United Nations TD/B/C.II/MEM.3/11

United Nations Conference on Trade and Development

Distr.: General
26 September 2011

Original: English

Trade and Development Board
Investment, Enterprise and Development Commission
Multi-year Expert Meeting on Investment for Development
Fourth session
Geneva, 5–6 December 2011
Item 3 of the provisional agenda
Making investment contribute to development: the policy perspective

Investment for development: current policy challenges

Note by the UNCTAD secretariat

Executive summary

This note identifies current challenges in national and international investment policies, and explores ways of moving forward in order to make investment work for development. The investment policy regime in the twenty-first century has become more complex, diversified, and interconnected with various other policy areas. At the national level, one serious challenge results from the increasing interaction of investment policies with industrial policies and enterprise development policies – leaving investment policymakers with the challenge of how to integrate foreign investment into overall development strategies. This interaction takes place not only through the various policies that address foreign investment, but also, increasingly, due to the salience of non-equity modes of international production such as contract manufacturing or service outsourcing.

Other challenges have to do with the fact that an increasing number of countries see a need to rebalance the rights and obligations of investors – for instance, in respect of permitting foreign investment in "sensitive" industries, or to further the goal of sustainable development. In both cases, the question arises of how to adjust the regulatory powers of the State in order to effectively address these challenges without resorting to investment protectionism.

At the international level, policymakers face the challenge of being confronted by an increasingly complex system of thousands of international investment agreements (IIAs), many ongoing negotiations, and multiple dispute-settlement mechanisms. This raises the question of what could be done to arrive at a more coordinated approach towards IIA rulemaking.

Introduction

1. Investment policymaking in the twenty-first century faces numerous new and complex challenges, both at national and international levels. Whereas in the past the main policy focus was on investment attraction through liberalization and protecting foreign investors, this approach has given way to a much broader and more intricate development policy agenda. Long-existing and well-known policy issues – such as how to create a favourable investment climate and how to establish a stable and transparent regulatory environment – are as pertinent as ever. In addition, new questions have arisen on how to integrate foreign investment into overall development strategies, how to balance investment liberalization with regulation to protect sensitive industries and to foster responsible investment, and how to avoid investment protectionism, among others. The situation is further complicated by the more frequent occurrence of economic and financial crises in recent years and the resulting need to adjust policies quickly.

2. At the international level, policymakers are faced with an increasingly complex system – characterized by thousands of IIAs, many ongoing negotiations, and multiple dispute-settlement mechanisms – which nevertheless offers protection to only two thirds of global foreign direct investment (FDI) stock and which covers only one fifth of bilateral investment relationships. Most Governments continue to participate in the race to add bricks to the international investment policy edifice, despite the fact that hardly any is satisfied with the overall design of the building. Policymakers, especially in developing countries but also in the international development community, are particularly concerned that the current international policy regime lacks a clear development dimension. The world has a multilateral trade system (World Trade Organization) and a multilateral monetary system (International Monetary Fund), but it has no equivalent for international investment policymaking.

3. Recent developments in the global economy make it more pertinent than ever before to find solutions for these pressing questions. Global FDI flows have been slow to recover from the financial crisis. While global growth in gross domestic product (GDP) is positive, world trade has returned to its pre-crisis levels, and the income that firms are earning on their foreign investments is close to 2007 highs. FDI flows remain approximately 15 per cent below their pre-crisis average and nearly 40 per cent below their 2007 peak. This is worrisome, since more private productive investment is needed to make up for the reduction in public investment in many countries as a reaction to the high levels of public debt that have accumulated over the years. It is all the more serious as the investment drought is caused neither by a lack of funds nor by a lack of opportunities for multinational firms to invest.

4. An improved investment policy regime could make a difference. As well as providing broad substantive coverage dealing with all relevant aspects of investment policymaking, such a regime would also need to address all relevant political and economic agents in the investment area, namely the home and host countries of foreign investment, foreign investors, and the international community.

5. This note identifies some of the most important national and international investment policy issues that would need to be addressed within such a regime.

I. Current challenges in foreign investment policies

A. Integrating investment policies into overall development strategies

6. The overall challenge of foreign investment policies is how to integrate foreign investment into overall development strategies. Although there is no "one size fits all" approach to this question because individual countries have their own particular needs and priorities, there is a common challenge insofar as investment policies have to be embedded in a broader economic policy agenda. This requires Governments to develop a coherent development vision, policies and regulations to implement it, an adequate institutional set-up, and international coordination.

7. Development strategies include a broad range of policy areas which bring in a variety of issues such as infrastructure development, education, trade and technology, access to finance, competition, and environmental and social protection. As far as the interaction between investment policies and development strategies is concerned, two related areas stand out as being particularly pertinent – namely industrial policy and enterprise development.

1. Industrial policy

8. Increasingly, investment policies interact with industrial policies. In general, countries promote or restrict foreign investment depending on specific situations and the industries concerned. For instance, transnational corporations (TNCs) can be a source of technology and know-how for the development of cutting-edge industries and may receive special incentives to invest. In some cases, however, a country may choose to restrict foreign investment because it sees a need to protect certain strategic industries from foreign takeovers due to national security concerns. Also, in times of economic crisis, a country may alter specific components of its investment policies for a temporary period due to employment concerns.

9. There are five main modes of interaction between industrial policy and investment policy. First of all, specific national investment guidelines have been used to define the role of foreign investment in domestic industrial development strategies and to identify the available policy tools. A number of countries have created such documents, which, to various degrees, specify the extent to which foreign investment is prohibited, restricted, allowed or encouraged, and which FDI-related policy instruments to apply. Secondly, some countries use investment policies to target individual companies or specific categories of foreign investors considered capable of making a particularly significant contribution to industrial development, such as hi-tech investments, environmentally friendly projects, or labour-intensive technologies. Investment promotion agencies (IPAs) have an important supporting role in this context, namely through their matchmaking and aftercare services. These "targeting" policies have been reinforced through linkage programmes, the promotion of industrial clusters, and incubation programmes, in order to maximize spillover effects and other benefits (see the section on enterprise development).

10. Thirdly, industrial development objectives can be furthered by general fiscal or financial investment incentives related to the development of certain industries or regions, or related to specific development goals such as export promotion, job creation, or technology transfer and upgrading. Investment incentives are also used to help developing industries where there is not, as yet, a sufficiently large market (e.g. renewables). Fourthly, many economies apply business facilitation programmes, such as one-stop shop mechanisms, special economic zones, and incubators. Examples of these are hi-tech zones

(e.g. Electronic City in Bangalore), IT corridors (e.g. Taipei Technology Corridor) and renewables zones (e.g. Masdar City in Abu Dhabi). Finally, interaction also occurs with regard to restrictions on foreign investment. In the past, restrictive investment policy has particularly been applied with a view to promoting infant industries, or for socio-cultural reasons (e.g. land ownership restrictions). At present, the restrictions include a broader spectrum of tools (e.g. the establishment of approval and screening procedures for foreign investors), and where the beneficiaries of government protection also include national champions, strategic enterprises and critical infrastructure.

11. Governments face the challenge of choosing the "right" investment policy instruments from among the above menu of options. Horizontal policies (e.g. general subsidies or tax rebates) will often be the basis, with the aim of improving the hard and soft infrastructure of the host country. What is actually needed depends on the type of business activity to be developed, the technology and skills required for it, and the form of TNC involvement (FDI vs. non-equity modes of international production). In countries with poor infrastructure and with business environments that are perceived as unfriendly, special investment incentives may be needed in order to help overcome barriers to entry. Such incentives may also be required with regard to emerging industries for which a market does not yet exist (e.g. renewable energy) or where there is a "first mover" problem, because of the risks attached to innovations. By focusing on increasing industrial productivity, industrial policy can contribute to strengthening international competiveness. The dynamic nature of industrial development calls for regular review and adaptation of existing policy instruments.

12. A fundamental challenge of industrial policies and related investment policies is how to "pick the winner". This difficulty also relates to the risk of wasting valuable and scarce resources, the risk of distorting market mechanisms to the long-term detriment of the economy, and the risk of succumbing to the pressure of lobbying. Industrial policy can be successful if governments are able to identify those industries or activities that possess existing or latent comparative advantages, and which will thereby benefit from new opportunities arising in the context of globalization. Policy tools are needed (such as a checklist of indicators against which to assess domestic potential), together with institutional mechanisms that reduce the risk of governments making the "wrong" choice. For special economic zones, authorities should bear in mind that export-generating choices do not always have the greatest impact on value added and on spillovers to domestic economies. Efforts need to be made to promote upgrading opportunities and linkages to the national economy through diversification, including in the services sector.

13. As more and more countries adopt forms of industrial policy, competition and conflict are bound to intensify and to become more complex. To avoid a global race to the bottom in regulatory standards, or a race to the top in incentives, and to avoid the return of protectionist tendencies, better international coordination of industrial policies is warranted. Better international coordination can also create important synergies through economies of scale, avoiding "beggar thy neighbour" policies and strengthening the position of participating countries. Cross-border industrial cooperation can also present solutions in cases where the size, costs and risks of an industrial project are too big for one country to implement the project alone.

2. Enterprise development

14. Investment policies also interact with enterprise development policies. The interaction takes place not only through the various policies addressed to TNCs, but also increasingly due to the salience of non-equity modes of international production (NEMs). The main areas for interaction relate to policies designed for improved capital movements, transfer of technology and know-how, the integration of local firms into chains of

international production, the marketing and opening up of export markets, and access to finance for SMEs. Each of these activities implies challenges for government authorities to better harness the impact of foreign investment for enterprise development.

15. One key challenge is the promotion of linkages and spillover effects of foreign investment. Policy coordination is needed among authorities to ensure that foreign investment promotion is targeted to those sectors that could have the biggest impact in terms of creating "backward" and "forward" linkages. In the long run, successful enterprise development can allow host countries to upgrade their status from capital inflows receivers to capital exporters. It is also important to prevent local firms from being limited to low value-added activities, and to capture higher economic rents instead (i.e. to avoid the "enclave economies" phenomenon.

16. A related challenge concerns IPA authorities and involves the need to better coordinate such policies as matchmaking, aftercare services, and the design of special economic zones. In order to better target TNCs and maximize their impact on domestic growth, IPAs cannot confine themselves to attracting foreign investment into a sector or industry, but need to aim at specific investor targeting. The new challenge is to target investors for specific activities for which the host country considers itself to have a competitive advantage. In light of the ever-changing economic environment, this also implies constantly reviewing the host country's competitive position and adapting the investment promotion strategy accordingly.

17. The way that the international division of labour is progressing, developing countries are increasingly facing the challenge of finding their competitive "niche" within regional or global production processes. Such niches may exist within the whole range of international value chains, including procurement, manufacturing, distribution, marketing, services, and after-sales. Policymakers face the challenge of identifying local potential that qualifies for such integration.

18. Skill development and education are central to better preparing the national labour force and local enterprises in order to better exploit the synergies with TNCs. With regard to education, the key challenge for Governments is to embed entrepreneurship knowledge (e.g. financial literacy, business strategy) into the formal and informal educational systems of countries. Reaching out to the business community and integrating it into the learning process can help accelerate that process. Vocational training that prepares trainees for jobs involving manual or practical activities related to a specific trade or occupation is also a key policy, for instance to enhance the capacity of local TNC suppliers.

19. Continued assistance for start-ups is needed at the early level of business development (e.g. business incubators); these can be sponsored by government institutions, universities or industry associations. In addition, Governments should support the creation of business networks and linkages to assist new entrepreneurs in their interaction with established companies and TNCs. Finally, business facilitation via the simplification of administrative steps and the provision of specific information through government websites and portals is central to reducing the costs of doing business.

20. Another policy task is to improve the transfer of technology and to provide adequate protection of intellectual property rights (IPR). For example, Governments should promote technology clusters that promote research and development (R&D) in a particular industry and can help to upgrade industrial activities by bringing together technology firms, suppliers and research institutes. Disseminating and facilitating the acquisition of technology can also improve the involvement of domestic producers in global value chains (e.g. call centres and business processing operations).

21. IPR protection is a precondition for TNCs to disclose their technology to licensees in developing countries, especially in areas involving easily imitable technologies (e.g.

software, pharmaceuticals). It can also be a means of encouraging independent research activities by local companies, as small and medium-sized enterprises (SMEs) are more likely to invest resources in R&D and technological upgrading if their innovations are protected against piracy. A new UNCTAD study of developing-country cases in the automotive components, software and audiovisual industries emphasizes the relevance and mutual dependence of technological upgrading and the protection of intellectual property rights.

22. Access to finance is crucial to successful interaction between foreign investment policies and enterprise development. In addition, SME entrepreneurs that work in contractual relationships with TNCs are usually the biggest source of employment. In developing countries, they may often face credit "bottlenecks" (due to their size and/or the institutional context in which they operate). Government policies are needed which aim at promoting credit for SMEs. Such policies may take a financial form (e.g. tax breaks, subsidies and government loan guarantees) or may be alternatives to bank credits (e.g. the formation of venture capital funds to assist start-ups). Also, Governments can promote finance by means of official institutions that provide special opportunities for certain types of activities (e.g. in the case of NEMs for franchising or licensing), or can encourage the formation of these opportunities within existing private institutions.

23. Overall, each of these policy areas also has an important dynamic dimension. Policymakers in developing countries need to seek technological and entrepreneurial upgrading over time so that domestic firms are able to retain a higher share within international value chains and to remain competitive once they lose their low-labour-cost advantage. The long-term goal should be that domestic firms outgrow their role as "junior partners" of TNCs and become international companies in their own right.

Questions:

(a) What do you consider to be the most important current policy challenges to making foreign investment work for development?

(b) Has your country experienced any particular difficulties in integrating foreign investment policies into overall development strategies?

(c) Where do you see room for improvement in integration strategies?

(d) What role do you see for international cooperation and coordination in this field?

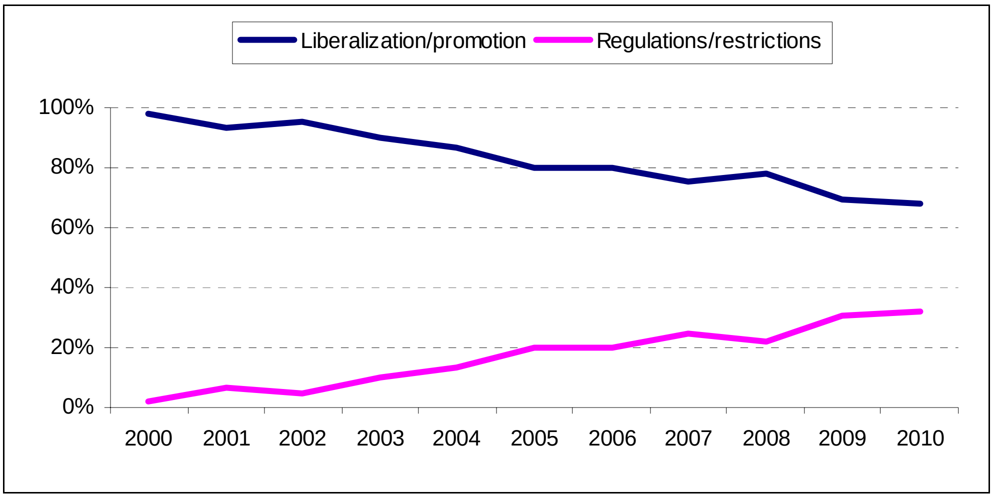
B. Balancing investment liberalization and regulation

24. Setting an appropriate regulatory framework for foreign investment has always been a key challenge for investment policymakers. One core aspect that the discussions have been focusing on is how to create a stable, enabling and transparent legal framework for foreign investment. Lately, and partly as a result of the recent serious economic, financial and social crises around the globe, the issue of how to readjust the regulatory powers of the State in the economy has moved to the centre of discussions.

25. UNCTAD's annual monitoring of national investment policy changes shows that the percentage of investment regulation as opposed to investment liberalization has grown consistently over the years and by 2010 stood at 32 per cent (fig. 1). Regulations relate both to entry conditions for foreign investors and to the regulatory environment for established investors in the host country. Two areas of regulation have received particular

attention; these are (a) measures to "protect" sensitive industries and national security; and (b) measures aimed at promoting and ensuring responsible investment.

Figure 1. National regulatory changes, 2000–2010
(percentages)



Source: UNCTAD. *World Investment Report 2011*.

1. Foreign investment in "sensitive" industries

26. Numerous countries either have regulations in place or are considering new rules that aim at protecting sensitive industries or that seek to strengthen State control. Over the past years, there have been a number of high-profile cases where foreign investment has been blocked based on considerations of national security or national interest. In other cases, entry regulations in this area have become stricter, or administrative procedures have been reinforced. Some countries have resorted to nationalizations and expropriations in sensitive industries, thereby undoing previous privatizations.

27. Natural resources–based industries, both agribusiness and extractive industries, have in particular been affected by these developments (see, for instance, table 1). In the case of agriculture, FDI in agricultural production has recently given rise to concerns about land grabs and aggravating food shortages in host countries. Foreign involvement in extractive industries has increasingly come under pressure following soaring global commodity prices. As a result, various Governments have introduced policies aimed at ensuring that local firms receive a higher rent of the profits – including mandatory joint ventures, local content requirements, nationalizations, and higher tax rates.

Table 1. National regulatory changes in 2010, by industry
(percentages)

	Liberalization/ promotion	Regulations/ restrictions
Total	67	33
No specific industry	84	16
Agribusiness	38	62
Extractive industries	7	93
Manufacturing	50	50
Electricity, gas and water	75	25
Financial services	59	41
Other services	61	39

Source: UNCTAD. *World Investment Report 2011.*

28. While it is the sovereign right of each country to decide to what extent to allow foreign investment and how to deal with sensitive industries, concerns have increased that individual policy measures could amount to investment protectionism, and questions are being raised about what could be done to avoid it (see below in section C). More regulation might also be at odds with international obligations that countries have undertaken, via IIAs, vis-à-vis foreign investment. This raises new questions of whether IIAs leave contracting parties with sufficient policy space (see below in section D, subsection 2). Finally, some issues, such as the policy concerns about land grab, have a strong international dimension and may therefore require action beyond the national level.

2. Ensuring responsible investment

29. Another crucial area where regulation has started to play a stronger role relates to the social and environmental implications of foreign investment. Over the last decade, concerns about negative social and environmental impacts from foreign investments, especially in developing countries, have gained much attention from civil society and resulted in increasing pressure on TNCs to apply equally high standards throughout their value chains. Apart from these specific concerns, there is also a more general trend in developing countries and emerging economies to improve and expand the regulatory framework for existing investment as they move from purely quantitative to more qualitative growth.

30. More recently, global crises have increased pressure on Governments on the regulatory front. Climate change is one area where many Governments have already introduced or are considering introducing new regulations to promote their move towards a low-carbon economy. As TNCs are an important part both of the problem and of the solution, Governments face the challenge of maximizing TNCs' benefits while at the same time minimizing the risks related to low-carbon investments. Another example is the global financial crisis, which demonstrated serious gaps and weaknesses in the regulation of financial markets. As a result, Governments, particularly those in the developed world, as well as intergovernmental bodies, have introduced various initiatives to strengthen financial regulation and to reform financial regulatory frameworks.

31. Another remarkable development is the proliferation of non-binding corporate social responsibility (CSR) standards in recent years, making CSR ever more important for foreign investment. In addition to fundamental standards developed by the United Nations, the International Labour Organization (ILO) and the Organization for Economic

Cooperation and Development (OECD), there are currently dozens of international multi-stakeholder initiatives, hundreds of industry association initiatives, and thousands of individual company codes (table 2). By promoting the adoption and implementation of these standards, Governments can contribute to maximizing the developments benefits associated with them. However, as this is still a relatively new area, it remains a challenge for many countries – particularly developing countries – and especially with regard to the monitoring of compliance with these standards, and their comparability.

Table 2. Compliance mechanisms of international CSR standards

	Proactive mechanisms (audits, inspections)	Reporting requirements/ redress mechanisms	No formal compliance mechanisms
International organizations	---	United Nations Global Compact, OECD Guidelines, ILO Tripartite Declaration	---
Multi-stakeholder/NGO	ISO14000, MSC, FSC, FLA, RSPO, SA8000, 4C Assoc.	---	ISO 26000 GRI
Company/ industry association	C.A.F.E. Practices, Leather Working Group, BSCI, International Council of Toy Industries	---	EICC, Pharmaceutical Industry Principles for Responsible Supply Chain Management

Source: UNCTAD. *World Investment Report 2011.*

32. Achieving the “right” balance between investment liberalization and regulations remains a major challenge. Countries that strengthen the regulatory environment face a “first mover problem”, i.e. they risk reducing their attractiveness as a foreign investment destination compared to competing countries that are content with laxer environmental or social standards. More coordination of these issues at the international level is therefore of crucial importance in order to avoid a regulatory freeze.

Questions:

(a) How do you interpret the trend towards more investment regulation? Do you see this as a worrying development?

(b) Does the move towards more regulation imply that countries should safeguard more policy space for themselves?

(c) Do you see a need for more international coordination as far as foreign investment in some sensitive areas is concerned (e.g. agricultural production)?

(d) What could be further done to ensure responsible and sustainable foreign investment?

C. Avoiding investment protectionism

33. Concerns about increasing investment protectionism have grown in light of the recent financial crisis, as countries may be tempted to protect their domestic industries to the detriment of foreign competitors. This may manifest itself in formal or informal

restrictions on inward foreign investment, or in political "requests" to domestic investors to refrain from outward foreign investment to prevent "job exports". While there is broad international consensus on the need to avoid investment protectionism, there is no internationally recognized definition of what constitutes such protectionism. Clarifying the term would require distinguishing between justified and unjustified reasons to restrict foreign investment. The motivations for foreign investment restrictions are manifold and include, for instance, sovereignty or national security concerns, strategic considerations, socio-cultural reasons, prudential policies in financial industries, competition policy, infant industry protection, and reciprocity policies. In each case, countries may have very different perceptions of whether and under what conditions such reasons are legitimate.

34. In the absence of a common understanding on what constitutes "investment protectionism", UNCTAD and OECD have been regularly monitoring policy measures in this area, following a request from the G-20. UNCTAD regularly reports on latest investment policy developments internationally in its *Investment Policy Monitor* reports. While instances of investment protectionism have largely been absent so far, the risk is far from disappearing in light of newly intensified economic crises in several world regions. In the longer term, the challenge remains to establish widely recognized international criteria for assessing whether investment restrictions are justified or not.

Questions:

(a) How do you assess the likelihood of more investment protectionism in the future?

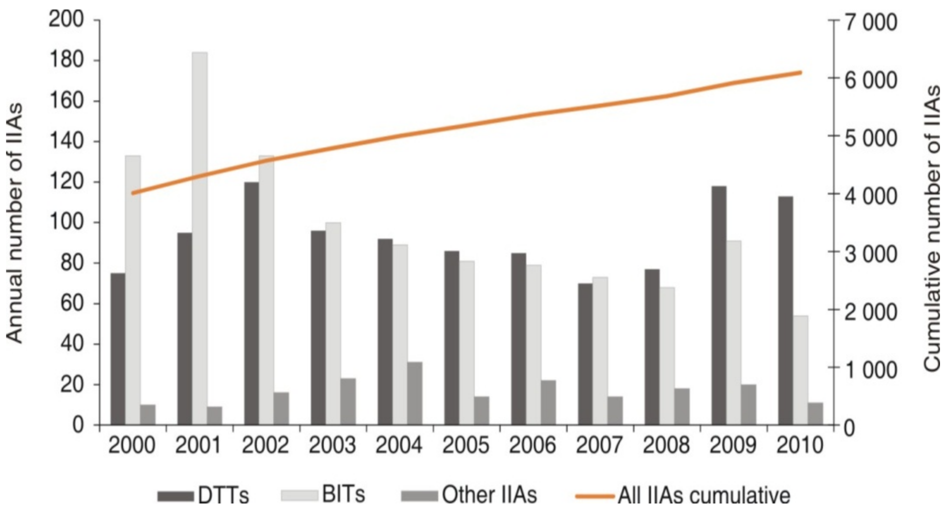
(b) Besides the existing monitoring systems mentioned above, do you see any other options to deal with the issue of investment protectionism?

D. The future of international investment agreements

1. The IIA regime and current challenges

35. With more than 6,100 treaties, the universe of IIAs has become highly fragmented and complex, presenting an atomized, multilayered and multifaceted network of treaties.

Figure 2. Trends in bilateral investment treaties, double taxation treaties and "other IIAs", 2000–2010



Source: UNCTAD. *World Investment Report 2011.*

36. As the IIA regime continues to grow, with governments concluding more than three IIAs per week, it also experiences a certain consolidation at the regional level. Despite its continuous growth, today's IIA regime offers comprehensive cross-sectoral post-establishment protection to only two thirds of global FDI stock and covers only one fifth of bilateral investment relationships. While some of the FDI stock is subject to protection offered by two or more IIAs, full coverage would require another 14,100 bilateral investment treaties.

37. Harnessing IIAs so as to effectively encourage sustainable investment is particularly crucial now, as the global economy experiences a series of investment-related challenges. First, as has already been mentioned, FDI flows remain some 25 per cent below their pre-crisis average and nearly 50 per cent below their 2007 peak. Second is the changing geography of international investment flows, whereby developing countries and emerging economies are increasingly becoming capital exporters. In 2010, FDI outflows from developing and transition economies increased substantially; they now account for 29 per cent of global outflows. Third is the growing risk of investment protectionism, given that the share of restrictive investment measures undertaken per year by governments reached its highest level since 1992 during 2011.

38. All of this is taking place at a time when the world is striving to deal with food, finance, and climate change–related crises, and when the development gap is widening, with the least developed countries and the poor and marginalized within societies being particularly affected. These investment-related challenges, together with today's broader debate about global economic governance, raise the question of whether the IIA regime – in its current form – is well equipped to play its role of offering a reliable pillar of global economic governance, successfully promoting responsible investment, and effectively delivering on its development promise.

Questions:

(a) What are the opportunities and challenges emanating from the changing investment landscape?

(b) What contribution can the IIA regime offer to meeting today's investment-related challenges?

(c) What are the lessons learnt from the current state and recent evolution of the IIA regime?

(d) How does this impact on the regime's possible evolution in the future?

2. What should guide the future evolution of the IIA regime?

39. To help the IIA regime better serve its function, a number of questions would need to be addressed, including the following:

40. Firstly, how could the IIA regime better promote investment for development? Among other things, IIA policymakers have been exploring options for (a) having effective promotion of responsible investment and the attendant generation of sustainable development benefits as one of IIAs' core objectives; (b) equipping IIAs with effective investment promotion mechanisms (instead of indirect promotion through protection); and (c) designing IIAs so that they fit and support countries' overall industrial and other development strategies.

41. Secondly, how could the IIA regime establish a proper balance between the rights and obligations of host countries and investors, and – to a certain degree – of home countries too? With a view to moving beyond solely establishing investor rights, IIA policymakers have been exploring options, including (a) acknowledging the role of

corporate social responsibility (CSR) initiatives and standards in IIAs; (b) incorporating into IIAs core principles for regulation of the behaviour of international investment (e.g. regarding environmental and social performance); and (c) how to properly address, in IIAs, issues related to corporate governance.

42. Thirdly, how could the IIA regime safeguard policy space for development? With a view to effectively preserving host countries' right to regulate investment for the purpose of pursuing legitimate policy objectives, IIA policymakers have been developing several options, including (a) using mechanisms that effectively preserve policy space (e.g. exclusions, exceptions, reservations, qualifications); (b) ensuring that policy space is preserved for a wide range of relevant policy objectives (e.g. including national economic development policies, as well as non-economic policies such as policies to preserve the environment, protect human health or pursue social objectives); and (c) ensuring that IIAs are coherent with other fields of international law and policy – while (d) establishing effective checks and balances to avoid investment protectionism.

43. With a view to better harnessing the development potential of IIAs, policymakers have been exploring options to combine (a) the above elements for ensuring that investment is responsible and the development dimension of IIAs is strong and operational with (b) common elements for attracting investment (e.g. promoting, liberalizing and protecting such investment). This approach requires identifying – based on past IIA practice – possible core elements of an IIA. According to UNCTAD's existing database and ongoing research, many IIAs include, inter alia, the following principles: non-discrimination (e.g. national treatment and/or most favoured nation treatment), protection in the case of expropriation, capital transfer rights, availability of dispute settlement, and transparency.

Questions:

(a) What can be done to better equip the IIA regime to serve its function of promoting investment for development?
(b) What can be done to ensure that IIAs address the development dimension more efficiently?
(c) How can IIAs help ensure adequate corporate contributions to development?
(d) How can IIAs grant proper policy space without opening the door to investment protectionism?
(e) What can be done to foster coherence between IIAs and other bodies of international law?
(f) What are core elements of an investment policy framework for sustainable development?
(g) How could such elements be designed, offering the best possible guidance for international investment policymaking?

3. The way forward

44. Today's global challenges (e.g. the climate, financial and food crises) and the changing landscape of international investment flows require a more coordinated and regulated approach to international investment issues, with a view to ensuring that the IIA regime effectively contributes to sustainable development and is consistent with other economic and non-economic policies.

45. Today's atomized system of bilateral and regional investment relationships, together with the special situation of most developing countries (which mostly act individually and have little chance to ensure consistency and policy coherence in their

investment policies), as well as the absence of a multilateral investment regime, create additional challenges in this context.

46. Advancing a broad understanding of key issues that need to be addressed in order to make international investment policies function in a way that is more efficient and conducive to sustainable growth and development is increasingly crucial. International sharing of experiences and best practices on key issues, and consensus-building, with a view towards better harnessing the sustainable development potential of IIAs and attendant FDI flows, can offer important opportunities in this regard. Questions of universality (in terms of effective participation by all countries, including the least developed countries), inclusiveness (in terms of involving relevant stakeholders beyond IIA negotiators), transparency and due process are important factors for the acceptability of, and progress in, any such endeavour.

Questions:

(a) How can the IIA regime address novel global challenges?
(b) How can the IIA regime better interact with international efforts to address global challenges (e.g. the stability of the financial system)?
(c) What are specific steps that can be taken (and by whom) to move towards a more sustainable IIA regime?
(d) How can multilateral consensus-building contribute in this regard?

II. Conclusions

47. The above overview has shown how complex, diversified and interconnected the policy agenda for foreign investment has become – both at the national and the international level. Investment policies can no longer be conducted largely in isolation, but rather they must be conducted in close cooperation with policymakers in related areas. This requires expertise in numerous policy fields, knowledge of particular industries, and familiarity with international investment policies. This complexity calls for the establishment of an integrated policy framework on investment for development to help policymakers – particularly in developing countries – to identify and to better understand the various policy issues at stake and the policy instruments available, so that they are able to design their investment policies on a solid basis. While it is impossible to forge a single investment framework that fits all (given that a framework that works in one country in a specific context may not work under different conditions), one can provide some prescriptive comments on what works under what circumstances, building on best practices, and highlighting where serious problems/concerns remain as well as what new solutions could be thought of. It is hoped that this issues note and the discussions at the multi-year expert meeting will help to advance work in this direction.

United Nations

TD/B/C.II/MEM.3/11/Corr.1

United Nations Conference on Trade and Development

Distr.: General
25 October 2011

Original: English

Trade and Development Board
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Note by the UNCTAD secretariat

Corrigendum

Paragraph 37

For the existing text in the second sentence, *substitute*

First, as has already been mentioned, FDI flows remain some 15 per cent below their pre-crisis average and nearly 40 per cent below their 2007 peak.