INTENSIVE TRAINING SESSION
FOR NEGOTIATORS OF INTERNATIONAL INVESTMENT AGREEMENTS
17-25 March 2004
Pretoria, South Africa

Faculty of Economic and Management Sciences
University of Pretoria
South Africa

FINAL REPORT
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OUTCOME

The UNCTAD secretariat organized the training programme for negotiators of International Investment Agreements from English-speaking Africa, comprising a preliminary distance-learning course and an intensive training session which took place in Pretoria, South Africa, from 17 to 25 March 2004.

Preparatory distance-learning course:

The IIA distance-learning course, developed in cooperation with TrainforTrade and comprising five core modules (scope and definition, admission and establishment, protection, treatment, dispute settlement) was undertaken by the participants before the intensive session, either on an individual basis with the DL package sent by UNCTAD (training manuals, CD-roms, chat sessions with Geneva) or during a DL course delivered in the COMESA secretariat. This course, fully sponsored by the COMESA secretariat, was held on 19-21 February 2004. It brought together 13 participants and allowed for a wider diffusion of the IIA materials.

Intensive training session:

It was the third intensive training session organized for English-speaking African countries. As the last two years, the session was hosted by the Investment and Trade Policy Centre (ITPC), Faculty of Economic and Management Sciences, University of Pretoria, and was implemented in cooperation of the Legon Centre of University of Ghana. The session was a shorter version of the curriculum (because of the distance learning modules) but followed the same pattern as all other sessions organized in all the regions: analysis of substantive provisions contained in IIAs, review of dispute settlement cases, drafting of clauses, simulation exercises and skills training module. The session was very well received by the participants. A detailed report of the session is attached for your information.

The local and regional faculty has been actively involved in this third session. Faculty from the region (South Africa, Ghana, Egypt) as well as from regional institutions (UNECA, COMESA) lectured and participated in the course. A full day in the course was devoted to dispute resolution and representatives from the US Department of State and the ICSID secretariat gave specific inputs on this topic.

The course brought together 28 negotiators from 18 countries all over English-speaking Africa (including Arab countries), the level of the group was very good, with an excellent combination of experiences and backgrounds. Discussion and interaction within the group was very deep. The Department of Foreign Affairs of the South African Government sent four participants. Two representatives from the COMESA secretariat currently negotiating the COMESA Common Investment Area (CCIA) also attended. In light of the forthcoming ACP EPA negotiations with the EU, officials from Embassies of Botswana (Coordinator for the SADC EPA group) and Lesotho in Brussels also participated. As part of the TA programme with Saudi Arabia, two representatives from SAGIA (Saudi Arabian General Investment Authority) participated in the session.
For the first time, the entire training material was given to the participants in form of CD-roms: the IIA CD-rom comprising the IIA series and the Compendium of international investment instruments, the Compilation of Bilateral Investment Treaties and a specific CD-rom prepared for the course comprising the relevant WIR, selected BIT of particular interest to African countries and a selection of dispute settlement cases. A final CD-rom comprising all the presentations made during the sessions and the list of participants and resource persons is being prepared.

As the last two years, the session was hosted by the ITPC of the University of Pretoria and the logistical support received from the ITPC and the facilities made available were outstanding.
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PROGRAMME

17-25 March 2004

Faculty of Economic and Management Sciences
University of Pretoria
South Africa
WEDNESDAY 17 MARCH 2004

09:00  Opening Session
       Presided over by Dr. Eltie Links, Executive Head, Business Development, SANTAM, Inc.

       Welcoming addresses
       Francis Moloi, Chief Director Asia, Ministry of Foreign Affairs, Government of South Africa
       Carolina Koornhof, Dean, Faculty of Economic and Management Sciences, University of Pretoria, South Africa

       Opening remarks
       Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat
       Chris Harmse, Professor, Investment and Trade Policy Centre (ITPC), University of Pretoria, South Africa

09:45  Welcoming function

10:15  Presentations of participants

   MODULE I: The economic environment of foreign investment: overview of FDI and its effects on development

11:00  The current world economy and prospects for Africa.
       Dr. Logan Rangasamy, Head, International Economic Research Unit, South African Reserve Bank

11:45  Discussion

12:00  Trends in and Determinants of FDI and export competitiveness
       Chris Harmse, Professor, Investment and Trade Policy Centre (ITPC), University of Pretoria, South Africa

12:45  Discussion

13:00  Lunch break

14:30  The changing global architecture and the small open economy: Lessons from Cancún
       Francis Moloi, Chief director, Asian Desk, Department of Foreign Affairs, South Africa

15:15  Discussion

15:30  Afternoon break

15:45  European / African trade and investment relations
       Dr. Eltie Links, Executive Head, Business Development, SANTAM, Inc.

16:30  Discussion
The determinants of FDI: Perspectives from the private sector
Riaan de Lange, Senior Manager, Tax and Legal Services, PriceWaterhouseCoopers Inc, South Africa

17:30 Discussion

18:30 End of working day
MODULE II: Issues and fundamental concepts relevant to the analysis and the negotiation of international investment agreements

Overview of the distance-learning modules
Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat
Ruth Nyakotey, Director and Attorney Chief, Investor Services Division, Ghana Investment Promotion Center, Ghana

Scope and definition

09:30 Analysis/drafting of clauses on definition
10:10 Morning break
10:30 Admission and establishment
11:00 Analysis/drafting of clauses on admission and establishment.
11:40 Most-favoured-nation treatment and national treatment
12:10 Analysis/drafting of clauses on treatment

13:00 Lunch break

14:30 Transparency: the concept and practices
Anna Joubin-Bret, Course coordinator, UNCTAD secretariat
15:15 Discussions
15:30 Afternoon break
15:45 Simulation exercises (group sessions):
• Negotiation of clauses on definition, admission and treatment
18:30 End of working day
FRIDAY 19 MARCH 2004

09:00 Protection of investments: taking of property
Yaw Benneh, Professor, Legon Center for International Affairs, Faculty of Law, University of Ghana

09:45 Discussion

10:00 Morning break

10:15 Fair and equitable treatment and international minimum standard
Mary T. Mitchell, Attorney-adviser, Office of International Claims and Investment Disputes, U.S. State Department

11:00 Discussion

11:30 Home country measures
Anna Joubin-Bret, Course coordinator, UNCTAD secretariat

12:15 Discussion

12:30 Lunch break

14:00 Transfer of funds
Anna Joubin-Bret, Course coordinator, UNCTAD secretariat

14:45 Discussion

15:00 Host country operational measures
Francis Moloi, Chief Director Asia, Ministry of Foreign Affairs, Government of South Africa

15:45 Discussion

16:00 Afternoon break

16:15 Simulation exercise (group sessions):
  • Protection clauses
  • Performance requirements

18:30 End of working day
SATURDAY 20 MARCH 2004

08:30  The development dimension in IIAs
       Marie-Estelle Rey, UNCTAD secretariat

09:00  FDI trends and discussions on investment in the region
       Sam Cho, Team Leader, Technical Assistance and International
       Cooperation, Trade and Regional Integration Division, United Nations
       Economic Commission for Africa

09:45  Discussion

10:00  Morning break

10:15  Discussion

11:15  The COMESA Common Investment Area
       Watipaso Mkandawire, Regional Investment Agency Unit, COMESA
       Secretariat

12:00  Discussion

12:30  Preparation of the final simulation exercise

13:00  Week-end break
MONDAY 22 MARCH 2004

09:00  Dispute settlement: State-State, investor-State  
Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat

09:30  Discussion

10:00  The International Centre for Settlement of Investment Disputes and the main features of the ICSID Convention  
Martina Polasek, Counsel, ICSID Secretariat

10:45  Discussion

11:00  Morning break

11:15  Practical workshop:  
• Drafting of dispute settlement provisions: good clauses/bad clauses  
• Simulation exercise

13:00  Lunch break

14:30  New trends in dispute settlement provisions  
Mary T. Mitchell, Attorney-adviser, Office of International Claims and Investment Disputes, U.S. State Department

15:15  Discussion

15:30  Overview on new issues in IIAs: environment, labour, social responsibility, illicit payments  
Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat

16:15  Discussion

16:30  Afternoon break

16:45  Incentives, fiscal and tax measures  
Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat

17:15  Discussion

17:30  Egypt's Experience in Negotiating and Implementing the Association Agreement with the E.U.: Lessons for African Countries  
Ambassador Nehab Abdelatif, Secretary General, National Committee responsible for the Economic Partnership Agreements, Ministry of Foreign Affairs, Egypt

18:30  Discussion

19:00  End of working day
08:30 Negotiating regional agreements: the experience of NAFTA and FTAA
Carlos García Fernández, former Director General of Foreign
Investment, Ministry of Economy, Mexico; former Chairman of the
FTAA Negotiating Group on Investment

09:15 Discussion

**MODULE III:** Procedural issues relevant to the negotiation of
international investment agreements

09:30 The experience of negotiations
Carlos García Fernández, former Director General of Foreign
Investment, Ministry of Economy, Mexico; former Chairman of the
FTAA Negotiating Group on Investment

10:15 Morning break

10:30 Common critical issues in BITs negotiations
Ruth Nyakotey, Director and Attorney Chief, Investor Services Division,
Ghana Investment Promotion Center, Ghana

11:15 The process of negotiations: practical steps
Ruth Nyakotey, Director and Attorney Chief, Investor Services Division,
Ghana Investment Promotion Center, Ghana

12:00 Open discussion on Module III

13:00 Lunch break

14:30 Workshop for investment negotiators: enhancing negotiation skills
Robert Weibel, Formation et Conseil en Négociations (FCN), Geneva,
Switzerland

16:00 Afternoon break

18:30 End of working day
WEDNESDAY 24 MARCH 2004

09:00 MODULE IV: Negotiation of a comprehensive investment arrangement
Introduction and direction by Robert Weibel, Formation et Conseil en Négociations (FCN), Geneva, Switzerland

Timetable for the simulation exercise: each group will develop its own timetable depending on own dynamics

THURSDAY 25 MARCH 2004

09:00 Debriefing and discussion on the process of negotiation during the exercise and outcome
Robert Weibel, Formation et Conseil en Négociations (FCN), Geneva, Switzerland

11:00 Afternoon break

11:15 Debriefing and discussion on the substance of negotiated texts during the exercise and outcome
Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat
Ruth Nyakotey, Director and Attorney Chief, Investor Services Division, Ghana Investment Promotion Center, Ghana
Carlos García Fernández, former Director General of Foreign Investment, Ministry of Economy, Mexico; former Chairman of the FTAA Negotiating Group on Investment

12:15 Conclusion of the intensive training session
Chris Harmse, Professor, Investment and Trade Policy Centre (ITPC), University of Pretoria, South Africa
Anna Joubin-Bret, Course Coordinator, UNCTAD secretariat

12:45 Closing ceremony presided over by Jan Van Heerden, Professor, Head of the School for Economics, University of Pretoria, South Africa
Intensive Training Session for Negotiators of International Investment Agreements
17 to 25 March 2004
Pretoria, South Africa

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TRAINING MATERIALS

• Distance learning modules (CD-Rom and distance-learning manuals) on scope and definition, admission, protection, Treatment and dispute settlement.

• The CD-Rom containing the UNCTAD Series on Issues Related to International Investment Agreements.

• The World Investment Report 2003 and its statistical annex

• Interactive CD-Rom comprising the Compendium of International Investment Agreements (Volumes I to X).

• Dispute Settlement Cases (compiled by the UNCTAD Secretariat).

• A CD-Rom of Selected International Investment Agreements: a Compilation

• An end-course CD-Rom comprising the contacts of participants and resource persons, and presentations made during the course.