

Sixth Annual Forum of Developing Country Investment Negotiators

Understanding and Harnessing New Models for Investment and Sustainable Development



DAY 1 – Monday, 29 October 2012

9:00 Registration

9:30 Opening Ceremony

- Ms Nathalie Bernasconi, Program Leader & Senior International Lawyer, Investment and Sustainable Development Program, IISD
- Ms Chantal Ononaiwu, Trade Policy & Legal Specialist, Office of Trade Negotiation, CARICOM Secretariat

Opening Address and Official Opening of the Forum:

- The Honourable Rudranath Indarsingh, Minister in the Ministry of Finance and the Economy, Government of Trinidad and Tobago

10:15 Break

10:45 Session 1 “Key Developments in 2011-2012: New Approaches for Investment Agreements and Sustainable Development”

This session will introduce three major contributions to the development of new approaches to investment negotiations and sustainable development. Each of the three organizations presenting here have produced a new model template or framework to assist developing countries in approaching investment policy and investment negotiations from a sustainable development perspective tied closely to developing country goals and objectives. Each one moves away from simplistic assumptions that development always follows foreign investment to look at what tools are needed to help ensure that foreign investment will contribute to sustainable development.

Chair: Prof. Mr Kusha Haraksingh, Dean, University of West Indies, Trinidad and Tobago

Speakers:

- Ms Veniana Qalo, Acting Head and Advisor, International Trade and Regional Cooperation Section (ITRC), Commonwealth Secretariat
- Ms Elizabeth Tuerk, Legal Expert, International Investment Agreements, UNCTAD Secretariat
- Ms Thembi Langa, Senior Program Officer Finance and Investment, SADC Secretariat
- Mr Mustaqeem de Gama, Director Legal, Department of Trade and Industry, South Africa (representing SADC Members)

12:30 Lunch

Sixth Annual Forum of Developing Country Investment Negotiators



14:00 Session 2 *“Challenges in Moving to a Sustainable Development Model: An Overview”*

What kinds of challenges do governments face in shifting from a traditional view of investment treaties to a new model? How can these challenges be overcome? This session provides an overview of the legal and policy issues arising as developing countries seek to change directions and objectives for investment negotiations. The session will move from the broader policy changes needed from an historical context to specific legal issues such as amendment and renegotiation provisions, interpretative statements and termination provisions; and to specific negotiating issues in a south-south and north-south context. How can developing countries gain cohesion in responding to these challenges?

Chair: Mr Nihal Samarappuli, Executive Director - Research and Policy, Board of Investment, Sri Lanka

Speakers:

- Mr Ignacio Torterola, former ICSID Legal Counsel, Counselor at the Embassy of Argentina, Argentina
- Mr Wayne Punnette, Director – Investment, Ministry of Trade and Industry, Trinidad & Tobago
- Ms Chantal Ononaiwu, Trade Policy & Legal Specialist Office of Trade Negotiations, CARICOM Secretariat

15:30 Break

16:00 Session 3 *“Investor-State Dispute Settlement: Its Growing Breadth and the Implications for Sustainable Development”*

Beginning with a review of recent developments in the scope and reach of dispute settlement, this session will ask what the implications of the expansion of investor-state dispute settlement are from a sustainable development perspective. Can the scope be reigned in? What happens when jurisdiction decisions go wrong? What other options are available to negotiators to safeguard states against the unintended expansion of ISDS? This session will be an interactive session with a real time “mapping” through the computer and onto the screen of how investor-state arbitration has been expanding both in substantive terms and through expansion of procedural rights. The result will be a participant generated representation that unfolds in a dynamic process, leaving a comprehensive picture of the full scope of issues in this area.

Chair: Mr Howard Mann, Associate & Senior International Law Advisor, Investment and Sustainable Development Program, IISD

Speakers:

- Mr Ignacio Torterola, former ICSID Legal Counsel, Counselor at the Embassy of Argentina, Argentina
- Mr Gustavo Guerra, Negotiator and Investment Assessor, Ministry of Production, Employment and Competitiveness, Ecuador

Sixth Annual Forum of Developing Country Investment Negotiators



- Mr Ricardo Ampuero, Legal Advisor, Special Commission on Controversies in International Investment, Ministry of Economy and Finance, Peru
- Mr Eduardo Porcarelli, Executive Director, CONAPRI, Venezuela
- Mr Carlos Moreno, Director of Policy, Ministry of Trade, El Salvador

17:30 End of Day

18:00 Cocktail Reception: Launch of Commonwealth Guide for Developing Country Negotiators

DAY 2 – Tuesday, 30 October 2012

9:00 Session 4 *“How to Implement Sustainable Development into Investment Agreements 1: FET and Expropriation”*

This session will provide concrete guidance to negotiators on options for addressing key concepts of investor protection from a sustainable development perspective. This session will look at how recent initiatives and treaty texts have addressed the issue of fair and equitable treatment and expropriation. It will look at UNCTAD options, Commonwealth, SADC and COMESA drafting language and discussions. The session will also cover recent developments in case law on the topic.

Chair: Ms Sanya Reid Smith, Affiliate, South Centre

Speakers:

- Ms Nathalie Bernasconi, Program Leader and Senior International Lawyer, Investment and Sustainable Development Program, IISD
- Mr Ahmad Irfan Aslam, Counsellor, Permanent Mission of Pakistan to the WTO, Pakistan

10:30 Break

11:00 Breakout Session 1: Comparing and selecting draft Provisions on Expropriation and fair and equitable treatment in different models.

Participant led sessions to be reported back to Plenary

12:30 Lunch

14:00 Session 5 *“How to Implement Sustainable Development into Investment Agreements 2: Investment Liberalization, Pre-establishment rights and performance requirements”*

Sixth Annual Forum of Developing Country Investment Negotiators



This session will focus on investment liberalization issues, pre-establishment rights and performance requirements. It will look at how recent initiatives and treaty texts have addressed the issue. It will look at UNCTAD options, Commonwealth, SADC and COMESA drafting language and discussions. The session will also cover recent developments in case law on the topic.

Chair: Prof. Carlos Correa, Director of the Center for Interdisciplinary Studies on Industrial Property and Economics Law (CEIDIE), University of Buenos Aires, Argentina

Speakers:

- Mr Howard Mann, Associate & Senior International Law Advisor, Investment and Sustainable Development Program, IISD
- Mr Gustavo Guerra, Negotiator and Investment Assessor, Ministry of Production, Employment and Competitiveness, Ecuador
- Ms Angela Dau-Pretorius, Acting Deputy Director, Investment Centre, Namibia
- Mr Ahmad Irfan Aslam, Counsellor, Permanent Mission of Pakistan to the WTO, Pakistan

15:30 Break

16:00 Breakout Session 2: Comparing and selecting draft Provisions on pre-establishment rights, and performance requirements in different models

Participant led sessions to be reported back to Plenary

17:30 End of Day

DAY 3 – Wednesday, 31 October 2012

9:00 Session 6 “How to Implement Sustainable Development into Investment Agreements 3: Investor Obligations”

This session looks at the various options developing states have to incorporate investor obligations into the text of investment agreements. How can this be done? Why do developed countries oppose this? How can the antipathy of developed country negotiators be overcome? How can such measures be made effective and enforceable if included? How have recent initiatives addressed this issue?

Chair: Mr Lincoln Price, Private Sector Liaison at Office of Trade Negotiations, CARICOM Secretariat

Speakers:

- Ms Elisabeth Tuerk, Legal Expert, International Investment Agreements, UNCTAD Secretariat

Sixth Annual Forum of Developing Country Investment Negotiators



- Ms Veniana Qalo, Acting Head and Advisor, International Trade and Regional Cooperation Section (ITRC), Commonwealth Secretariat
- Ms Michelle Walker, Head of Legal Unit, Ministry of Foreign Affairs and Foreign Trade, Jamaica

10:30 Break

11:00 Breakout Session 3: Comparing and selecting draft provisions on Investor obligations and their enforcement
Participant led sessions to be reported back to Plenary

12:30 Lunch

14:00 Session 7 *“What tools and institutions do developing countries need to lead the transition to investment for sustainable development?”*

Chair: Ms Veniana Qalo, Acting Head and Advisor, International Trade and Regional Cooperation Section (ITRC), Commonwealth Secretariat

Speakers:

- Mr Howard Mann, Associate & Senior International Law Advisor, Investment and Sustainable Development Program, IISD
- Ms Marit Kitaw, UNECA Secretariat, Kigali, Rwanda
- Mr Ignacio Torterola, former ICSID Legal Counsel, Counselor at the Embassy of Argentina, Argentina
- Ms Mariama Williams, Senior Research Fellow, The South Centre

15:30 Break

16:00 Closing Ceremony

- Ms Chantal Ononaiwu, Trade Policy & Legal Specialist, Office of Trade Negotiations, CARICOM Secretariat
- Representative: Government of Trinidad and Tobago
- Ms Nathalie Bernasconi, Program Leader and Senior International Lawyer, Investment and Sustainable Development Program, IISD
- Ms Mariama Williams, Senior Research Fellow, The South Centre

17:00 **Closing Reception: A Caribbean farewell offered by the T&T Ministry of Trade, Industry and Investment**