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HOME COUNTRY MEASURES

Note by the UNCTAD secretariat

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INTRODUCTION

1. At the tenth session of UNCTAD, in its stocktaking of major international initiatives, the Conference noted that “some countries have introduced home country measures to promote FDI flows to developing countries, and such measures deserve to be encouraged” (Plan of Action (TD/386), paragraph 48). Accordingly, UNCTAD was requested "to study existing home country measures that could be considered in programmes to support efforts of developing countries to attract FDI and benefit from it" (Plan of Action, paragraph 123), and to "identify and disseminate information concerning existing home country measures that encourage transfer of technology in various modes to developing countries, in particular least developed countries" (Plan of Action, paragraph 118).

2. Subsequently, the Trade and Development Board decided to convene an Expert Meeting on Home Country Measures (HCMs) within the framework of the Commission on Investment, Technology and Related Financial Issues. The Expert Meeting provides a forum for governmental experts to exchange national experiences and identify best practices with respect to existing home country measures, with a view to benchmarking their use and encouraging their diffusion. Specifically, the Expert Meeting is expected to consider: (1) experience (what measures exist, including their spread); (2) rationale (why they are applied); (3) effectiveness (how they have worked); (4) improvements (what can be done to enhance their impact); and (5) the international dimension (how are they operationalized in international investment/technology agreements). This note presents brief background information on the subject, and poses issues and questions for discussion.

3. A foreign direct investment (FDI) transaction establishes a triangular relationship involving three main actors: a transnational corporation (TNC) investing its assets; the capital-importing host country; and the capital-exporting home country. Most discussions of FDI issues focus on the TNC/host country dimension, especially on issues of why and where TNCs invest, and how they behave in host countries, as well as what host country factors attract FDI and how those countries treat foreign investors. However, the third point of the triangle -- home countries and the role they play through their laws, regulations and policies, and practical home country measures -- can exert a significant influence on the flow of FDI and technology to developing countries and the impact they have on development. This is the topic of the Expert Meeting and, consequently, this note.

4. The effectiveness of home country measures in promoting FDI to developing countries depends on the measures themselves (their formulation and administration), as well as the extent to which they complement host country measures. Home and host country measures should convey consistent signals to the investor with respect to the decision to engage in FDI as well as the enterprise’s performance once the investment is made.

5. *Home countries* take measures to support outward FDI as they see it in their national interest and/or in the interest of firms headquartered in their territories to acquire a portfolio of locational assets abroad. Such interests can derive from commercial, strategic or humanitarian motivations, as well as international commitments and obligations. (An increasingly important stakeholder in the home country context is civil society; indeed, non-governmental organizations (NGOs) have explicit and widely publicized views on some HCMs and their impact.) *Host countries* welcome HCMs as a complement to their own actions to attract FDI in the interest of promoting

development. By helping their firms to invest in developing countries, home country Governments can help development. The extent to which host countries benefit, in turn, depends on various factors, a number of which can be influenced by host country policies (UNCTAD, 1999a).

6. Although HCMs may restrict outward FDI, the principal interest of this note is in proactive measures that capital-exporting countries take (or can take) to encourage FDI flows to developing countries and enhance their benefits. Indeed, many developed countries espouse policy positions that support outward FDI promotion through HCMs. The actual application of such measures remains, however, largely at the unilateral discretion of home countries. A number of them can also be found in international investment agreements (IIAs), suggesting that they lend themselves to international agreements if all parties so desire.

7. The promotion of outward direct investment has traditionally been the domain of developed countries, but in recent years a number of developing countries and economies in transition have also begun to promote the outward investment of their enterprises. They do so for reasons of improving access to overseas markets, resources and technologies, as well as to strengthen the competitive advantage of their mature industries (UNCTAD, 1995). While reasons may vary, the measures themselves tend to be similar and fall into broad categories which are described in the next section.

I. MAJOR TYPES OF HOME COUNTRY MEASURES

8. No standardized classification of HCMs exists. For the purpose of this note, six broad categories encompassing the major types of HCMs used by developed countries to promote outward FDI, including transfer of technology, are identified. These are:

- information provision and technical assistance;
- financial support;
- fiscal incentives;
- investment insurance;
- measures based on market access; and
- measures aimed at promoting or facilitating transfer of technology.

Table 1 gives an overview of the measures provided by selected OECD countries as regards the first four categories; annex table 1 contains a synopsis of OECD country initiatives to facilitate investments by their TNCs in developing countries, with a focus on environmentally friendly investment. (It should be noted that most data in table 1 refer to the early 1990s and that they may well have changed since then.)

Table 1. Outward FDI promotion programmes of selected OECD member countries

Country	Information and technical assistance					Financial		Fiscal	Insurance
	Inform-ation	Match making	Missions	Feasibility studies	Project & start-up	Equity	Loans	Tax sparing	Guarantees
Australia	×	×	×	×	-	-	-	×	-
Austria	×	-	-	-	-	×	x	-	×
Belgium	×	×	-	-	-	×	x	-	×
Canada	×	×	×	×	×	×	-	×	-
Denmark	-	-	-	-	-	×	x	×	×
Finland	×	-	×	×	×	×	x	-	×
France	×	-	-	×	×	×	x	-	-
Germany	×	×	×	×	×	×	x	×	×
Italy	×	×	×	×	×	×	x	-	×
Japan	×	×	×	×	×	×	x	×	×
Netherlands	×	×	×	×	-	×	x	×	×
New Zealand	×	×	-	×	-	×	-	×	-
Norway	×	×	×	×	×	-	x	-	×
Portugal	×	×	×	-	-	-	x	-	-
Spain	×	×	×	-	-	×	x	×	×
Sweden	×	×	-	×	-	×	x	×	-
Switzerland	×	×	×	×	×	×	x	-	×
U.K.	-	-	-	-	-	×	x	×	×
United States	×	×	×	×	×	-	x	-	×

Source: based on OECD, 1993, pp. 14-17, and OECD, 1998.

Key: x indicates the existence of a programme/project aimed at delivering the described service.
Information: Provision of information on investment opportunities to home country firms.
Matchmaking: Pro-active search for investment opportunities and possible partners.
Missions: Provision of support to investment missions.
Feasibility studies: Provision of support to undertake feasibility studies, including financial support.
Project & start-up: Support for project development and business start-ups, including financial support.
Financing/equity: Direct shareholding in investment project.
Financing/loan: Provision of (medium to long-term) loans for investment projects.
Insurance: Provision of investment insurance through guarantees.

A. Information provision and technical assistance

9. Investment climate information constitutes an important element of an FDI decision-making process. Promoting outward FDI to developing countries must begin with fundamental steps to gather, publish and disseminate basic information regarding a country's regulatory framework, macroeconomic circumstances, sectoral conditions and other factors that form the broad political and socio-economic framework within which TNCs look for investment opportunities. Although host developing countries can and do compile many of these data, their efforts can be supported, particularly in the information dissemination stage, by home country Governments and relevant international institutions.

10. Programmes to gather and disseminate information on FDI opportunities in developing countries and to provide technical assistance to facilitate such investment therefore comprise an important category of HCMs meant to promote outward FDI. Indeed, several home countries pro-

actively compile and disseminate such information for the benefit of their national firms. (For example, the United States Department of Commerce provides elaborate services in this area.[1]) These initiatives help to overcome market imperfections or structural deficiencies that often work to the disadvantage of developing countries, especially when an economy's relatively small size, geographic distance or limited prior experience with foreign investors tend to exclude it from customary lists of prospective FDI sites. Overcoming such initial knowledge-based obstacles can be particularly difficult for attracting FDI from small and medium-sized enterprises (SMEs). Although sometimes especially appropriate for a developing country's situation, these firms generally lack the global breadth, background and resources to conduct a wide search of unconventional FDI sites.

11. Business contacts and facilitation functions are closely related to the dissemination of investment climate information. Seminars, workshops and investment missions all provide valuable occasions for personal exchanges when prospective investors meet with government officials and potential local business partners in developing countries. The active participation of home countries -- through joint consultative groups on investment (e.g. the Japanese-Indian “Fast-Track” groups) or joint chambers of commerce and industry (e.g. the Indo-German Chamber of Commerce) -- plays an especially valuable role in linking prospective investors with opportunities in developing host countries.

12. Technical assistance to promote FDI in developing countries covers a wide range of applications and, more broadly, assistance to host Governments to improve regulatory regimes and enhance institutional capabilities to attract, receive, employ and benefit from FDI. Technical assistance is also provided to investing enterprises, particularly SMEs, as well as to host country joint venture partners.

13. Such information provision, business facilitation and specific technical assistance support is provided by most OECD countries and a number of developing countries in various degrees. Provisions can also be found in several regional agreements (most notably in the European Community agreements with developing countries (Cotonou and ASEAN)) and at the multilateral level (through the World Bank Group’s Multilateral Investment Guarantee Agency (MIGA) and International Finance Corporation (IFC) and United Nations organizations such as UNCTAD and UNIDO).[2]

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[1] See http://www.doc.gov/ for the website of the Department of Commerce and http://www.opic.gov/ for the website of the Overseas Private Investment Corporation.

[2] See the related websites of MIGA (http:\www.miga.org), the IFC (http:\www.ifc.org), UNCTAD (http://www.unctad.org/en/techcop/techcop.htm) and UNIDO (http://www.unido.org).

B. Financial support

14. Some countries offer national enterprises direct financial assistance in the form of support for feasibility studies and project development and actual grants, loans or even equity participation for investment projects in eligible developing countries. In some cases, such support is provided through development assistance institutions. Special support might be offered for FDI in designated industries, such as infrastructure projects, or for ventures undertaken by SMEs or jointly with local business partners. There are indeed several major public organizations in developed countries that support outward FDI by SMEs, including development finance corporations (such as the Commonwealth Development Corporation in the United Kingdom), export credit institutions (such as the Kreditanstalt für Wiederaufbau in Germany) and technical organizations (such as the Canadian International Development Agency) (UNCTAD, 1993, chapter VIII).

15. Financial support is provided by about half of the OECD countries, mostly through a combination of direct assistance to developing countries and support for private FDI projects. In some countries, several different government entities are involved. This assistance is usually channelled through development finance institutions that provide both loan and equity financing for FDI projects in developing countries, sometimes by taking minority equity positions (box 1). Along with their own annual investments, these institutions can garner additional private financing for foreign investment and exert considerable leverage in determining the nature of projects.

Box 1. Financial support for outward FDI: the example of Denmark

Denmark provides financial support to outward FDI principally through two facilities:

* The *Danish Industrialization Fund for Developing Countries*, funded by DANIDA, promotes investment in developing countries in collaboration with Danish firms. The Fund mostly participates as a capital partner, providing share capital, loans or guarantees and assisting in mobilizing supplementary financing from other sources. It usually also holds a seat on the board of directors, together with the Danish company investing in the project.

* The *Danish Cooperation for Environment and Development* programme, through its DANCED Partnership Facility, promotes FDI that involves the transfer of environmentally sound technologies and know-how from Danish firms to countries in Asia.

Source: CBS, 1999.

C. Fiscal incentives

16. Fiscal HCMs are concerned with either providing tax incentives to companies investing in developing countries or alleviating disincentives arising out of double-taxation possibilities. The former could include tax breaks for companies investing in developing countries through the granting of tax exemptions, deferrals or credits for taxation of foreign source income, as well as general tax sparing provisions. The tax regime can be important in another manner as well, e.g. when double taxation can occur or when incentives granted by host countries are offset by taxation in home

countries. In the latter case, the home country tax authority appropriates the tax benefit granted to an investor by the host country's lowered tax rate, thereby nullifying the FDI incentive effect of such a measure designed to attract FDI. This problem can be alleviated if home countries adopt a tax-sparing policy that grants investors tax credits for the amounts of taxes that would have been paid to the host country, absent the use of the tax incentive (UNCTAD, 2000). Many developed countries have been willing to accept tax-sparing provisions in double taxation treaties signed with developing countries (table 2).

Table 2. Examples of double taxation treaties with tax-sparing provisions

Australia - China (1988), Article 23;
Australia - Viet Nam (1996), Exchange of Notes;
Canada - Argentina (1993), Article 23;
Canada - China (1986), Article 21;
Canada - Thailand (1984), Article 22;
Denmark - Poland (1994), Protocol;
Germany - Indonesia (1977), Article 22(1);
Germany - Turkey (1985), Article 23(1);
Japan - Bangladesh (1991), Article 23;
Japan - Brazil (1976), Protocol;
Japan - Bulgaria (1991), Article 23;
Japan - Viet Nam (1995), Article 22;
Netherlands - Bangladesh (1993), Article 23;
New Zealand - Singapore (1993), Protocol;
Spain - India (1993), Article 25;
Sweden - Malta (1995), Article 22(2);
United Kingdom - Indonesia (1993), Article 21;
United Kingdom - Mongolia (1996), Article 24;
United Kingdom - Papua New Guinea (1991), Article 23.

Source: OECD, 1998.

17. Difficulties can also arise from the application of transfer pricing policies if a home country's tax authority adjusts a TNC's pricing standards in ways that increases the tax liability in the home country (UNCTAD, 1999b). The OECD's Model Tax Convention, essentially taking the opposite track of tax-sparing policies, recommends that the host country adjust downward the tax to be paid by foreign affiliates in order to avoid double taxation. Such a response, of course, would decrease the tax revenue obtained by the host country government and thereby reduce the benefits that host countries can derive from FDI, in this case as regards tax revenues. Double taxation treaties can be used to address some of these issues, including through a specification of standards, monitoring and information-sharing agreements, enforcement procedures and appeal processes.

D. Investment insurance

18. Investment insurance represents a narrower traditional category of HCMs aimed at promoting outward FDI to developing countries. Most national and some regional or multilateral programmes offer coverage of political and other non-commercial risk not normally included under conventional, private insurance policies. Although the principal purpose of such HCMs is to protect their own national investors, the resulting off-set of risk helps to encourage outward FDI. Some investment insurance agencies provide associated promotional support specifically designed to encourage investment in development-oriented projects. National investment insurance programmes exist in many developed countries to provide coverage for expropriation, war and repatriation risks. While in some countries these programmes cover all outward FDI (such as Austria, Sweden and the United Kingdom), other countries (such as Finland, the Netherlands, Switzerland and the United States) limit this coverage to developing countries only (box 2).[3]

Box 2. Investment insurance: the example of the United States

Overseas Private Investment Corporation

The United States Overseas Private Investment Corporation (OPIC) is an independent government agency that sells investment services to assist United States companies to invest abroad. With current reserves of $3 billion (in 2000), the Corporation primarily provides project financing and political risk insurance. Its self-declared mission is to mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries. The grant of such assistance is contingent on meeting certain home country objectives, principally to exclude the coverage of FDI projects that might harm United States domestic business or employment interests.

Source: http://www.opic.gov/, website of the United States Overseas Private Investment Corporation.

19. At the regional and multilateral levels, several bodies offer investment insurance to various degrees. Regional bodies, such as the Inter-Arab Investment Guarantee Corporation, provide security against the non-commercial risks which may confront inter-regional investment and that are difficult for investors to avert. The Corporation, for example, is authorized to provide both direct insurance and reinsurance for inter-Arab FDI, providing reasonable compensation for losses caused

[3] Many of these programmes also require the protected FDI to generate direct economic benefits for the home country, including employment and income, or to serve other national interests (Australia, Belgium, France, Germany, Japan and the United States) (OECD, 1993).

by covered risks (UNCTAD, 1996a, vol. II, pp. 127-129). At the multilateral level, MIGA has been providing political risk insurance (covering transfer restriction, expropriation, breach of contract, and war and civil disturbance) to private foreign investors investing in developing countries since 1990. While the Agency's joint sponsorship by developed and developing countries is meant to increase confidence among investors from all countries to invest jointly in developing countries, its services have been primarily utilized by developed country firms. However, MIGA's coverage for investments by investors from developing countries has been growing steadily. So as to improve this picture, MIGA encourages South-South investments (i.e. investments made by developing country investors) by offering such investors reduced fees. In addition, in order to improve the quality of the FDI projects that seek insurance coverage, certain criteria need to be met. MIGA requires, for example, before it issues a guarantee, that an environmental assessment be undertaken, the front-end costs of which may be discouraging for SMEs from developing countries (for a discussion, see UNCTAD, 1999a, pp. 307-308).

E. Investment-related trade measures

20. A number of investment-related trade measures also constitute HCMs in that they influence the volume, sectoral composition and geographic distribution of FDI in host countries. They include market access development preferences, i.e. measures aimed at enhancing the host country's attractiveness for export-oriented FDI through the granting of special tariffs, quotas or duty preferences to imports from developing host countries, and export promotion devices, i.e. measures aimed at supporting the supply capacity of the host country for exports to the home country through, for example, the creation of export processing zones and buy-back trade arrangements (UNCTAD, 1999c).

21. Market access preferences can be granted by countries or regional groupings on terms and conditions that vary with specific cases. As a trade policy instrument, they can serve to attract export-oriented FDI to the developing countries favoured by the preferences. The Generalized System of Preferences (GSP) is an example of this kind of policy whereby developed countries offer preferential treatment in their markets to developing countries. Each developed country that opts to participate in the GSP system selects the products, countries and margins that it will allocate. The United States system, for example, provides for preferential duty-free entry for approximately 4,500 imported products from over 140 beneficiary countries and territories (Robinson, 1998).[4] Another example is the United States tariff schedule provision known as "chapter 98" that greatly assisted in the development of the maquiladora industry in Mexico. Tariffs on goods entering the United States under this chapter are only applied on the value added abroad, thereby greatly encouraging United States foreign investment in the maquiladora industry.[5] Similarly, the GSP and Lomé/Cotonou trade

[4] The recently passed African Growth and Opportunity Act (United States Congress, 2000, Section 102(9)) extends these preferences.

[5] See http://infoserv2.ita.doc.gov/ticwebsite/naftaweb.nsf/504ca249c786e20f85256284006da7ab/ab04e16e721ef690852566ff005ece25?OpenDocument.

regimes of the EU provide for duty-free access to the EU market for all industrial and fish products and nearly 80 per cent of agricultural products from the ACP States members of these agreements (EC, 1998).

22. Export promotion devices usually take the form of support for the establishment of export processing zones (EPZs), either directly through financial and other technical assistance, or indirectly through the granting of specific trade regulations to products originating in such zones. A number of foreign investors have indeed taken it on themselves to build and operate some EPZs primarily to coordinate their own international trade and processing needs. The Japanese Sumitomo Corporation, for example, has developed 14 EPZs in Asian countries in support of its manufacturing and distribution network (WEPZA, 1998). Other support measures include direct or indirect export financing programmes aimed at re-importing semi-processed goods (buy-back arrangements) and taxation measures that have an effect on export income (such as the United States Foreign Sales Corporation programme whereby companies can gain tax advantages by establishing a foreign-based entity through which their exports are channeled).

23. There may also be an impact on outward FDI to developing countries from the indirect effects of home country import restraints. HCMs regulating the imposition of import duties through devices such as anti-dumping or rules-of-origin definitions can indirectly discourage outward FDI by companies that might otherwise serve the home country market more productively and profitably from foreign locations with comparative economic advantage factors. On the other hand, voluntary export restrictions (e.g. in textiles and automobiles) encourage outward FDI that is geared towards making use of the import quotas of other countries under such systems.

F. Promoting technology transfer

24. To the extent that technology is part of the package offered by the foreign investor, the promotion of FDI can also contribute to the transfer of technology. It is important to note, however, that transfer of technology goes beyond the sharing of know-how entailed in most of the FDI-related measures discussed above. Measures geared specifically to the facilitation of transfer of technology exist in a number of home countries (table 3), and several international agreements contain clauses in this regard (annex table 2). At the unilateral level, such measures include the following:

Table 3. Examples of main types of existing home country measures encouraging transfer of technology

Selected developed countries	Partnerships	Promoting the use of specific technology	Provision of expertise		Research and development
			Advisory services	Training and education	
European Union	x	x	x	-	x
Australia	-	-	x	x	-
Austria	-	-	-	-	x
Belgium	x	-	-	x	-

Canada	-	x	x	x	x
Denmark	x	-	x	-	x
Finland	-	x	-	-	-
France	x	-	x	x	x
Germany	-	-	x	-	-
Japan	-	-	x	-	-
Netherlands	-	x	x	-	-
New Zealand	x	-	x	-	-
Norway	x	x	x	x	-
Spain	x	-	x	-	-
Sweden	-	-	x	x	x
Switzerland	-	x	x	-	-
United Kingdom	x	x	-	-	x
United States	x	x	x	x	-

Source: UNCTAD, based on information from various sources including websites, publications of relevant agencies, and WTO documents IP/C/W/132/ Add.1-5.

Note: this is a preliminary working table. Experts are invited to complete it with additional or other relevant information.

* *Support for technology partnerships* between firms from developed and developing countries plays a useful role in assisting the latter in to strengthen their technological capability, either through access to advanced technology and/or the learning process involved in the interaction between firms (UNCTAD, 1996b). Such partnerships -- which can take many forms ranging from sharing technology on an ad-hoc basis to entering long-term contractual or business engagements -- are supported by various initiatives. For example, the Technology Partnership Initiative in the United Kingdom promotes the transfer of technology, with special emphasis on environmentally-friendly technologies, in Argentina, Ethiopia, Ghana, India, Nigeria, Oman and Uganda.[6]

* *Promoting the transfer of specific technology* (such as telecommunications, energy production and environmental protection technologies) is at the heart of several developed country initiatives. For example, through its Asia-Ecobest project, the European Union's Regional Institute of Environmental Technology (RIET) promotes the use of technologies adapted to

6 See http://www.tradepartners.gov.uk an http://www.dti.gov.uk/tpi.

Asian environmental needs through the provision of ad-hoc technical assistance and expertise.[7] Similarly, the Japanese International Co-operation Agency (JICA) provides for the transfer of specialized technical knowledge in areas such as health, agriculture, forestry and fisheries, mining and manufacturing.[8]

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7 See http://www.riet.org.

8 See http://www.jica.go.jp/english.

* *Measures relating to research and development (R&D)* may be targeted at specific technological problems of developing countries and provide a venue for public-private cooperation in promoting transfer of technology. Such R&D is carried out by public and private institutions in joint arrangements between host and home countries. For example, the French Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD) undertakes joint research activities on genetic resources, food, nutrition technologies and biotechnology of interest to developing countries with R&D institutions in more than 90 countries.[9]

25. There are, however, also some HCMs that restrict technology transfer for reasons of national security or economic competitiveness. For example, most developed countries implement a system of export (and technology transfer) controls for dual-use goods and technologies with significant military applications, and coordinate their actions through the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies adopted in 1991.[10]

26. An important issue for future examination is how existing provisions in international agreements intended to encourage the transfer of technology can be made operative more effectively than has been done so far. In this context, environmentally friendly technologies are particularly important, the transfer of which is encouraged in a number of international instruments (annex table 2).

II. THE NATURE OF HCMS IN INTERNATIONAL AGREEMENTS

27. Most of the measures described above are applied on a unilateral basis. Generally found as part of development assistance programmes, they can serve a useful function. But they have their limitations: although potential FDI recipients may offer suggestions regarding how such policies and programmes might aid their development, it is the home countries alone that fully control the formulation of goals, procedures and implementation. Unilateral initiatives can, therefore, be weighted towards the type of measures that promote the home country's TNCs and, more specifically, the realization of benefits within the home country's own borders. In parallel fashion, these initiatives may inhibit outward FDI to developing countries for projects that threaten to have an adverse impact on home country employment or other interests.

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[9] See http://www.cirad.fr.

[10] See http://www.wassenaar.org.

28. Some measures can, however, also be found in international agreements. With the notable exception of double taxation treaties with tax-sparing provisions and agreements related to investment insurance (especially MIGA), the vast majority of these are confined to hortatory declarations that place no specific obligations on home countries, or leave questions of implementation to be developed later:

* At the *bilateral level*, bilateral treaties for the protection and promotion of investment (BITs) focus predominantly on protecting investment projects in the host country; in this manner they serve the purpose of encouraging outward FDI. But, as their name indicates, they can also provide for active measures to the same effect through provisions calling for the mutual encouragement of investment in the parties' respective territories (UNCTAD, 1998). However, the language regarding home country promotion of outward FDI is normally no more than hortatory and involves no specific obligations (box 3), in contrast to the specific and binding obligations laid down for the treatment of inward FDI by host countries.

Box 3. Examples of HCMs provisions in BITs

BIT between the Belgium-Luxembourg Economic Union and Cameroon (1980)

"Aware of the importance of investments in the promotion of its policy of cooperation for development, the Belgium-Luxembourg Economic Union shall strive to adopt measures capable of spurring its commercial operations to join in the development effort of the United Republic of Cameroon in accordance with its priorities" (Article 2(3)).

BIT between Japan and Sri Lanka (1982)

"Each Contracting Party shall, subject to its rights to exercise powers in accordance with the applicable laws and regulations, encourage and create favourable conditions for nationals and companies of the other Contracting Party to make investments in its territory, and, subject to the same rights, shall admit such investment" (Article 2(1)).

BIT between Malaysia and the United Arab Emirates (1991)

"(4) (a) Each Contracting State shall endeavour to take the necessary measures and legislation for granting appropriate facilities, incentives and other forms of encouragement for investments made by investors of the other Contracting State. [...]
(6) The Contacting Parties shall periodically consult between themselves concerning investment opportunities within the territory of each other in various sectors of the economy to determine where investments from one Contracting State into the other may be most beneficial in the interest of both Contracting States.
(7) To attain the objectives of the Agreement, the Contracting States shall encourage and facilitate the formation and establishment of the appropriate joint legal entities between the investors of the Contracting States to establish, develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State" (Article 2).

BIT between China and Jamaica (1994)

"Each Contracting Party shall encourage and promote investment by investors in the other Contracting Party in its territory. To this end, the Contracting Parties shall consult with each other as on the most effective ways to achieve this purpose" (Article 2(1)).

Source: UNCTAD, 1998, p. 52.

* At the *regional level*, agreements typically contain home country commitments to promote outward FDI and host country responsibilities regarding FDI treatment. Again, the language that can be found addressing the investment promotion aspect is often hortatory in nature. Unless based on a specific development assistance commitment, regional agreements encompassing both developed and developing countries usually address the promotion of outward FDI, if at all, in only the most broad and general terms and usually indirectly in terms of removing restrictions rather than actively promoting outward FDI (box 4).

Box 4. HCMs in regional agreements

Asian-African Legal Consultative Committee Draft of Model Agreements for Promotion and Protection of Investments

"Each Contracting Party shall take steps to promote investments in the territory of the other Contracting Party and encourage its nationals, companies and State entities to make such investments through offer of appropriate incentives, wherever possible, which may include such modalities as tax concessions and investment guarantees" (Article 2) (UNCTAD, 1996a, III, p. 117).

Agreement on Investment and Free Movement of Arab Capital among Arab Countries

"Every Arab state exporting capital shall exert efforts to promote preferential investments in the other Arab states and provide whatever services and facilities required in this respect" (Article 1) (UNCTAD, 1996a, II, p. 121).

Pacific Basin Charter on International Investments

"Governments - especially those of economies in a creditor or favourable foreign exchange situation - should stimulate and encourage the flow of private investments abroad" (UNCTAD, 1996a, III, p. 377).

APEC Non-Binding Investment Principles

"Member economies accept that regulatory and institutional barriers to the outflow of investment will be minimised" (UNCTAD, 1996a, II, p. 537).

Source: UNCTAD.

* At the *multilateral level*, few agreements incorporate commitments concerning HCMs affecting investment in, and technology transfer to, developing countries, and most of which tend to be hortatory in nature. Reference was already made to international agreements dealing with technology transfer. Relevant are also policy references to HCMs in the area of restrictive business practices: the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices states among the principles advanced to meet the agreement's objectives the "preferential or differential treatment for developing countries", according to which "particularly developed countries, should take into account in their control of restrictive business practices the development, financial and trade needs of developing countries, in particular of the least developed countries" (UNCTAD, 1996a, I, p. 137).

29. In all, references to HCMs exist in various forms at the international level, which indicates that they can be made subject to international agreements. Their confinement to hortatory statements of intent on the one hand and to the unilateral discretion of home countries in their application on the other suggest, however, that their effectiveness has largely been limited. Practical outcomes increase, of course, if an agreement's general statement of policy principles is followed by provisions containing a more detailed list of measures or a specific implementation process that will translate policy into practice, including actions involving other types of HCMs. The recent ACP-EC Cotonou Agreement offers an example on how this can be done (annex table 3).

CONCLUSION AND POSSIBLE ISSUES FOR THE CONSIDERATION OF THE EXPERT MEETING

30. This Note has described the major categories of existing home country measures and their nature. In all, quite a number of HCMs exist, at both the national and international levels. However, they appear to be most developed at the level of soft provisions where their impact on FDI decisions by TNCs is weakest. In turn, HCMs tend to be the weakest in areas where their impact could be the greatest, i.e. in areas with direct financial implications for the home country. Correspondingly, the use and spread of HCMs is most considerable at the unilateral level where their application is left to the discretion of home country governments and less developed at the international level where their application is mostly confined to hortatory provisions.

31. The preceding paragraphs have drawn attention to some specific HCMs. However, more information on existing HCMs is required in order to gain a better understanding of their rationale, their effectiveness and their possible operationalization in international agreements. The Expert Meeting offers an excellent opportunity to explore this issue further in pursuance of the objectives underlined in the Bangkok Plan of Action. Towards this end, the Expert Meeting might wish to address, among others, the following issues:

* Whether there is a clear formulation of the rationale for HCMs?

* Whether the types of HCMs identified in this Note cover the full range of policies initiated by capital exporting countries to facilitate outward FDI towards developing countries; what other categories of measures could be identified to support efforts of developing countries (and especially the least developed countries) to attract FDI and benefit from it?

* Which are the existing home country measures that encourage transfer of technology to developing countries? What can countries learn from these measures and their experience with them?

* Whether home countries do/should support only FDI that benefits the home territory, or home country TNCs, or any FDI; and whether the answer to that question does/should differ, depending on whether the home country is a developed or a developing country?

* What can be done to enhance the impact of HCMs? Should HCMs be structured in such a way as to promote the quality of FDI?

* Is there a role for the host country in the design and execution of HCMs; and what should be the role of other actors, such as civil society? Should there be greater cooperation between inward and outward investment promotion agencies?

* Does the experience with the application of HCMs to date help to shed further light on their rationale and practical effects? What is the actual use made of HCMs by private agents? Is there any information gap on their existence? What could be done internationally to improve their effectiveness and make them more stable, transparent and predictable?

* * *

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Annex table 1. OECD initiatives to facilitate investment in developing countries, end-1990s

Country	Ministry	Agency	Programme	Goals	Activities
Australia	Foreign Affairs & Trade *www.dfat.gov.au*	AusAID (autonomous) *www.ausaid.gov.au*	Private Sector Linkage Programme (PSLP)	Must have high development priority for developing country AND be likely to promote sustainable development and economic growth.	"...training, feasibility studies for investments & Jvs, demonstration & adaptation of proven & appropriate Australian technology."
	Environment Australia *www.ea.gov.au*	Environment Protection Group	Environmental Industries Focus Unit *www.environment.gove.au/epg/eifu*	"encourage industry efforts to identify, develop and expand commercial opportunities for Australian environment management expertise and technology..."	- Assistance on funding mechanisms - Information on contacts within the environment management industry - Advance notice of Ministerial-led delegations.
Austria	Foreign Affairs *www.bmaa.gv.at*	Austrian Development Cooperation *www.bmaa.gv.at/aussenpolitik/*	Private Business Partnerships	"propel effective combinations of private enterprise & development policy initiatives and...actively promote...private enterprises in developing countries."	"funding may be granted to projects aimed at long-term cooperation of an Austrian enterprise...achieving high value added in the target country."
Belgium		Agency for Development Cooperation	None		
Canada		CIDA *www.acdi-cida.gc.ca*	CIDA-INC (Industrial Cooperation Programme)	"Act as a bridge between commercial and developmental issues. It reduces the risk to Canadian firms by sharing the costs unique to doing business in developing countries and those associated with providing training, the participation of women..."	- Through its more than 20 years experience, CIDA-INC offers: a) key success factors from other projects, b) tips on doing business in the destination country, and c) links to useful contacts in Canada & abroad.
			CASBA (non-profit initiative administered by Alliance of Manufacturers & Exporters Canada, supported by CIDA-INC) *www.the-alliance.com/cbsa*	- Proactive programme to "develop long-term business linkages between Canadian & S. African companies," both in the established and Black Economic Empowerment (BEE) sectors.	- Identification of specific partnership opportunities in South Africa (for southern African companies, identification of potential partners in Canada) for Jvs, licensing agreements, technology transfers, direct investment & training.

Country	Ministry	Agency	Programme	Goals	Activities
Denmark	Foreign Affairs *www.um.dk*	DANIDA (Danish Int' Development Ass't)	Private Sector (PS) Programme	"incentive for Danish companies to think along new lines & to seek cooperation internationally...better prepared for the challenges inherent in globalization...easier access to and knowledge of new markets...in developing countries, ...job creation, economic growth..."	FOCI: Egypt, Ghana, India, Uganda, Vietnam & Zimbabwe - Provide advisory service.
	Energy & Environment *www.mem.dk*	Danish EPA *mstex03.mst.dk*	DANCED (Danish Cooperation for Environment & Development)	- "promotion of environmentally sustainable utilization of natural resources & conservation of nature"	- FOCI: SE Asia & southern Africa - "developing capacity"
			DANCED Partnership Facility	promote the transfer of environmental know-how & technology from Danish companies to Thailand & Malaysia	- support for travel expenses, preliminary studies, implementation of project ideas, & information activities
Finland	Foreign Affairs	Dept. For International Development Cooperation *global.finland.fi*	FINNFUND *www.finnfund.fi*	"working in cooperation with Finnish & foreign companies...to promote dynamic and innovative private enterprises."	- Consultation & advice - Structuring & syndication
France		French Agency for Development (AFD) Agence Française du Développement *www.afd.fr*	French Global Environmental Facility/Fonds Français pour l'Environnement Mondial (FGEF/FFEM)	FGEF gives priority to innovative projects with "demonstration effect." Innovative feature may be scientific, technological or institutional. To meet demonstration effect criteria, "project must lend itself to replication elsewhere"	- grants to investment projects with beneficial impact...global environment"
Germany	Economic Cooperation & Development (BMZ) *www.bmz.de*	Agency for Technical Cooperation (GTZ) *www.gtz.de*	German Investment and Development Association (DEG)		
Greece	Foreign Affairs				

Country	Ministry	Agency	Programme	Goals	Activities
	www.mfa.gr				
Hungary	Economic Affairs, Dept. Int'l Organizations & Tariff Policy *www.gm.hu*	Investment & Trade Development *www.itd.hu*			
Iceland	Foreign Affairs		New Business Venture Fund		"Support to investment in developing countries"
Ireland	Foreign Affairs (Development Cooperation Div.) *www.irigov.ie/iveagh*	Irish Aid *www.irigov.ie/fveagh/irishaid*			
Japan		Japanese External Trade Organization (JETRO) *www.jetro.go.jp*	JETRO Overseas Investment Scheme (JOIN)		"JETRO selects (projects) with high technological transfer ability and little or no adverse environmental problems, and launching operations. Specifically, JETRO gives advice and consultations..."
	International Trade & Industry (MITI) *www.miti.go.jp*		Green Aid Plan	"...cooperative transfer and diffusion of energy and environmental technology to those countries, based on Japan's experience and technological expertise in environmental protection fields."	FOCI: Thailand, China, Indonesia, Malaysia, Philippines & India - holding policy dialogues with the governments
Luxembourg		Lux-Development *www.lux-development.lu*			
Netherlands	Foreign Affairs/Development Cooperation *www.minbuza.nl*		Environment and Economic Self-Sufficiency Programme (MILIEV)	MILIEV programme imposes the criterion that the export transaction must be relevant to the environment.	"Provides the opportunity in certain cases to grant to the recipient country part of the purchase price of Dutch goods. Funds are available for Egypt, Jordan, Lebanon, Syria

Country	Ministry	Agency	Programme	Goals	Activities
					and the Palestinian Territories”
			Emerging Markets Cooperation Programme (PSOM)	- “to encourage Dutch companies to invest in developing countries.” - “development of sustainable production processes in the market sector: clean technology & energy conservation methods for enterprises.”	
New Zealand	Foreign Affairs & Trade *www.mft.govt.nz*	Development Cooperation Division *www.mft.govt.nz/ nzoda*	Adia Development Assistance Facility (ADAF)	- promote sustainable economic and social progress in developing countries - to increase the involvement of New Zealand private sector in the country's ODA.	“offers scope for New Zealand enterprises to establish linkages and business relationships that promote sustainable development. The local partner receives technical and managerial expertise and the New Zealand partner the opportunity to extend its expertise
Norway	Foreign Affairs *www.odin.dep.no*	NORAD (Norwegian Agency for Development Cooperation) *www.norad.no*		- a) Establishment of Norwegian companies in developing countries, through Jvs.	- a) Support for feasibility studies, training, loans and guarantees.
			NORFUND (separate legal entity; all Fund’s capital provided by the Norwegian State)	- “supports the realisation of viable commercial projects which balance social, environmental and economic considerations.”	- invests in profitable, private enterprises in developing countries and promotes business development in those markets - two investment strategies...”
Portugal	Negocios Estrangeiros *www.min-nestrangeiros.pt*	Instituto da Cooperaçao Portuguesa	Economic Cooperation Fund (FCE)		
Sweden	Foreign Affairs	Swedish International Development Agency (SIDA) www.sida.se	StartEast Programme	“to set productive and profitable activities in motion as quickly as possible in the host countries and to contribute to efficient transfer of skills and know-how.”	- Supports small-scale Swedish companies investments in Latvia, Lithuania, Russia, Ukraine, Moldova and Georgia through financial support in the starting-up phase” - Provides two types of loans for (a)

Country	Ministry	Agency	Programme	Goals	Activities
					investments in the transfer of know-how and (b) investments in equipment in the companies of the host country.
Switzerland	Foreign Economic Affairs (BAWI) *www.admin.ch/bawi*		Clean Production Centres (CPC) - Currently in Colombia only, with plans to expand "soon" to Costa Rica, Guatemala, El Salvador, Peru, Morocco, Pakistan, Brazil & Indonesia	"To promote the utilization of environmentally sound technologies and introduce product production processes that are eco-efficient...in...developing countries, making use of Swiss know-how and technology whenever possible."	- Creation of an environmental-related information system (collaborating with Swiss Organizations for Facilitating Investments (SOFI) to promote business contacts, promoting available Swiss technologies).
	State Secretariat for Economic Affairs (SECO)	Swiss Organisation for Facilitating Investments (SOFI) Swiss Development Finance Corporation (SDFC)	Investment promotion	"Stimulate the growth of private investment in the developing countries and in the economies in transition and promote the redistribution of such investments. SECO hopes in this way to stimulate the interest of private investors a) in countries considered to be higher risks, b) in regions beyond the so-called growth centres, and c) in small-to-medium-sized projects. The guiding principle behind the policy of collaboration with the private sector is to share the investment risk, rather than to offer subsidies".	Sharing part of the initial cost, that enables an investor to obtain an advance from SECO which will cover up to 50% of the cost of a feasibility study or carrying out a pilot trial. The Swiss Organisation for Facilitating Investments (SOFI) helps find foreign partners and to negotiate a joint venture agreement (or other form of partnership). The Swiss Development Finance Corporation (SDFC), may provide part of the necessary funding as well as financial services for securing the remaining funds. Finally, SECO is involved in launching a mechanism which will enable it to provide financial support for vocational training programmes set up by the private sector, in order to encourage them to extend the scope of such programmes beyond their immediate needs.
United Kingdom	International Development		Business Partnership Unity (BPU)	"to influence the behaviour of business in order to enhance its developmental impact"	- supporting Ethical Trading Initiative - working with business social issues

Country	Ministry	Agency	Programme	Goals	Activities
	(DFID)				
United States		OPIC *www.opic.gov*		"To mobilize and facilitate the participation of US private capital and skills in the economic and social development of less developed countries and areas."	Provides political risk insurance and project finance
		USAID *www.info.usaid.gov*	Global Technology Network	To facilitate the transfer of US technology and services to address global development problems.	- trade lead/business matching programme - matches a country's development needs with US firms that offer appropriate technological solutions.
		Export-Import Bank *www.exim.gov*	Environmental Exports Program *www.exim.gov/envprogs*	Aims to promote exports of products and services specifically used to aid in the abatement, control or prevention of air, water and ground contamination or pollution, or which provide protection in the handing of toxic substances.	- A variety of short-term and long-term measures that improve the competitive position of U. S. exporters.
		JOINT: US Department of Energy & USAID (with private funding from the Rockfeller Foundation)	IFREE-Pre investment Funding Program *www.energyhouse.com/ifree*	"To promote the sustainable use of renewable energy and energy efficient technologies in less developed and transitional economies."	IFREE shares the risks of project development with private sector companies by "sharing the cost of pre-investment activities that directly result in commercially financeable projects."

Source: UNCTAD, based on CBS, 1999, pp. 22-24.

Annex table 2. References in international agreements to HCMs concerning transfer of technology

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

"Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base." (Article 66.2)
"In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members." (Article 67) (UNCTAD, 1996a, vol. I, p. 368).

The General Agreement on Trade in Services (GATS)

"1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments [...] relating to:

a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;
b) the improvement of their access to distribution channels and information networks; and
c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate access to developing country Members' service suppliers to information, related to their respective markets, concerning:

a) commercial and technical aspects of the supply of services;
b) registration, recognition and obtaining of professional qualifications; and
c) the availability of services technology. [...]" (Article IV) (UNCTAD, 1996a, vol. I, p. 290).

The Energy Charter Treaty

"The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis"; accordingly, the signatory countries "shall eliminate existing and create no new obstacles to the transfer of technology in the field of Energy Materials and Products and related equipment and services, subject to non- proliferation and other international obligations." (Article 8) (UNCTAD, 1996a, vol. II, pp. 553-554).

The LOME IV Convention

"With a view to assisting the ACP States to develop their technological base and indigenous capacity for scientific and technological development and facilitating the acquisition, transfer and adaptation of technology on terms that will seek to bring about the greatest possible benefits and minimize costs, the Community, through the instruments of development finance cooperation, is prepared, inter alia, to contribute to: (a) the establishment and strengthening of industry-related scientific and technical infrastructure in the ACP States; [...] (e) the identification, evaluation and acquisition of industrial technology including the negotiation on favourable terms and conditions of foreign technology, patents and other industrial property, in particular through financing or through other suitable arrangements with firms and institutions within the Community." (Article 85) (UNCTAD, 1996a, vol. II, pp. 402-403).

The Cotonou Agreement

"3. Cooperation shall promote business development through the provision of finance, guarantee facilities and technical support aimed at encouraging and supporting the creation, establishment, expansion, diversification, rehabilitation, restructuring, modernisation or privatisation of dynamic, viable and competitive enterprises in all economic sectors as well as financial intermediaries such as development finance and venture capital institutions, and leasing companies by:

d. encouraging inter-firm linkages, networks and cooperation including those involving the transfer of technology and know-how at national, regional and ACP-EU levels, and partnerships with private foreign investors which are consistent with the objectives and guidelines of ACP-EC Development cooperation. [...]" (Article 21).

"Cooperation shall support sustainable policy and institutional reforms and the investments necessary for equitable access to economic activities and productive resources, particularly:

j. development of scientific, technological and research infrastructure and services; including the enhancement, transfer and absorption of new technologies; [...]"(Article 23).

(http://www.acpsec.org/gb/cotonou/accord1e.htm)

Agenda 21

"Governments, business and industry, including transnational corporations, should strengthen partnerships to implement the principles and criteria for sustainable development" (Chapter 30.7)

"Business and industry, including transnational corporations, should be encouraged to establish world-wide corporate policies on sustainable development, arrange for environmentally sound technologies to be available to affiliates owned substantially by their parent company in developing countries without extra external charges, encourage overseas affiliates to modify procedures in order to reflect local ecological conditions and share experiences with local authorities, national Governments and international organizations" (Chapter 30.22).

"Long-term collaborative arrangements should be promoted between enterprises of developed and developing countries for the development of environmentally sound technologies. Multinational companies, as repositories of scarce technical skills needed for the protection and enhancement of the environment, have a special role and interest in promoting cooperation in and related to technology transfer, as they are important channels for such transfer, and for building a trained human resource pool and infrastructure" (Chapter 34.27). (http://www.un.org/esa/sustdev/agenda21text.htm)

Kyoto Protocol to the United Nations Framework Convention on Climate Change

"All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall: [...]

[c] Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;" (Article 10).
(http://www.unfccc.de/resource/docs/convkp/kpeng.html)

Source: UNCTAD.

Annex table 3. Investment provisions in the Cotonou Agreement

"PART 4: DEVELOPMENT FINANCE COOPERATION
TITLE II: FINANCIAL COOPERATION
CHAPTER 7: INVESTMENT AND PRIVATE SECTOR DEVELOPMENT SUPPORT

ARTICLE 74

Cooperation shall, through financial and technical assistance, support the policies and strategies for investment and private sector development as set out in this Agreement.

ARTICLE 75

Investment promotion

The ACP States, the Community and its Member States, within the scope of their respective competencies, recognising the importance of private investment in the promotion of their development cooperation and acknowledging the need to take steps to promote such investment, shall:

a. implement measures to encourage participation in their development efforts by private investors who comply with the objectives and priorities of ACP-EU development cooperation and with the appropriate laws and regulations of their respective States;
b. take measures and actions which help to create and maintain a predictable and secure investment climate as well as enter into negotiations on agreements which will improve such climate;
c. encourage the EU private sector to invest and to provide specific assistance to its counterparts in the ACP countries under mutual business cooperation and partnerships;
d. facilitate partnerships and joint ventures by encouraging co-financing;
e. sponsor sectoral investment fora to promote partnerships and external investment;
f. support efforts of the ACP States to attract financing, with particular emphasis on private financing, for infrastructure investments and revenue generating infrastructure critical for the private sector;
g. support capacity building for domestic investment promotion agencies and institutions involved in promoting and facilitating foreign investment;
h. disseminate information on investment opportunities and business operating conditions in the ACP States; and
i. promote national, regional and ACP-EU private sector business dialogue, cooperation and partnerships, in particular through an ACP-EU private sector business forum. Support for operations of an ACP-EU private sector business forum shall be provided in pursuit of the following objectives:
    i. to facilitate dialogue within the ACP-EU private sector and between the ACP-EC private sector and the bodies established under the Agreement;
    ii. to analyse and periodically provide the relevant bodies with information on the whole range of issues concerning relations between the ACP and EU private sectors in the context of the Agreement or, more generally, of economic relations between the Community and the ACP countries; and
    iii. to analyse and provide the relevant bodies with information on specific problems of a sectoral nature relating to, inter alia, branches of production or types of products at regional or sub-regional level.

ARTICLE 76

Investment finance and support

1. Cooperation shall provide long-term financial resources, including risk capital, to assist in promoting growth in the private sector and help to mobilise domestic and foreign capital for this purpose. To this end, cooperation shall provide, in particular:

a. grants for financial and technical assistance to support policy reforms, human resource development, institutional capacity-building or other forms of institutional support related to a specific investment, measures to increase the competitiveness of enterprises and to strengthen the capacities of the private financial and non-financial intermediaries, investment facilitation and promotion and competitiveness enhancement activities;
b. advisory and consultative services to assist in creating a responsive investment climate and information base to guide and encourage the flow of capital;
c. risk-capital for equity or quasi-equity investments, guarantees in support of domestic and foreign private investment and loans or lines of credit on the conditions laid down in Annex II "Terms and Conditions of Financing" to this Agreement; and
d. loans from the Bank's own resources.

2. Loans from the Bank's own resources shall be granted in accordance with its statute and with the terms and conditions laid down in Annex II to this Agreement.

ARTICLE 77

Investment guarantees

1. Investment guarantees are an increasingly important tool for development finance as they contribute to reducing project risks and inducing private capital flows. Cooperation shall therefore ensure the increasing availability and use of risk insurance as a risk-mitigating mechanism in order to boost investor confidence in the ACP States.

2. Cooperation shall offer guarantees and assist with guarantees funds covering risks for qualified investment. Specifically, cooperation shall provide support to:

a. reinsurance schemes to cover foreign direct investment by eligible investors; against legal uncertainties and the major risks of expropriation, currency transfer restriction, war and civil disturbance, and breach of contract. Investors may insure projects for any combination of the four types of coverage;
b. guarantee programmes to cover risk in the form of partial guarantees for debt financing. Both partial risk and partial credit guarantee shall be available; and
c. national and regional guarantee funds, involving, in particular, domestic financial institutions or investors for encouraging the development of the financial sector.

3. Cooperation shall also provide support to capacity-building, institutional support and participation in the core funding of national and/or regional initiatives to reduce the commercial risks for investors (inter alia, guarantee funds, regulatory bodies, arbitration mechanisms and judiciary systems to enhance the protection of investments improving the export credit systems).

4. Cooperation shall provide such support on the basis of complementary and added value with respect to private and/or public initiatives and, whenever feasible, in partnership with private and other public organisations. The ACP and the EC will within the framework of the ACP-EU Development Finance Cooperation Committee undertake a joint study on the proposal to set up an ACP-EU Guarantee Agency to provide and manage investment guarantee programmes.

ARTICLE 78
Investment protection

1. The ACP States and the Community and its Member States, within the scope of their respective competencies, affirm the need to promote and protect either Party's investments on their respective territories, and in this context affirm the importance of concluding, in their mutual interest, investment promotion and protection agreements which could also provide the basis for insurance and guarantee schemes.

2. In order to encourage European investment in development projects of special importance to, and promoted by the ACP States, the Community and the Member States, on the one hand and the ACP States on the other, may also conclude agreements relating to specific projects of mutual interest where the Community and European enterprises contribute towards their financing.

3. The Parties also agree to introduce, within the economic partnership agreements, and while respecting the respective competencies of the Community and its Member States, general principles on protection and promotion of investments, which will endorse the best results agreed in the competent international fora or bilaterally.

Source: http://www.acpsec.org/gb/cotonou/accord1e.htm.