INVESTMENT POLICY MONITOR

A PERIODIC REPORT BY THE UNCTAD SECRETARIAT

Nº. 5, 5 May 2011

Introduction

With this *Monitor* the UNCTAD secretariat aims 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 15 January to 15 April 2011.

The policy measures mentioned in the *Monitor* are identified through a systematic review of government and business intelligence sources. Measures are verified, to the fullest extent possible, by referencing government sources. This *Monitor* also reports selected measures that could not be verified for the previous edition.

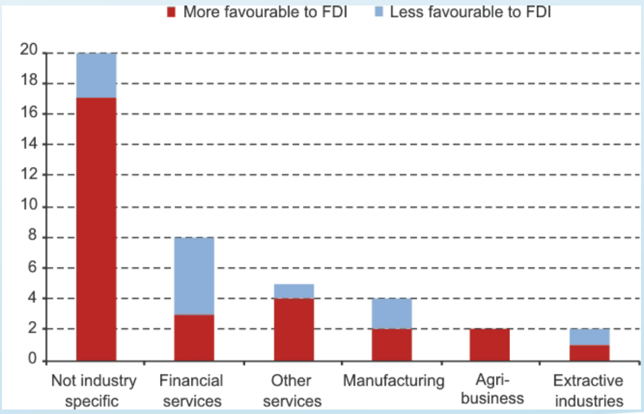
Highlights of main developments

- In the review period between 15 January and 15 April 2011, at least 32 economies adopted 41 policy measures in connection with foreign investment. With 17 measures, Asia was responsible for almost half of these measures.
- Most measures taken (29) aim at improving investment conditions. They fall into the categories of entry regulations, and promotion or facilitation. Twelve measures are new investment regulations or restrictions. Some relate to screening requirements, including for national security purposes.
- Just over half of the measures were industry specific (figure 1). Compared with general measures, industry-specific measures exhibit a higher incidence of measures that are less favourable to foreign direct investment (FDI). This is particularly the case for measures addressing financial services.

(continued on next page)

Figure 1. National policy measures by type of industry, 15 January to 15 April 2011

(Number of measures)



Source: UNCTAD, Investment Policy Monitor database.

Advance unedited version

UNITED NATIONS
UNCTAD

Highlights (continued)

- Among the measures are:
  - o *India* removed foreign ownership restrictions for selected parts of its agricultural sector;
  - o *Turkey* increased the foreign ownership cap in broadcasting companies to 50 per cent;
  - o *Australia* rejected Singapore Exchange's $8.3 billion offer to take over Australian Securities Exchange on the basis that it was against the national interest.

- In terms of international investment policy making, 42 countries concluded 31 new international investment agreements (IIAs). These agreements include ten bilateral investment treaties (BITs), sixteen double taxation treaties (DTTs), and five "other IIAs".

- While four of the BITs concluded during the reporting period involve European Union (EU) member States, the process of defining the contours of future EU IIAs continued. The European Parliament adopted a Resolution addressing the substance of future EU IIAs, suggesting, amongst others to include social and environmental standards into IIAs and to protect the right to regulate.

- In its April 2011 trade policy statement, the Government of Australia announced that it would stop including investor-State dispute settlement (ISDS) clauses into its future IIAs.

Between 15 January and 15 April 2011, at least 14 countries or economies adopted 19 investment-specific policy measures. As in previous review periods, the majority of them relate to investment liberalisation, facilitation and promotion, but there have also been some important instances of investment restrictions or regulations.

1. Investment-specific policy measures[1]

Many countries took ***investment liberalisation measures***. Countries in Asia were particularly active.

Abu Dhabi adopted a decree allowing full foreign ownership of investments in Abu Dhabi airport properties.[2] *Afghanistan* liberalised international investment in the hydrocarbon sector starting with issuing a tender for oil exploration and production in the Amu Darya Basin in the North.[3]

Australia increased the threshold for screening of investments from New Zealand.[4] *Canada* increased the threshold for review for WTO member investors from $299 million in 2010 to $312 million for the year 2011.[5] Pursuant to the Investment Canada Act, new thresholds must be determined and become effective on 1 January of each year.

In *China*, the Ministry of Commerce delegated some authority for the examination, approval and administration of foreign investment to commercial departments at the provincial government level and cancelled some items originally subject to foreign investment examination and approval. The same circular stipulates that commercial departments at all levels have to conduct strict examination and approval of foreign investments in the service sector such as financing and lease, international express delivery, advertisement and auction, as well as value-added telecommunication service.[6] In addition, the Xinjiang Uygur Autonomous Region permitted local economic planning agencies in the

---

[1] 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] "Abu Dhabi extends free-zone incentives", The National, 3 March 2011.

[3] "Afghanistan announces Oil Tender", Press Release Ministry of Mines, 1 March 2011.

[4] Foreign Investment Policy 2011, Foreign Investment Review Board, January 2011.

[5] Canada Gazette (Part I), 12 February 2011, p. 238.

[6] Circular of the Ministry of Commerce on Issues concerning Foreign Investment Administration, Ministry of Commerce, 25 February 2011.

region to approve foreign investments of up to $100 million, up from the previous limit of $30 million.[7]

India released "Circular 1 of 2011", the third edition of the Consolidated FDI Policy. [8] This Circular contains a number of major changes, including, for instance, the removal of the condition of prior approval in case of existing joint ventures or technical collaborations in the “same field” and the simplifying of existing guidelines relating to down-stream investments. In addition, full foreign ownership has been allowed in parts of the agricultural sector, namely in the development and production of seeds and planting material, animal husbandry, pisciculture, aquaculture under controlled conditions and services related to agro and allied sectors.[9]

Taiwan Province of China opened a large part of its core high-technology business, including semiconductor manufacturing, to investors from mainland China.[10] However, such investors will be allowed to acquire only a maximum of 10 per cent in existing Taiwanese technology companies and a maximum of 49 per cent in new technology-sector joint ventures and will be barred from setting up wholly-owned technology ventures in Taiwan. The Taiwanese Cabinet also amended regulations governing mainland China-bound investment by local display panel makers.[11] According to the amendment, Taiwanese firms will, in principle, be able to set up new plants employing the same level of manufacturing technology as their home-base facilities.

Turkey adopted a law permitting foreign investors to hold up to 50 per cent in broadcasting companies. However, foreigners can only invest in up to two broadcasting firms.[12]

In a few cases, measures were taken to ***promote and facilitate foreign investment***. *Honduras* took a major step towards implementing a Special Development Region (SDR) by passing the necessary amendments to its constitution.[13] *Myanmar* passed a "Special Economic Zone Law" which provides tax incentives for foreign investors in banking and insurance. The law obliges foreign investors to employ at least 25 per cent of local labour in their workforce, increasing gradually to 75 per cent after 15 years.[14] The *Philippines* liberalised the aviation industry, allowing foreign carriers to fly into key destinations in the Philippines.[15]

A small number of countries took measures towards ***restricting or otherwise regulating foreign investment***.

In *Argentina*, the national insurance regulator established that in order to operate in its reinsurance market, foreign reinsurers are required to establish a subsidiary subject to local regulatory requirements.[16] In *Australia,* the Treasury rejected Singapore Exchange’s $8.3 billion offer to take over

---

7 "China’s Xinjiang eases rules for foreign investment to boost inbound investment", People’s Daily, 22 March 2011.

8 Consolidated FDI Policy Circular 1 (2011), Department of Industrial Policy and Promotion, 31 March 2011.

9 Ibid.

10 "The second phase of opening up the mainland investment in Taiwan Industry Project", Press Release of the Investment Commission (Ministry of Economic Affairs), 2 March 2011.

11 "Fixed investment in the mainland TFT-LCD panel plant", Press Release Investment Commission (Ministry of Economic Affairs), 8 March 2011.

12 Law 6112 on the Establishment and Broadcasting Services of Radio and Television, published in the Official Gazette No. 27863, 3 March 2011.

13 The SDR will have its own jurisdictional courts and its own system of administration, will be capable of issuing its own legal rules, appointing its own judges, hiring its own security forces, signing treaties and international agreements on trade and co-operation issues within its competence, and will abide by international arbitration and court rulings. "Timeline of the birth of a Model City in Honduras", published on the Honduran National Congress website, 18 April 2011 and "Honduras economy: ‘Special Development Region’ approved", Economist Intelligence Unit Viewswire, 18 March 2011.

14 Published in the Official Gazette, 28 January 2011.

15 Executive Order 29, published in the Official Gazette, 14 March 2011.

16 Resolution 35.615 (2011), Superintendencia de Seguros de La Nación (SSN), published in the Official Gazette, No. 32096, 21 February 2011.

Australian Securities Exchange as it concluded that the bid was not in Australia's national interest.[17] The State Council of *China* announced the establishment of a joint ministerial committee to review foreign acquisitions with respect to potential threats to China's national security. The mergers and acquisitions by foreign investors of domestic military-industrial and military-related enterprises, and of domestic enterprises dealing with major farm products, energy and resources, infrastructure, transportation services, key technologies and major equipment manufacturing involving national security may be subject to review.[18] *Zimbabwe* set out the requirements for the implementation of the Indigenisation and Economic Empowerment Act as they pertain to the mining sector. This 2007 Act provided for the indigenisation of up to 51 per cent of all foreign-owned businesses operating in Zimbabwe. The new regulation calls for all non-indigenous mining businesses to submit an indigenisation implementation plan to the Minister within forty-five days of the date of the notice. Such plans, once approved by the Minister, must be implemented within six months of the date of the notice.[19]

Between 15 January and 15 April 2011, at least 20 countries or economies adopted 22 investment-related policy measures. Most often, these measures consisted of general investment promotion measures and taxation.

2. Investment-related policy measures[20]

A number of countries around the globe adopted ***general laws and regulations*** that are particularly relevant to foreign investors.

In *Argentina* automotive companies are now required to match their import costs with export revenues as part of a drive to expand local industry.[21] *Israel* introduced reserve requirements for banking corporations relating to foreign exchange derivative transactions by non-residents.[22] *Italy* took a series of steps to set up a mechanism that would enable a State-controlled fund to acquire stakes in companies considered to be of strategic importance to Italy. The scheme includes the State-run lender "Cassa Depositi e Prestiti".[23] In *Jamaica*, a bill was passed to establish an international financial services authority as a first step in developing the country as a center for international financial services.[24] *Kazakhstan* adopted the Law on State-Owned Property which regulates the nationalization of private property in case that there is a threat to national security.[25] *Qatar* ordered conventional banks to stop offering Islamic banking services by year-end, leaving it open whether banks can apply for separate Islamic banking licences.[26] *South Africa* took further steps towards the implementation of a new Companies Act, bringing a host of changes, such as a restructuring of corporate categories.[27] In *Togo*, the Cabinet adopted an Investment Code which, inter alia, intends to encourage private investment and employment, the use of Togolese raw materials and technology adapted for Togo.[28]

17 Foreign Investment Decision, Australian Treasury, 8 April 2011.

18 Circular of the General Office of the State Council on the Establishment of Security Review System Regarding Merger and Acquisition of Domestic Enterprises by Foreign Investors, General Office of the State Council, 3 February 2011.

19 General Notice No. 114, published in the Official Gazette, 28 March 2011.

20 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.

21 "Auto manufacturers to import in dollars the same amount they export", National News Agency of Argentina (Télam), 11 March 2011.

22 Imposition of a Reserve Requirement on Foreign Exchange Derivative Transactions by Non-residents, Bank of Israel, 20 January 2011.

23 Decree Law No.26, published in the Official Gazette No.70, 26 March 2011; and Press Release No.14/2011, Cassa Depositi e Prestiti, 11 April 2011.

24 "Jamaica to be promoted as centre for International Financial Services", Jamaica Information Service (JIS), 7 March 2011.

25 "Kazakhstan adopts law on property nationalization", Kazakhstan News Agency, 24 March 2011.

26 "Islamic branches of conventional (commercial) banks", Qatar Central Bank, 11 February 2011.

27 Country Commerce Report South Africa, Economist Intelligence Unit, February 2011. The amendment bill was finalized in the parliament on 24 March 2011 (Press Release of the Department of Trade and Industry, 31 March 2011).

28 "Togo's Investment Code Aims to Create Jobs", Diversify Economy, Bloomberg, 26 January 2011.

General investment promotion figured prominently on the policy agenda of countries particularly in Europe and parts of Asia.

Belarus significantly reduced the number of mandatory primary accounting documents that are used in financial accounting. This measure is a step towards bringing Belarus' practice in line with international accounting standards.[29] *Fiji* adopted a "One Stop Shop" policy to enhance processes relating to foreign and local investment applications in the country.[30] *Greece* approved a new Investment Incentive Law to assist private investment to improve business, technological development, business competitiveness and regional cohesion.[31] *Hungary* introduced institutional changes to its investment promotion. Since the beginning of 2011, a new department – the National Foreign Economy Office – has taken over the functions of the Hungarian Investment and Trade Development Agency.[32]

Oman established the Public Authority for Investment Promotion and Exports Development.[33] The *Philippines* launched its Public-Private Partnership (PPP) Centre. The Centre will facilitate the coordination and monitoring of PPP programs and projects.[34] The *Russian Federation* eased registration rules for highly-qualified foreign professionals coming to work in Russia. The rules aim to attract foreign specialists and investment to innovative industries including its flagship Skolkovo research hub project.[35] In *Sri Lanka*, a new procedure for granting permission to local firms to obtain loans from foreign sources was introduced for projects which contribute to the economic development of the country. Thanks to this measure, local companies can borrow money for working capital, investment, restructuring or to settle existing foreign currency loans.[36]

A few countries in Central and Eastern Europe adopted new ***privatisation programmes***.

Belarus adopted the Privatization Plan for 2011–2013, providing for the sale of shares in 244 state-owned companies, including machine tool, power generating and construction plants, transportation companies and others.[37] *Bulgaria* announced that it will offer shares of eleven companies for sale at the 25th Centralized Public Auction of the Bulgarian Stock Exchange in Sofia.[38]

Several countries in various regions ***lowered corporate and other tax rates***.

Malta launched a new incentive whereby income from royalties on eligible patents will be exempt from taxation, an initiative which is aimed at encouraging enterprises to invest in research and knowledge creation as well as encourage the exploitation of intellectual property.[39] *Sierra Leone*, inter alia, exempted companies that are involved in rice cultivation for the first five years of operation from taxation.[40] The President of *Uzbekistan* issued a resolution stipulating that commercial banks providing preferential loans to small and medium-sized enterprises (SMEs) are temporarily exempt from corporate tax on the profit received from such operations. The resolution

---

29 "From 1 April 2011, only 8 mandatory prime accounting documents will be applied in financial accounting", Belarus Telegraph Agency (BelTA), 25 March 2011.
30 "Cabinet approves One-stop Shop", Fiji Government Online Portal, 18 January 2011.
31 Law 3809, published in the Official Gazette No. 8, 1 February 2011.
32 ITD Hungary website, last visited 26 April 2011.
33 "His Majesty issues Royal Decree on Ociped", Oman Tribune, 28 March 2011.
34 Public-Private Partnership Centre website, last visited 26 April 2011: http://www.ppp.gov.ph.
35 "Medvedev eases registration rules for foreign specialists", RIA Novosti, 23 March 2011.
36 Notice by the Central Bank of Sri Lanka, 8 April 2011.
37 Privatization plans for 2011–2013 adopted in Belarus, Belarus Telegraph Agency (BelTA), 22 March 2011.
38 Bulgarian News Agency, 26 January 2011.
39 Income Tax Law: LN 429 of 2010; and Incentive Guidelines, Malta Enterprise, 18 January 2011.
40 "Sierra Leone economy: Incentives to attract investment", Economist Intelligence Unit Viewswire, 2 March 2011.

also provides that the funds should primarily be granted to finance high tech and innovation projects.[41]

Vice versa, some countries ***increased taxes or other duties*** for companies.

Ghana passed the 2011 budget which, inter alia, increases the withholding tax on foreign suppliers of services from 5 per cent to 15 per cent, abolishes the five-year tax exemption for real estate developers, and extends the communication service tax to all companies and individuals across the industry, rather than only the larger communication providers at present.[42] In the *Russian Federation*, the Government tightened the rules for automobile producers, including foreign ones, who wish to make use of the duty-free importation of components into Russia.[43] The new conditions require that the volume of production must amount to at least 300,000 autos a year (up from 25,000); at least 30 per cent of engines must be produced in Russia; and localization of the auto components production must amount to 60 per cent by 2020.

Numerous countries prolonged ***emergency programmes and State aid*** following the financial crisis, but also pursued exit strategies (see upcoming *UNCTAD-OECD Report on G20 Investment Measures*).

3. International investment rulemaking

Between 15 January and 15 April 2011, 42 economies concluded 31 new IIAs. This number includes ten BITs, sixteen DTTs, and five IIAs other than BITs and DTTs.

During the reporting period, ten bilateral investment treaties were concluded. Four of the ten BITs were South-South agreements (*Bangladesh-United Arab Emirates, Botswana-Zimbabwe, Kuwait-Pakistan,* and *Sudan-United Arab Emirates*) and three BITs involved G20 countries (*Nigeria-Turkey*, *United Republic of Tanzania-Turkey, and India-Lithuania)*. Interestingly, in light of the shift of competence for FDI from EU member State to the European level (see below), three EU countries (*Lithuania, Malta,* and *Portugal*) also signed BITs during the reporting period (*Portugal-Senegal, Albania-Malta, Lithuania-Macedonia FYR* and *India-Lithuania*).

Six of the sixteen newly signed DTTs involve a G20 country (*Germany, Indonesia,* and *Saudi Arabia*) and twelve of the sixteen DTTs involved an EU member State (*Cyprus, Germany, Hungary, Ireland, Malta, Poland, Portugal, Spain*), with four DTTs having been signed between EU members *(Cyprus-Germany, Germany-Spain, Germany-Hungary,* and *Germany-Ireland*).

Regarding IIAs other than BITs and DTTs, two of the five agreements are South-South agreements (the *India-Malaysia* Free Trade Agreement (FTA) and the *Republic of Korea-Peru* FTA) and all five involve at least one G20 country (*Australia, Brazil, India, Japan, Republic of Korea,* and the *United States)*.

On 16 February 2011, Australia and New Zealand signed the investment protocol to the Australia-New Zealand Closer Economic Relations Agreement (ANZCERTA). The protocol aims at encouraging and promoting investment and at liberalising barriers to and establishing a transparent framework for investment. It includes provisions on national treatment, MFN treatment, performance requirements, transfers, minimum standard of treatment, expropriation, transparency as well as clauses on prudential measures, exceptions and on investment and the environment. The protocol does not contain an investor-State dispute settlement (ISDS) clause.

[41] "Banks giving loans to small businesses will be exempt from paying profit tax", Kommersant.Uz, 25 March 2011.

[42] Final Budget Allocation and Implementation Instructions for the 2011 Budget, Ministry of Finance and Economic Planning, 4 January 2011; and "Ghana economy: 2011 budget presented", Economist Intelligence Unit Viewswire, 8 December 2010.

[43] Joint Order No.678/1289/184H, Ministry of Economic Development, Ministry of Industry and Trade and Ministry of Finance, 24 December 2010.

On 16 February 2011, *India* and *Japan* signed a Comprehensive Economic Partnership Agreement (CEPA).[44] The agreement, expected to take effect in the coming months, contains a full investment protection regime, including a MFN clause and protection standards such as fair and equitable treatment (FET), protection in case of expropriation and an ISDS mechanism.[45] *India* also signed a FTA with *Malaysia*, on 18 February 2011, making India the most active country in this regard during this reporting period. Like the *India-Japan* CEPA, the *India-Malaysia* FTA contains an investment chapter providing similar, comprehensive investment protection standards.[46] The *India-Malaysia* FTA is scheduled to take effect on 1 July 2011. On 21 March 2011, the *Republic of Korea* and *Peru* signed a FTA. The agreement is referred to by its signatories as a "comprehensive and high-level FTA" including chapters on investment, economic cooperation, the environment and labour.[47] The agreement is expected to take effect in July 2011.[48] Finally, on 18 March 2011, *Brazil* and the *United States* concluded an Agreement on Trade and Economic Cooperation. The agreement establishes the United States-Brazil Commission on Economic and Trade Relations with the objective of promoting economic cooperation, including by developing a work programme on the facilitation and liberalization of bilateral investment; and identifying opportunities for expanding investment flows and promoting the removal of unnecessary investment obstacles.[49]

Beyond the signature of "other IIAs" several further investment policy developments at the international level merit attention. On 4 April 2011, *Argentina* and *Israel* concluded an "Intention Memorandum towards the Promotion of Investments", through which the respective institutions (i.e. the Israeli Investment Centre and Argentina's Trade and International Economic Relations Secretariat) seek to "cooperate towards the bilateral relationship as regards investments".[50]

On 7 April 2011, *Colombia* and the *United States* took a step towards the ratification of their FTA, when the parties initialled an agreement related to labour rights.[51] The United States deemed the labour agreement as a prerequisite to moving forward on the FTA ratification process.[52] The *Columbia-United States* FTA, which was signed on 22 November 2006, aims at promoting trade and investment between the two countries. Amongst others, it provides a full array of investment protection clauses, and establishes rules on labour and environmental protection. Ratification is also coming closer for the *Panama-United States* FTA, signed on 28 June 2007, with the two countries having agreed over issues related to tax transparency in April 2011.[53]

Also of great relevance is the 12 April 2011 trade policy statement issued by the Government of *Australia* in which the Government announced that it would stop including ISDS clauses into its future IIAs.[54] While Australia has already refrained from including ISDS clauses in its FTA with the United

44 http://www.mofa.go.jp/announce/announce/2011/2/0215_01.html.
45 http://www.mofa.go.jp/region/asia-paci/india/epa201102/index.html.
46 http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_54ce4f96-c0a8156f-2af82af8-6735df31.
47 http://www.mofat.go.kr/english/econtrade/fta/issues/index.jsp.
48 http://www.bizusaperu.com/news_details.php?cat=&noti=1609.
49 http://www.whitehouse.gov/sites/default/files/uploads/Brazil_ATEC.pdf.
50 http://www.argentina.ar/_es/pais/C7245-acuerdo-con-israel-para-promover-inversiones.php; http://english.telam.com.ar/index.php?option=com_content&view=article&id=11526:foreign-minister-timerman-signs-agreement-on-promotion-of-investments-with-his-israeli-counterpart-&catid=36:foreign-affairs.
51 http://www.ustr.gov/trade-agreements/free-trade-agreements/colombia-fta.
52 http://ictsd.org/i/news/bridgesweekly/104355/. Given that the underlying IIA was concluded in 2006 and not in this IPM's reporting period, the agreement was neither included in the table annexed to this IPM, nor counted in the number of concluded IIAs.
53 http://www.ustr.gov/about-us/press-office/blog/2011/april/us-panama-trade-promotion-agreement.
54 "Gillard Government Trade Policy Statement Trading our way to more jobs and prosperity", http://www.dfat.gov.au/publications/trade/trading-our-way-to-more-jobs-and-prosperity.html#investor-state, See also Investment Arbitration Reporter, http://www.iareporter.com/articles/20110414, April.

States,[55] and its investment protocol with New Zealand, the recent policy statement would expand that approach to future IIAs with other partners, including developing or transition countries, notably the Transpacific Partnership Agreement, that is under negotiation right now. Moreover, the shift in policy appears to be part of a broader development, responding to increasing concerns about the impact and legitimacy of ISDS. As noted in earlier UNCTAD publications, countries are fostering alternative mechanisms for solving investment disputes.[56]

A number of important developments in international investment policy making also occurred in the EU. Following the 2009 entry into force of the *Lisbon Treaty* that shifted certain responsibilities in the field of FDI from the member States to the EU,[57] the EU is now developing its international investment policy (see IPM No.3, 7 October 2010).[58]

On 6 April 2011, the European Parliament adopted its Resolution on the future European international investment policy.[59] The Parliament's Resolution responds to the July Commission Communication which outlines the main direction for future EU investment policy.[60] The Resolution, which refers to an integrated and coherent investment policy, notes that the future EU investment policy should have the goal of promoting high-quality investments and making a positive contribution to worldwide economic progress and sustainable development. Amongst others, it refers to concerns regarding ISDS and notes developments in the United States and Canada, who have adapted their model BITs to limit tribunals' scope of interpretation and to ensure better protection of regulatory prerogatives.

In that context, the Resolution makes a number of specific suggestions on substantive and procedural clauses of IIAs. Amongst the substantive suggestions are i) a clear definition of investment, excluding speculative forms of investment and ensuring that in case of the inclusion of intellectual property rights this will not affect the production of generic medicines and is in line with the exceptions of the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property; ii) non-discrimination, including qualifiers regarding 'in like circumstances' and flexibilities regarding the MFN clause; iii) fair and equitable treatment (FET) based on international customary law; iv) protection against direct and indirect expropriation, with a clear and fair balance between public welfare objectives and private interests; v) specific attention to protecting the right to regulate and the inclusion of social and environmental standards; and vi) an assessment of the umbrella-

55 See article 11.16 of the Australia-United States FTA, signed on 14 May 2004.

56 See Chapter III of UNCTAD's *World Investment Report 2010* "Investing in a Low-carbon Economy" (New York and Geneva: United Nations), United Nations Publication, Sales No. E.10.II.D.2. Available at: http://www.unctad.org/en/docs/wir2010_en.pdf. See also Investor-State Disputes: Prevention and Alternatives to Arbitration. Series on International Investment Policies for Development (New York and Geneva: United Nations), United Nations publication, Sales No. E.10.II.D.11. Available at: http://www.unctad.org/en/docs/diaeia200911_en.pdf.

57 See Chapter III of UNCTAD's *World Investment Report 2010* "Investing in a Low-carbon Economy" (New York and Geneva: United Nations), United Nations Publication, Sales No. E.10.II.D.2. Available at: http://www.unctad.org/en/docs/wir2010_en.pdf.

58 The European Commission issued two policy documents in July 2010: one being the "Communication entitled "Towards a comprehensive European international investment policy"(http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf) and the other one being a proposal for a Regulation (http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146308.pdf). Subsequently, in October 2010, the Council of the European Union adopted its "Conclusions on a Comprehensive European International Investment Policy" stating that a common EU investment policy should increase investment protection for EU investors while avoiding negatively affecting investor protection under existing IIAs (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/117328.pdf).

59 This 6 April 2011 plenary vote followed the 22 March 2011 vote in the Parliament's Committee on International Trade. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0141+0+DOC+XML+V0//EN.

60 http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf.

clause. Amongst the suggestions for procedural aspects are changes to the present ISDS regime towards greater transparency, an appeals mechanism and amicus curiae briefs.

On 13 April 2011, the European Parliament's Committee on International Trade voted on procedural aspects relating to the future of EU BITs. The vote responds to the Commission's July 2010 Proposal for a Regulation,[61] and addressed questions of how to handle existing intra- and extra- EU member States BITs, and the Commission's power to review and withdraw authorisation for member State BITs. According to the rapporteur's explanatory statement, there is a need to ensure that the present system of overlapping and sometimes conflicting member State BITs is replaced by a new frame of EU investment treaties that are consistent with horizontal EU policies. The statement notes the importance of legal certainty during the transition process, suggests to introduce a time line for the transition process, and proposes to clarify the conditions under which the Commission could withhold authorisation for a BIT. Given the close margins of the vote in the Committee, the report will be submitted to a plenary voting. [62]

Finally, there is a broader development regarding the process of international investment policy making. While IIAs have traditionally been negotiated by the relevant line-ministry, there is now an emerging trend of other investment stakeholders spurring a dialogue on their countries' IIAs. This process is particularly prominent at the European level, but is also evident in European member States and other countries. For example, during the reporting period, parliamentary bodies (e.g. in Switzerland and Austria) initiated specific debates about their country's IIAs.

* * *

In conclusion, most of the investment measures observed for this *Monitor* remain in the area of liberalization or promotion of FDI. In particular countries from Asia eased both general and sector-specific entry conditions for foreign investment. At the same time the number of measures regulating or restricting foreign investment confirms the ongoing trend of increased state regulation in the area of FDI.[63] In the review period this trend manifested itself prominently in the area of policy measures related to the protection of national security and strategic interests. At the international level, there is a dichotomy of policy trends. While countries continue to negotiate IIAs, some respond to the challenges posed by the IIA regime.

61 http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146308.pdf.

62 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20110411IPR17422+0+DOC+XML+V0//EN&language=EN.

63 See UNCTAD World Investment Report 2010, and UNCTAD Investment Policy Monitor No. 4.

Annex 1. Summary table of national investment policy measures adopted between 15 January and 15 April 2011

COUNTRY/ECONOMY	INVESTMENT MEASURES		
	Entry	Promotion and Facilitation	Operation
Abu Dhabi	●		
Afghanistan	●		
Argentina	●		●
Australia	●		
Belarus	●	●	
Bulgaria	●		
Canada	●		
China	●		
Fiji		●	
Ghana		●	
Greece		●	
Honduras		●	
Hungary		●	
Jamaica			●
India	●		
Israel			●
Italy	●		
Kazakhstan			●
Malta		●	
Myanmar		●	
Oman		●	
Philippines		●	
Qatar			●
Russian Federation		●	
South Africa			●
Sri Lanka		●	
Sierra Leone		●	
Taiwan, Province of China	●		
Togo			●
Turkey	●		
Uzbekistan		●	
Zimbabwe	●		

Source: UNCTAD, Investment Policy Monitor database.

Annex 2. Summary table of IIAs signed between 15 January 2011 and 15 April 2011

	Name of Agreement	Date of Signature
1	Bilateral Investment Treaty between Bangladesh and the United Arab Emirates	17.01.2011
2	Income Tax Treaty between Portugal and the United Arab Emirates	17.01.2011
3	Bilateral Investment Treaty between Portugal and Senegal	25.01.2011
4	Bilateral Investment Treaty between Albania and Malta	27.01.2011
5	Bilateral Investment Treaty between Nigeria and Turkey	02.02.2011
6	Income Tax Treaty between Bahrain and Isle of Man	03.02.2011
7	Income and Capital Tax Treaty between Germany and Spain	03.02.2011
8	Income and Capital Tax Treaty between Bahrain and Turkmenistan	09.02.2011
9	Bilateral Investment Treaty between Kuwait and Pakistan	15.02.2011
10	Economic Partnership Agreement between Japan and India	16.02.2011
11	Investment protocol to the Australia-New Zealand Closer Economic Relations Agreement (ANZCERTA)	16.02.2011
12	Free Trade Agreement between India and Malaysia	18.02.2011
13	Income and Capital Tax Treaty between Cyprus and Germany	18.02.2011
14	Income Tax Treaty between Poland and Saudi Arabia	22.02.2011
15	Income Tax Treaty between Singapore and Switzerland	24.02.2011
16	Income Tax Treaty between Malta and Switzerland	25.02.2011
17	Income and Capital Tax Treaty between Germany and Hungary	28.02.2011
18	Income Tax Treaty between Indonesia and Serbia	28.02.2011
19	Income Tax Treaty between Isle of Man and Poland	07.03.2011
20	Bilateral Investment Treaty between Lithuania and the FYR of Macedonia	08.03.2011
21	Income Tax Treaty between Norway and Portugal	10.03.2011
22	Bilateral Investment Treaty between the United Republic of Tanzania and Turkey	11.03.2011
23	Income and Capital Tax Treaty between Malta and Uruguay	11.03.2011
24	Agreement on Trade and Economic Cooperation between Brazil and the United States	18.03.2011
25	Free Trade Agreement between the Republic of Korea and Peru	21.03.2011
26	Bilateral Investment Treaty between Botswana and Zimbabwe	21.03.2011
27	Income Tax Agreement between Hong Kong, China and Portugal	22.03.2011
28	Income and Capital Tax Treaty between Germany and Ireland	30.03.2011
29	Bilateral Investment Treaty between India and Lithuania	31.03.2011
30	Income Tax Agreement between Hong Kong, China and Spain	01.04.2011
31	Bilateral Investment Treaty between Sudan and the United Arab Emirates	04.04.2011

Source: UNCTAD, IIA database.

Annex 3: Summary table of international investment agreements by type of agreement and country/economy, between 15 January 2011 and 15 April 2011

	Country/Economy	BITs	DTTs	Other IIAs
1	Albania	1		
2	Australia			1
3	Bahrain		2	
4	Bangladesh	1		
5	Botswana	1		
6	Brazil			1
7	Cyprus		1	
8	Germany		4	
9	Hong Kong, China		2	
10	Hungary		1	
11	India	1		2
12	Indonesia		1	
13	Ireland		1	
14	Isle of Man		2	
15	Japan			1
16	Korea, Republic of			1
17	Kuwait	1		
18	Lithuania	2		
19	Macedonia, the FYR of	1		
20	Malaysia			1
21	Malta	1	2	
22	New Zealand			1
23	Nigeria	1		
24	Norway		1	
25	Pakistan	1		
26	Peru			1
27	Poland		2	
28	Portugal	1	3	
29	Saudi Arabia		1	
30	Senegal	1		
31	Serbia		1	
32	Singapore		1	
33	Spain		2	
34	Sudan	1		
35	Switzerland		2	
36	Tanzania, United Republic of	1		
37	Turkey	2		
38	Turkmenistan		1	
39	United Arab Emirates	2	1	
40	United States			1
41	Uruguay		1	
42	Zimbabwe	1		

Source: UNCTAD, IIA database.

For the latest investment trends
and policy developments,
please visit the website of the UNCTAD
Investment and Enterprise Division
www.unctad.org/diae

For further information,
please contact
Mr. James X. Zhan
Director
Investment and Enterprise Division
UNCTAD

Tel.: 022 917 57 60
Fax: 022 917 04 98

UNITED NATIONS
UNCTAD

UNCTAD/WEB/DIAE/IA/2011/5 - May 2011