INVESTMENT POLICY MONITOR

A PERIODIC REPORT BY THE UNCTAD SECRETARIAT

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Introduction

This *Monitor* is the second of a new series launched by the UNCTAD secretariat in order to provide policymakers and the international investment community with up-to-date information about the latest developments and salient features in foreign investment policies at the national and international level. It covers measures taken in the period from December 2009 until March 2010.

The policy measures reported in this *Monitor* have been collected from various sources, particularly government and business intelligence sources.[1]

[1] The latter have only been used to the extent that it has not been possible to receive official confirmation

Highlights of main developments and policy implications

- Between December 2009 and March 2010, 62 countries or economies introduced new national policy measures affecting their policy framework for foreign investment.
- Twenty-eight economies adopted investment-*specific* measures, most of which aimed at liberalizing the entry of foreign investment into previously closed sectors (e.g. air transport or banking) or to otherwise facilitate investment conditions (through creating preferential conditions in free economic zones or the granting of incentives). Only a few countries adopted measures less favourable for foreign investment. Some instances of nationalizations occurred in Latin America.
- Forty-three economies enacted measures *related* to foreign investment. Most of these measures, undertaken by at least 23 economies, related to the adoption of new or the prolongation of existing State aids and stimulus packages implemented to counter the continuing financial and economic crisis. At the same time, some countries have started to terminate existing stimulus programmes with a potentially dampening effect on investment flows.
- Increased State ownership and control of numerous companies as a result of rescue packages continue to create a risk of non-transparent or discriminatory measures affecting foreign investment flows. This risk also exists with regard to the expected re-privatization of companies that temporarily came under State control as part of governments' rescue efforts.
- Moreover, policy slippage in the trade area is beginning to leave its mark on the international integrated production systems of transnational corporations (TNCs) and their global value chains. Although the impact of such trade protectionist tendencies on foreign direct investment (FDI) flows is hard to discern at this early stage, this remains a potentially disruptive policy area to impinge on global flows of FDI.
- At the international level, countries continued to conclude new investment agreements at a rapid pace – 37 new international investment treaties were signed between 73 economies. Amongst them are many treaties on the avoidance of double taxation, partially reflecting the ongoing efforts to eliminate international tax havens.

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1. Investment-specific policy measures [2]

Between December 2009 and March 2010, 28 economies adopted investment-specific policy measures. Mostly, these measures continued to go in the direction of more openness for and facilitation of investment.

The majority of measures falling into this category aim at further improving the **entry conditions for foreign investors.** Most of these measures relate to raising the ownership ceilings for foreign participation in domestic companies. Such policies were adopted in a number of industries, including air transportation (Australia and Canada), and mobile television services (India). In China regulations were liberalized in order to facilitate the setting up of foreign-invested partnership enterprises.

Some countries – Cameroon, Malaysia and the Syrian Arab Republic – also liberalized in the area of banking or residential property. In Qatar liberalization took place in a number of industries, including consultancy services, information technology, services related to sports, culture and entertainment, and distribution services. Qatar also provided for the discretionary relaxation, on a case-by-case basis, of rules on the equity share that foreign investors can hold in local companies in a number of industries. In Croatia, the Government has started to implement new privatization programmes, offering new investment opportunities for domestic and foreign companies.

Nine countries acted to further **promote and facilitate foreign investment**. Measures taken in this respect include the consolidation, clarification or simplification of existing foreign investment regulations in order to make investment faster and easier. In Jordan, this was done with the specific purpose to facilitate investments in renewable energy projects. In addition, Costa Rica, the Libyan Arab Jamahiriya and the Russian Federation took promotion measures by establishing or revising free economic zones. Peru provided tax incentives for investments in high altitude areas. Mexico launched a tax incentive programme to attract investments in film production.

With regard to the **operations of foreign investors**, 10 measures have been taken during the review period. South Africa removed restrictions for inward and outward capital transfers. Sweden amended its labour legislation to allow collective action against foreign employers only under certain conditions.

The Bolivarian Republic of Venezuela continued its policy of increasing State control over the economy. Some companies in the retailing sector, banking and power generation were **nationalized**. Two other Latin American countries introduced changes to their mining laws. In Ecuador, the existing concession system in the mining sector has been replaced by a new operation contract scheme. In Colombia, the amendment to the mining law has several objectives, including increasing State control over mining contracts in order to avoid speculation.

In Asia, Kazakhstan introduced a local content requirement into the terms of subsoil use contracts. Kazakhstan also tightened its legislation with regard to the definition of a domestic company in the subsoil sector, requiring that at least 95 per cent of its employees must be domestic citizens. This may imply that existing legal entities have to reduce the number of foreign personnel. Indonesia introduced an obligation for companies in the mining sector to sell a certain share of their production on the domestic market.

Madagascar, South Africa and Thailand introduced new measures aimed at **promoting outward investment** by relaxing approval requirements or foreign exchange regulations in relation with such activities.

[2] Investment-specific measures specifically address foreign investment, i.e. liberalize, regulate, protect and/or facilitate/promote foreign investment. For more details on methodology, see the UNCTAD website.

2. Investment-related policy measures [3]

State aid measures and/or stimulus packages relate to various industries, primarily financial services and the automobile industry. At least 23 economies took measures in one or several of these areas. Most of the measures were taken by G-20 countries. (For information on the countries that have implemented stimulus packages/State aids or general taxation measures during the reporting period, see annex table 1).

None of the reported measures in connection with stimulus programmes and State aids include discriminatory elements against foreign investors or are otherwise designed with protectionist content. However, this does not mean that the risk of investment protectionism has disappeared. One hazard derives from non-transparent and informal government behaviour. For instance, in the G-20 context, a case has been reported where a government put pressure on one of its domestic companies not to invest abroad in order to safe jobs at home. With regard to the increased role of the State in numerous companies, including the partial or complete nationalization of ailing enterprises, fears have been expressed that the government bases its operational decision not only on economic, but also on political considerations with potentially detrimental effects for foreign investors.

Between December 2009 and March 2010, 43 economies enacted measures related to foreign investment. The great majority of these measures concern the adoption or renewal of State aid measures and/or stimulus packages.

Although recourse to **trade restrictions** declined,[4] some protectionist trade measures taken in response to the crisis (e.g. increased import tariffs and new non-tariff measures) are beginning to impact on TNCs' decisions about the location of their investment and production. This may lead to an investment-creating or investment-diverting effect.[5]

Overall, the quantity of new State aids and stimulus packages has decreased. In addition, several countries have started to terminate existing aid schemes. These **exit policies** relate to various industries, including financial services and the automobile industry. While such exit strategies could have a dampening effect on investment, including foreign investment (as some TNCs are still struggling with the effect of the economic crisis), they could also create opportunities for firms to acquire shares released by governments. In addition, it cannot be excluded that protectionist policies may emerge in connection with the future re-privatization of companies over which the government took temporary control as part of its rescue measures. Since many of these companies may be considered as having strategic importance (e.g. in the financial or automotive sector), governments might be inclined to seek keeping them under domestic control rather than selling them to foreign investors.

Twenty-four countries amended their **tax legislation** applicable to domestic and foreign investments. Most of these measures went in the direction of lowering corporate tax rates, e.g. Canada and the Czech Republic; some others implied the introduction of a flat tax rate for corporations – which in Qatar is as low as 10 per cent. By contrast, Hungary and Mexico increased their corporate tax rates.

[3] Investment-related policy measures include laws or regulations, including in the area of taxation, that concern the general legal framework for the operation of companies, including foreign affiliates. For more details on methodology, see the UNCTAD website.

[4] See the Organisation for Economic Cooperation and Development (OECD)–UNCTAD–World Trade Organization (WTO), Report on G-20 trade and investment measures (September 2009 to February 2010), published in March 2010.

[5] In terms of investment creation, some trade protectionist measures may create an incentive for foreign companies to expand their manufacturing capacities abroad in order to circumvent tariff barriers. On the other hand, trade protectionist measures may also result in investment diversion from one to another country. For information on trade restrictive measures, see paragraph 7 in OECD–UNCTAD–WTO, Report on G-20 trade and investment measures (September 2009 to February 2010), published in March 2010.

3. International investment rulemaking

Between December 2009 and March 2010, 73 economies concluded 37 IIAs, including 7 bilateral investment treaties (BITs), 23 double taxation treaties (DTTs) and 7 IIAs other than BITs and DTTs.

In addition to investment policymaking at the national level, countries have also been engaged in the negotiation and conclusion of international investment agreements (IIAs) (see annex table 2).[6] Apart from the agreement between Bahrain and Uzbekistan, each new BIT involved either a G-20 country (Germany, India and Turkey) or a member State of the European Union (EU). Two BITs are South–South agreements.

Countries were very active with regard to the conclusion of DTTs, partly in response to international efforts to increase cooperation against tax evasion.

Among the seven "other IIAs",[7] three involve a G-20 member (the Jordan–Turkey Free Trade Agreement (FTA); the Framework Agreement on the Promotion, Protection and Liberalization of Investment between the Participating States of the Asia Pacific Trade Agreement (APTA)[8]; and the Colombia-EU-Peru FTA). Three agreements were concluded between a regional integration organization (i.e. by the EU or the European Free Trade Association (EFTA)) and a third country and one takes the form of a regional agreement (APTA). Hong Kong, China and New Zealand signed a Closer Economic Partnership Agreement on 29 March 2010.

In terms of content, only the FTA between Costa Rica and Singapore contains provisions commonly found in BITs (i.e. establishing binding obligations on the protection of foreign investment and investor-State dispute settlement).[9] The other agreements have limited investment-related provisions, confined, for example, to FDI in services or the right of establishment, typically combined with an institutional setup. Three other agreements, in turn, do not contain binding investment protection disciplines, but instead express a general commitment to promote investments, establish an institutional framework to monitor, cooperate on or negotiate investment-related issues – or explore the feasibility of such negotiations.

[6] While this Investment Policy Monitor covers the period from beginning of December 2009 to end March 2010, reporting policy changes is an ongoing exercise. Hence, it is worth mentioning that since the launching of the last Investment Policy Monitor beginning of December 2009, 12 new IIAs were identified that were not reported in the first Monitor. This includes six BITs (Bangladesh-Denmark, Bahrain-Uzbekistan, Czech Republic-Saudi Arabia, Kuwait-Singapore, Libyan Arab Jamahiriya-Turkey, Mexico-Singapore); five DTTs (Armenia-Hungary, Libyan Arab Jamahiriya-Serbia, Georgia-Singapore, Japan-Singapore, New Zealand-Saint Kitts and Nevis) and one "other IIA" (the Memorandum of Understanding between Canada and India on the Establishment of a Joint Study Group for the Comprehensive Economic Partnership Agreement (CEPA)). For the sake of consistency, it is also worth noting that the last Investment Policy Monitor covered one agreement (the BIT between Germany and Pakistan) which was outside of its reporting period. This BIT is also included in the figures given in this Investment Policy Monitor.

[7] In the case of the FTA between Costa Rica and Singapore and the plurilateral FTA between Colombia, the EU and Peru, negotiations were concluded.

[8] APTA countries include: Bangladesh, China, India, Republic of Korea, Lao People's Democratic Republic and Sri Lanka.

[9] http://www.fta.gov.sg/press_home_detail.asp?id=115&txt_rdate=2010&txt_ftalist=0.

Annex 1. Summary table of national investment policy measures undertaken between December 2009 and March 2010

COUNTRY/ ECONOMY	MEASURES					
	INVESTMENT SPECIFIC MEASURES				INVESTMENT RELATED MEASURES	
	Entry	Facilitation/ promotion	Operation/ taxation	Outward investment-related measures	Stimulus package/ State aid	General taxation measures
Aruba					●	
Australia	●					
Austria					●	
Brazil					●	
Cameroon	●					
Canada	●				●	●
China	●	●	●		●	
Colombia			●			
Costa Rica		●				
Croatia	●					
Czech Republic						●
Denmark					●	●
Ecuador			●			
Ethiopia	●					
European Union					●	
Finland					●	
Fiji						●
France						●
Gambia						●
Germany					●	
Greece					●	
Hungary					●	●
India	●				●	
Indonesia	●	●	●			●
Iraq	●					
Israel						●
Japan					●	
Jordan		●				●
Kazakhstan			●			
Korea, Republic of						●
Latvia					●	
Libyan Arab Jamahiriya		●				
Lithuania						●
Madagascar			●	●		●
Malaysia	●					
Mexico	●	●				●
Montenegro						●
Morocco						●

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COUNTRY/ ECONOMY	MEASURES					
	INVESTMENT SPECIFIC MEASURES				INVESTMENT RELATED MEASURES	
	Entry	Facilitation/ promotion	Operation/ taxation	Outward investment-related measures	Stimulus package/ State aid	General taxation measures
Netherlands					●	
Oman		●				●
Peru		●				
Poland					●	
Qatar	●		●			
Romania					●	
Russian Federation		●			●	
Sao Tome and Principe						●
Seychelles						●
Singapore						●
Slovakia					●	
Slovenia						●
South Africa	●		●	●		
Spain					●	
Sweden			●			
Syrian Arab Republic	●					
Taiwan Province of China						●
Thailand				●		
Tunisia	●					
United Kingdom					●	
United States					●	
Uzbekistan						●
Venezuela, Bolivarian Republic of			●			
Zimbabwe						●

Annex 2: Summary table of international investment agreements signed between December 2009 and March 2010

NAME OF AGREEMENT	DATE
Barbados-Luxembourg Income and Capital Tax Treaty	01.12.2009
Germany-Pakistan Bilateral Investment Treaty	01.12.2009
Free Trade Agreement between Jordan and Turkey	01.12.2009
Malawi-Norway Income Tax Treaty	08.12.2009
Framework Agreement on the Promotion, Protection and Liberalization of Investment between Asia-Pacific Trade Agreement (APTA) Participating States	09.12.2009
China-Turkmenistan Income Tax Treaty	12.12.2009
Aruba-Australia Income Tax Treaty	16.12.2009
Australia-Samoa Income Tax Treaty	16.12.2009
Egypt-Slovenia Income Tax Treaty	16.12.2009
Free Trade Agreement between Albania and EFTA	17.12.2009
Free Trade Agreement between EFTA and Serbia	17.12.2009
Slovakia-Viet Nam Bilateral Investment Treaty	17.12.2009
St. Vincent and the Grenadines-Taiwan Province of China Bilateral Investment Treaty	17.12.2009
Israel-Taiwan Province of China Income Tax Treaty	18.12.2009
Cyprus-Jordan Bilateral Investment Treaty	20.12.2009
Croatia-Oman Income Tax Treaty	21.12.2009
Free Trade Agreement between Colombia, the EU and Peru (negotiations concluded)	03.01.2010
Singapore-Slovenia Income Tax Treaty	08.01.2010
Slovenia-Qatar Income Tax Treaty	10.01.2010
Austria-Kazakhstan Bilateral Investment Treaty	13.01.2010
Norway-Turkey Income Tax Treaty	15.01.2010
Greece-United Arab Emirates Income and Capital Tax Treaty	17.01.2010
Bulgaria-Germany Income and Capital Tax Treaty	25.01.2010
Jersey-Malta Income Tax Treaty	25.01.2010
Free Trade Agreement between Costa Rica and Singapore (negotiations concluded)	29.01.2010
Bermuda-Japan Income Tax Treaty	01.02.2010
Chile-United States Income and Capital Tax Treaty	04.02.2010
Hungary-United States Income Tax Treaty	04.02.2010
Belgium-Montenegro Bilateral Investment Treaty	16.02.2010
Germany-Syrian Arab Republic Income Tax Treaty	17.02.2010
Japan-Kuwait Income Tax Treaty	17.02.2010
India-Latvia Bilateral Investment Treaty	18.02.2010
Germany-Malaysia Income Tax Treaty	23.02.2010
Netherlands-Switzerland Income Tax Treaty	26.02.2010
Australia-Chile Income Tax Treaty	10.03.2010
Bahrain-United Kingdom Income Tax Treaty	10.03.2010
Hong Kong, China-New Zealand Closer Economic Partnership Agreement	29.03. 2010

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