



FOREIGN DIRECT INVESTMENT (FDI) AND PROTECTION OF NATIONAL SECURITY: STRIKING THE RIGHT BALANCE

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Outline...

- ◆ Introduction
- ◆ Foreign direct investment in Zambia
- ◆ Emerging issues
- ◆ Investment policies to address national security in Zambia
- ◆ Way forward for Zambia
- ◆ Takeaways

Introduction

- ◆ Based on the OECD Guidelines for Recipient Country Investment Policies Relating to National Security (2009), and
- ◆ National polices: China (2017), Germany (2017), Italy (2017), Japan (2017), France (2018), USA (2018), UK (2018), Lithuania (2018), Australia (2018), Hungary (2019).
- ◆ How Zambia can strike right balance between FDI inflow and protection of national security

Introduction

- ◆ Beginning in 2000, many countries have eliminated barriers to trans-border capital flows
- ◆ In 1997, FDI was only 7% of world GDP, which in 2017 increased to 40% (OECD, 2019)
- ◆ FDI flows to Africa reached \$42 billion in 2017, down by 21% (2016) (UNCTAD, 2018)
- ◆ Broadly, FDI remains the largest external source of finance for developing economies

Introduction...

- ◆ Openness has created opportunities for home and host economies as well as for businesses
- ◆ With these opportunities, occasional risks have emerged (potential risk for national security)
- ◆ Although, treaties and instruments recognise countries' rights to manage such risks, few do it

Foreign direct investment (FDI) in Zambia: The background

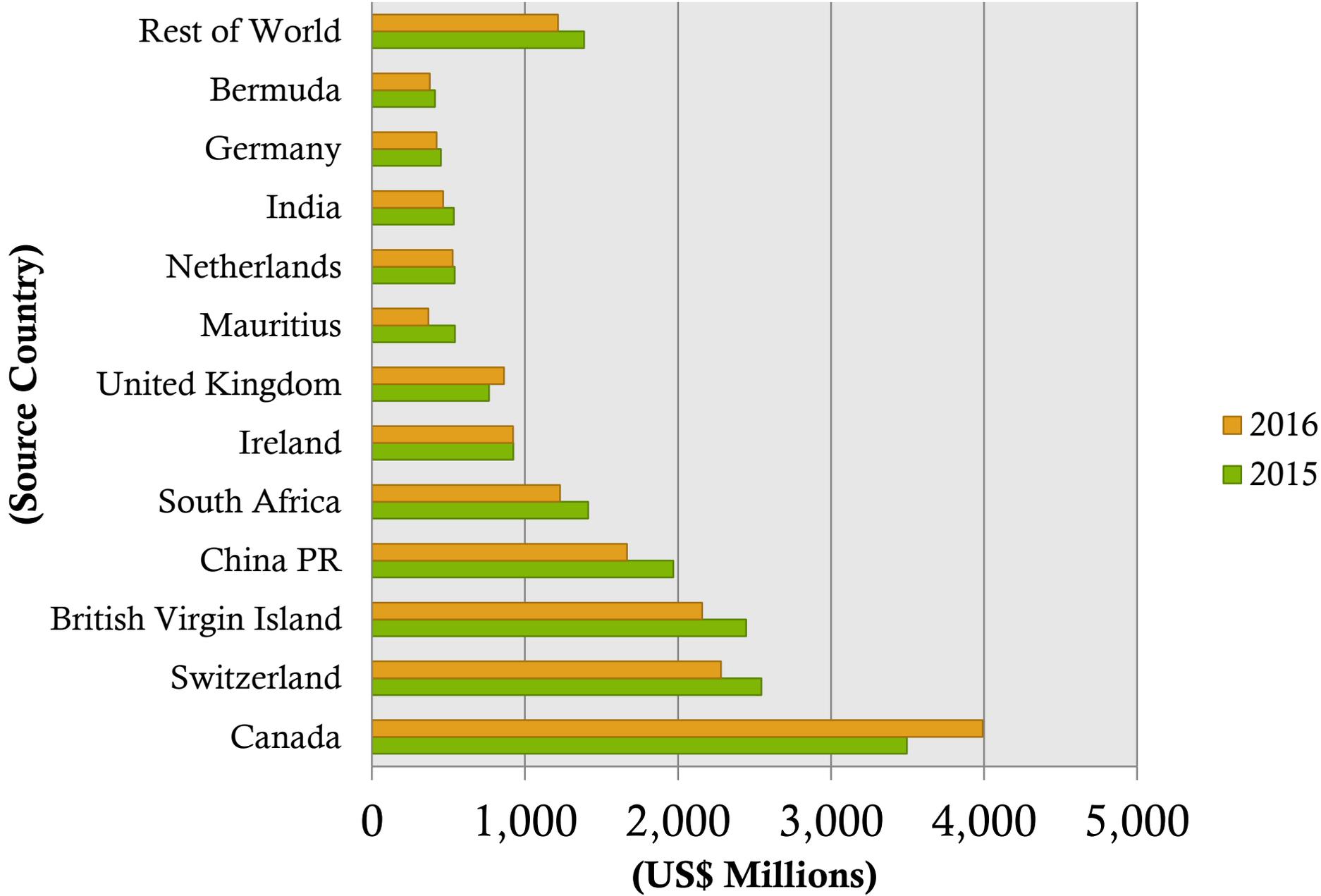
- ◆ In Zambia, piecemeal investment policies related to national security exist (e.g. Competition and consumer protection, and ZDA Acts, among others)
- ◆ Fear that outright investment policy to address national security would injure the economy, may account for the absence of the policy

Real GDP growth & FDI inflow in Zambia, 2000-2018

Year	Real GDP Growth (%)	FDI Net inflow (US\$ M)
2000	3.90	121.7
2002	4.51	298.4
2004	7.03	364.0
2006	7.90	615.8
2008	7.77	938.6
2010	10.30	1,729.3
2012	7.60	1,731.5
2014	4.70	1,507.8
2016	3.60	662.8
2018	3.50	568.9

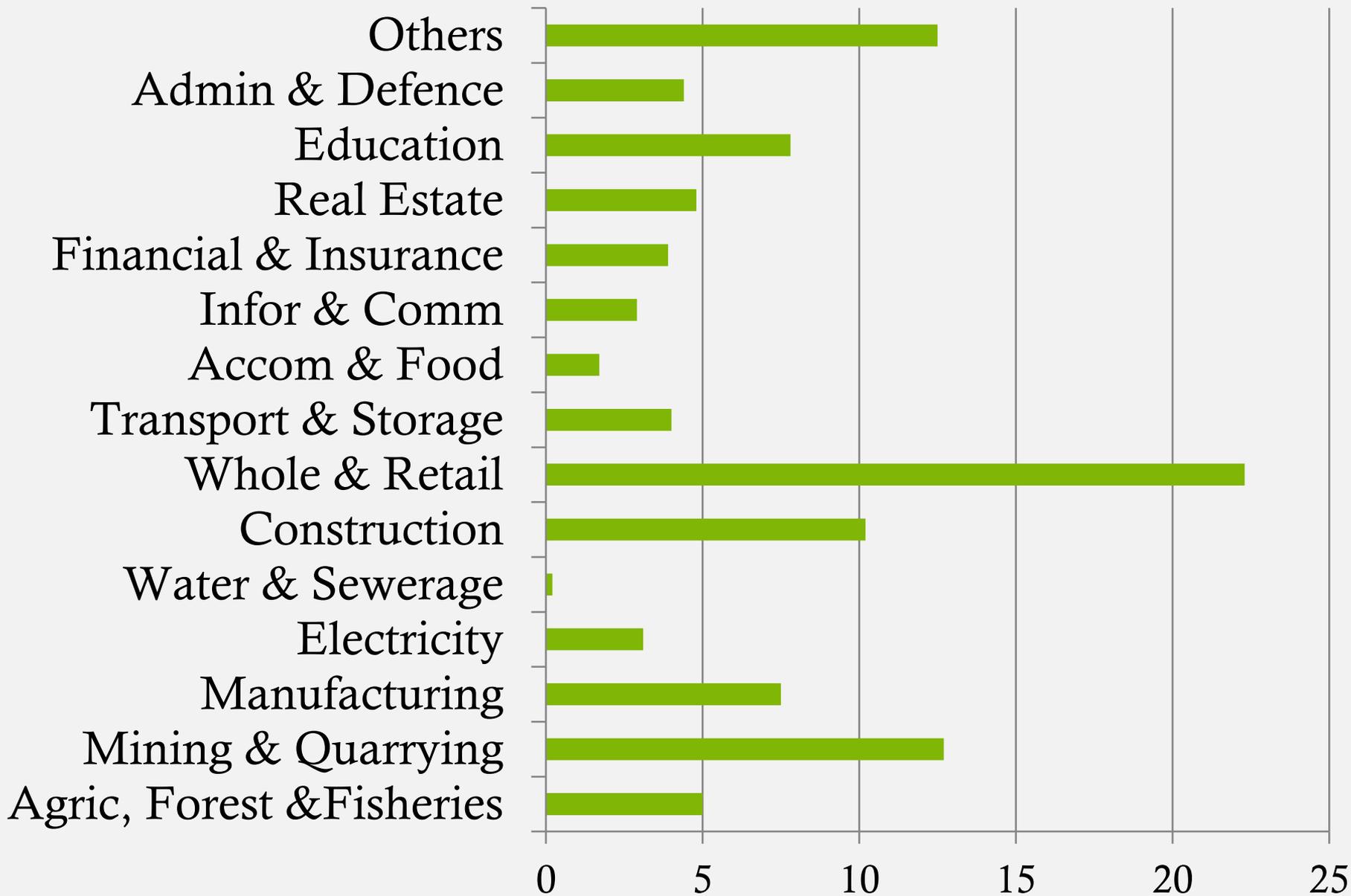
Source: World Bank (2019)

FDI Liabilities Stocks by Source Country, 2015-2016

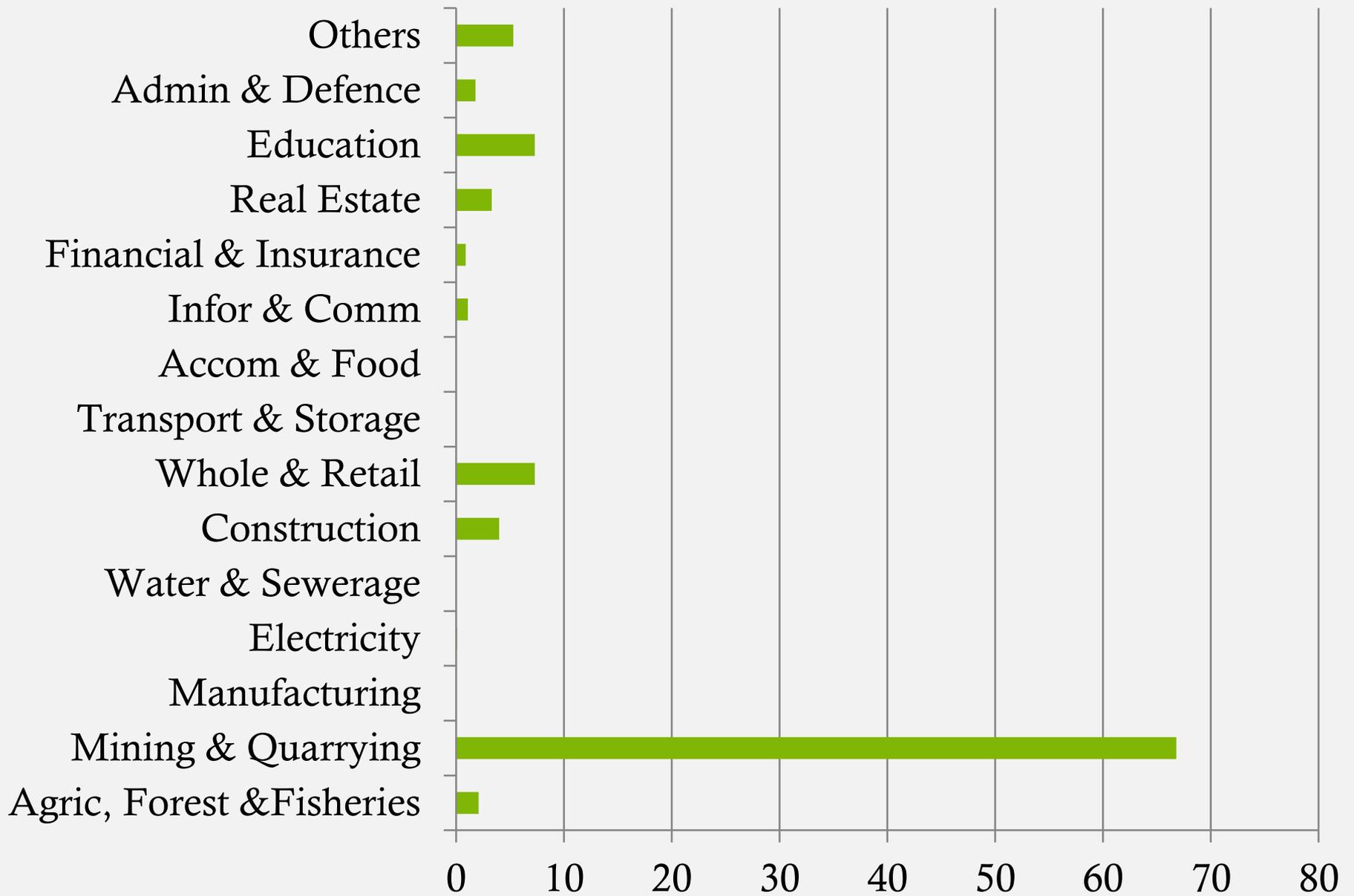




Between 2000 and 2015, Zambia received \$13.1 bn in mining (over 60% of national FDI) (ZEITI 2016).



Industry Share to the Total GDP at Current Prices, 2015



Industry Share to the Total GDP at Current Prices, NWP, 2015

Emerging issues

What is FDI?

- ◆ The concept of FDI remains ambivalent.
 - a) As a *commercial* phenomenon, FDI describes an enterprise's creation or acquisition of productive capacity in a foreign host country.
 - Here, the focus was on FDI's effects on employment, production, technology transfer.

Emerging issues...

- b) As a *financial* phenomenon, FDI measures the value of a border-crossing financial flows or stocks
- 💧 FDI stock or flow data are compiled according to international standards – OECD Benchmark Def. (investor owns at least 10% of voting power)
- 💧 The standards serve a purpose in economic accounts and balance of payments statements.

Emerging issues...

- ◆ The concepts of FDI are not interchangeable
- ◆ FDI stocks or flows are not a valid measure, not even proxy,
- ◆ For the commercial operations of enterprises that are assumed to trigger effects on employment and production in host countries

Emerging issues...

Thus, FDI data are:

- Not indicative of the size of engagement or exposure of enterprise in another country;
- Do not attribute “foreignness” according to the nationality of an investor; and
- Do not reflect origin and destination of a given investment.

Emerging issues...

What is national security?

- ◆ Countries surveyed define “national security” in different ways.
- ◆ They either employ:
 - A clarifying definition or
 - A list of relevant sectors given as examples

Emerging issues...

Clarifying definition include terms such as:

- 💧 “Protecting independence or sovereignty of the state...” (Art. 2 Lithuania’s Law)
- 💧 “...safeguarding public order and security...” (Sec. 2.1 of Act 172, Australia)
- 💧 “Protecting homeland security...” (Sec. 2 (a) 5 and 6, USA)
- 💧 “...domestic capabilities...” (Art. 3 China’s Law)

Emerging issues...

- ◆ Countries employing sector list, pinpoint:
 - Energy and water supply, and education and healthcare (**Austria, France**, etc)
 - Media (**Australia**, Russia, etc)
 - Farming and food supply (**China**, Japan, etc).
 - Network technology, personal data & enterprises (**Germany, France, Italy, UK, USA, Australia**)
 - Real estate assets (restrict foreign ownership in border areas (USA), and plot of land in **Australia**).

Emerging issues...

- ◆ Notable shifts in policy approaches since 2017
- ◆ New policy approaches tend to diversify and broaden the instruments to address national security beyond traditional perimeters
- ◆ Neither size of economy nor ratio of FDI to GDP could account for this shift

Emerging issues...

Acquisition & ownership

- Joint ventures, procurement, leases, use of certain equipment in critical infrastructure, and international research cooperation
- Acquisition & ownership related security concerns (USA, Australia, UK, Russia, etc)

Emerging issues...

Foreigners & domestic acquirers

- ◆ Until recently, acquisition and ownership applied to foreigners and domestic acquirers
- ◆ Recently countries have concentrated on the nature of assets rather than acquirers (e.g. UK, Australia and Norway).

Emerging issues...

Controlling stakes & any interest

- 💧 Traditional policies concerned with listed.
- 💧 When espionage and sabotage dominated the risk scenarios.
- 💧 Recently, countries have lowered thresholds (UK, USA, Germany, China, Japan etc.)

Emerging issues...

Inward Investment & trans-border asset transfer

- ◆ Traditional policies applied to inward FDI
- ◆ Triggered by the acquisition of an enterprise or asset by foreigners that is located in the country that implemented the policy
- ◆ Some countries also seek to address concerns that emanate from outward FDI (China, USA, etc).

Emerging issues...

- ◆ Most recent investment policy are driven by new concerns:
 - Technological development and digitalization
 - A shift in global economic weight
 - New and more widely shared concerns
 - Heightened sensitivity over the control of assets

Investment policies to address national security in Zambia

- The ZDA (Amendment) Act No. 15 of 2012, Section 2:
 - (1) ...arms and ammunition, explosives, military vehicles and equipment, aircraft and any other military hardware.
 - (2)...poisons, narcotics, dangerous drugs and toxic, hazardous and carcinogenic materials.
 - (3)...currency, coins and security documents.

Investment policies to address national security in Zambia cont'...

- ❑ The Competition and Consumer Protection Act No. 25 of 2010
 - 💧 Prohibition of anti-competitive practice, agreement or decision.
 - 💧 A merger threshold of at least 30% (single) and 60% (not more than three enterprises).
 - 💧 Period allowed for assessment 90 days

Investment policies to address national security in Zambia cont'...

- ◆ Zambia focuses on *acquisition, acquirer, controlling stakes, and inward investment* (traditional features)
- ◆ Main concerns – employment creation, local business development, technology transfer, and environmental impact (“local capabilities”)
- ◆ National security is treated as a “by-the-way” issue

Way forward for Zambia

a) Strong policy framework

- ◆ Strengthened and streamlined policy framework to address national security
- ◆ Enact “Investment policy related to national security”, following international guidelines
- ◆ Need to re-define “national security”

Way forward for Zambia...

b) Transparency and predictability

- Public availability of laws and regulations
- Clear guidance and criteria on how proposals can be assessed (UK & USA)
- Timeframes & disclosure of decisions on restrictions of FDI are already defined

Way forward for Zambia...

c) Regulatory proportionality

- 💧 Restrictions should focus on security concerns (Germany and UK, etc)
- 💧 Employ appropriate expertise for fair decisions and avoid political interference

Way forward for Zambia...

d) Accountability

- ◆ Authority to review investment, such as:
 - Head of State (e.g. Italy, USA)
 - Government (e.g. China, Canada, Germany)
 - Independent body (e.g. Lithuania, Russia)
- ◆ Administrative & judicial reviews of decisions

Takeaways

- ◆ Piecemeal policy approaches exist to address national security concerns stemming from FDI
- ◆ Shows lack of strong perceptions of risks relating to FDI, yet media reports abound.
- ◆ Policies cover wide areas of the economy, but treat national security as a “by the way issue”

Takeaways...

- ◆ FDI plays an important role in maintaining vitality and vibrancy of the national economy.
- ◆ Maintaining long-term national security depends on maintaining a welcoming environment for FDI; not suffocating it.
- ◆ Despite its importance, the FDI that impairs national security is not desirable in Zambia.

Takeaways...

- ◆ Zambia needs policies to enhance her ability to pinpoint transactions that could raise security risks, while not discouraging FDI inflow.
- ◆ International cooperation becomes even more critical than ever before (information-sharing, regulatory alignment & mutual recognition).



The End!
Thank You For Your Attention

