have a concerted international effort to facilitate growing flows of sustainable FDI. It is encouraging that the members of the G20, in their September 2016 Communique, have picked up the idea of investment facilitation and committed themselves to working towards this objective.

Perhaps one way to make progress in this area would be the preparation of "G20 Guiding Principles for Global Investment Facilitation", to draw on the precedence of the "G20 Guiding Principles for Global Investment Policymaking" adopted in Hangzhou, as a basis and stimulant for more concrete work.

Let me now turn briefly to:

2. **The need for an Advisory Centre on International Investment Law**

I do not need to remind you of the discussions surrounding dispute settlement. Let me just say a few words about one important aspect that has not received much attention, but, I venture to bet, is most likely to receive more attention in the future, namely the need to enhance the ability of governments to defend themselves adequately in international investment disputes. Dealing with this problem is necessary because we know that a number of countries simply do not have the human or financial resources to defend themselves adequately before international arbitral tribunals.

Hence the idea to establish an independent Advisory Centre on International Investment Law, available to governments that need support in international investment disputes. Such an Advisory Centre could be patterned on the independent Advisory Centre on WTO Law, which was established in 2001, has an excellent reputation and has helped to enhance the legitimacy of the international trade regime.

The establishment of an Advisory Centre on International Investment Law would go a long way in enhancing the legitimacy of the international investment regime. The E15 report suggests, therefore, that this be done as soon as possible. Perhaps ICSID, together with other interested international organizations, could take the lead in making this happen.

Mr. Chairman,

Let me conclude by saying that the two subjects I discussed briefly -- an investment facilitation support programme and an Advisory Centre on International Investment Law -- are proposals for a **positive agenda**, i.e., an agenda that actively seeks to improve the international investment law and policy regime. All the E15 Task Force on Investment Policy sought to do is to introduce concrete ideas into the international discussions to help strengthen the global trade and investment system for sustainable development. It is of course up to governments to act.

Thank you very much for your attention.