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**STATEMENT
BY**

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**IN THE
SIXTH COMMITTEE OF GENERAL ASSEMBLY
UNDER AGENDA ITEM 77
“REPORT OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW ON THE WORK OF ITS FORTY-
SEVENTH SESSION”**

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Check against delivery

Mr Chairman

Thank you for affording us the floor. My delegation attaches great importance to this agenda item 77 "Report of the United Nations Commission on International Trade Law on the work of its Forty-Seventh Session". Since 2008, the United Nations Commission on International Trade Law has officially recognized the importance of ensuring transparency in investor-State dispute resolution. In July 2013, it reached an important milestone in turning this principle into law. Recognizing the need for provisions on transparency in the settlement of treaty-based investor-State disputes to take account of the public interest involved in such arbitrations, UNCITRAL adopted the Rules on Transparency in Treaty-Based Investor-State Arbitration. In July 2014, UNCITRAL finalized and adopted the "Mauritius Convention on Transparency". This treaty establishes a mechanism through which all parties to existing investment treaties can efficiently and effectively update the procedural rules governing investor-State arbitrations under those treaties so as to effectively implement the Transparency Rules and better take into account the public interest nature of these disputes. The Convention provides various routes through which the Transparency Rules will or can apply, and gives parties significant flexibility to craft their commitments to transparency. Overall, the Convention is a landmark instrument and, if widely adopted, will do much to reform investor-State arbitration under existing treaties and address concerns that, under the status quo, and even with the adoption of the Transparency Rules, important issues of public interest are too easily and too frequently being decided behind closed doors.

Mr Chairman

Investment law is an emerging discipline and in the words of a leading scholar should be approached with extreme caution. Few areas of international law excite as much controversy as the law relating to foreign investment. At the beginning of November 2013, the South African government published the much anticipated draft Promotion and Protection of Investment Bill. The Bill has been introduced as part of an overhaul of the regulatory framework for foreign investment in South Africa, an overhaul that was initiated following a Government review of the country's policy on bilateral investment treaties. Some commentators, in response to the Government's attempts to "update and modernise" South Africa's investment, have applauded the Government for "taking the lead" in seeking to rebalance the rights and responsibilities of states and investors. Nobel laureate Joseph Stiglitz

has suggested that South Africa should be "congratulated" for the "pro-development" nature of its actions and for demonstrating its "commitment to the rule of law", and that other countries should "follow suit". The Government, for its part, has stressed that the draft Promotion and Protection of Investment Bill contains "more than enough clarity, transparency and certainty around the domestic investment regime" and that it provides "adequate protection to all investors, including foreign investors". The Government's actions are motivated by a legitimate and widely shared concern that bilateral investment treaties and the international system of investor-state arbitration inhibit the ability of governments to enact legislation and regulatory measures aimed at promoting public policy objectives in areas such as public health, environmental protection and social equality.

I thank you for your attention.