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OUTWARD FDI POLICIES:

PROMOTION AND FACILITATION - REGULATION AND SCREENING

HIGHLIGHTS

- The global landscape of outward foreign direct investment (OFDI) promotion, facilitation and regulation has undergone substantial changes since the early 2000s. This reflects the evolving patterns of global investment and production, the increasing focus on sustainability, and the heightened geopolitical tensions and gradual shift from liberalization to regulation that have characterized FDI policies over the past decade.
- OFDI promotion initiatives are common among developed countries, present in 79 per cent of them, reflecting their role as traditional sources of FDI. Support for companies to invest abroad typically serves two main objectives. First, the development and internationalization of domestic businesses, particularly SMEs. Second, the promotion of international cooperation and development efforts.
- An increasing number of developing countries are also supporting their firms in investing overseas (14 per cent), in line with their expanding role as sources of FDI. Supporting the internationalization of domestic firms and securing access to new markets, resources and technologies are the main objectives of these policies.
- Sustainability considerations and the potential benefits to the host country's development increasingly feature among the qualifying criteria for OFDI policy support, particularly among developed countries. However, despite international commitments in the context of the SDGs, only 18 developed and 5 developing economies have adopted OFDI promotion schemes targeted at promoting investment specifically in developing countries.
- OFDI promotion and regulation policies often coexist within the same country. Nearly half of the world's economies impose restrictions on OFDI, including most developing countries and least developed countries (LDCs). In these countries, restrictions traditionally aim at controlling capital flows to prevent balance of payment difficulties and to ensure that investments abroad do not adversely affect the home country's economic priorities.
- The past decade has seen a surge in OFDI restrictions across economies at all levels of development. Efforts to comply with anti-money laundering standards and concerns over the potential national and economic security risks posed by OFDI have contributed to the rise. The United States and the European Union, for instance, are in the process of adopting OFDI monitoring and screening mechanisms for economic transactions related to sensitive sectors for national security.
- As OFDI restrictions become more widespread, the complexity of applicable rules and regulatory discretion may reduce predictability and increase the administrative burden for home country authorities and investors.

Introduction

In a world increasingly characterized by geopolitical tensions, economic uncertainties and a fragmented global economy, the significance of outward foreign direct investment (OFDI) policies is rising. Mirroring inward FDI policies trends, OFDI strategies are increasingly focused on safeguarding strategic objectives and national interests. These include maintaining technological leads, mitigating risks from global supply chain disruptions and pursuing sustainable development objectives. Such shifts could profoundly influence global investment patterns and production networks.

This Investment Policy Monitor (IPM) conducts an in-depth review of OFDI-related policies implemented by investors' home countries. These policies encompass all regulations, measures, and institutional arrangements enacted by home countries to regulate, promote and facilitate OFDI flows to other countries (UNCTAD, 2001).

The first section of the Monitor sheds light on key OFDI trends and the underlying rationale for implementing OFDI policies. The second section delves into the promotion and facilitation of OFDI, exploring the strategies and tools used by countries to encourage outbound investments, and assessing the role of OFDI policies in advancing the Sustainable Development Goals (SDGs). The third and final section scrutinizes the regulatory landscape, examining the evolution of OFDI regulations and restrictions globally from 1999 to 2022, highlighting key emerging trends.

<u>Methodological note:</u>

This IPM is based on the analysis of different sources and databases. The analysis on OFDI promotion and facilitation is based on the review of programmes and initiatives put in place by countries to support their domestic firms in investing abroad. These policy measures are included in the UNCTAD OFDI promotion and facilitation policies database, which covers 179 countries. While many countries around the world have put in place specific agencies or policy instruments to support local business growth and exports, they often do not specifically mention outward investment as one of their policy support areas. For the purpose of this analysis, a country is considered as having an outward FDI promotion mechanism when it explicitly mentions support for local business in investing abroad.

The analysis of trends in OFDI regulation draws upon a comprehensive examination of 394 OFDI policy measures documented in both the Investment Policy Monitor (IPM) database and in the International Monetary Fund (IMF) Annual Report on Exchange Arrangement and Exchange Restrictions (AREAR) database, from 1999 to 2022. UNCTAD also reviewed the legislation of 194 countries to ascertain the presence and nature of OFDI restrictions and provide an assessment of the current regulatory framework governing OFDI globally.

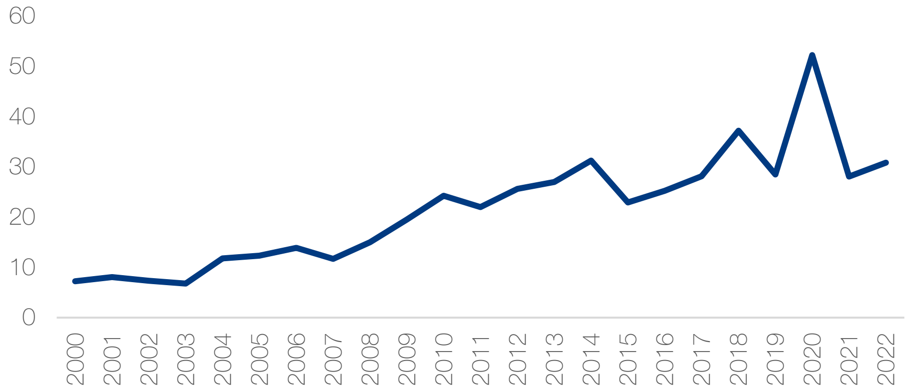
In this IPM, the classification of "OFDI restriction and regulation" is deliberately broad. It encompasses a spectrum of mechanisms including, but not limited to, the complete prohibition of OFDI, procedures for the notification and registration of OFDI, authorization processes for OFDI transactions, screening mechanisms for OFDI based on national security considerations, discriminatory exchange rates, additional taxation on outward investors, restrictions on foreign exchange, and various other measures directly influencing OFDI.

1. Context and rationale for home country measures

In the last thirty years, the global OFDI landscape has significantly evolved, with the increasing involvement of developing countries. In the 1990s, these economies accounted for less than 10 per cent of global OFDI. This changed between 2000 and 2010, with a substantial rise in OFDI from developing countries. From 2010 to 2022, while OFDI from developed countries saw notable fluctuations, OFDI from developing countries maintained a consistent growth. Consequently, the share of developing countries in global OFDI rose to over 50 per cent during the pandemic, highlighting their growing importance in the global investment arena. By 2022, even as OFDI from developed economies rebounded, developing countries still constituted a significant 30 per cent of the global total (figure 1).

Figure 1. OFDI from developing countries, 2000-2022

(Share of total, per cent)



Source: UNCTAD Stat.

OFDI promotion policies are often designed with the aim of benefiting the home country, as investing abroad can increase exports and enhance the global competitiveness of domestic companies, particularly small and medium-sized enterprises (SMEs). The enhanced efficiency, productivity, and competitiveness of home-based companies that invest abroad can also positively affect the home country's economic performance and contribute to sustainable long-term growth and job creation. In some cases, OFDI policies have also been utilized to advance strategic objectives, such as securing access to new markets, resources and technologies (table 1).

There is also growing recognition that OFDI policies can contribute to sustainable development, as detailed in section 2. In particular, orienting OFDI promotion policies towards developing countries, including least developed countries (LDCs), can contribute to bridging the SDGs financing gap. SDG 17, which calls for action by all countries through a global partnership, recognizes the significance of outward FDI promotion policies. In this regard, indicator 17.5.1, for which UNCTAD is the custodian agency, measures the number of countries that adopt and implement outward investment promotion regimes for developing countries, including LDCs.

OFDI, however, also presents potential risks, which has led several home countries to adopt policies to regulate and restrict it (table 1), including home countries that have also adopted OFDI promotion schemes.[1] Historically, restrictions on OFDI were mainly observed in developing countries and related to balance-of-payments risks. The initial capital outflow required for establishing foreign subsidiaries or making acquisitions abroad can contribute to a deficit in the balance of payments, especially if the investment is substantial. This can become particularly critical

[1] Out of the 50 countries with OFDI promotion initiatives identified by UNCTAD in the context of this research, 21 also have OFDI restrictions in place.

for developing countries striving to build national productive capacities, as prolonged capital outflows hinder the investment of these funds domestically. However, over the long term, the financial earnings and repatriation of funds from OFDI could mitigate the negative effects of these initial capital outflows, and even surpass the initial amount of capital invested abroad.

Table 1. Rationale of OFDI policies

	Promotion and facilitation
Economic	To generate economic benefits for the home country, including boosting exports and increased global competitiveness of domestic firms, especially SMEs.
Technological	To promote access to advanced technology, management know-how, and other skills that are not readily available domestically, in order to enhance the home country's technological capabilities and foster innovation.
Political	To utilize OFDI as a tool of soft power to strengthen diplomatic relations, enhance political ties, and shape a favourable international image.
Global good	To foster OFDI that contributes to global goods, such as achieving the SDGs, environmental protection, or addressing global challenges through responsible investment.
Development	To promote host country development. This type of support is often carried out by development banks and aid agencies from developed countries, which encourage their domestic firms to invest in developing countries.
	Restriction and regulations
Managing the impact on the domestic economy	To control the outflow of capital, particularly in developing countries, and prioritize the development of domestic productive capacities.
Balance of payment	To safeguard currency reserves and limit downward pressure on the home currency value.
Prevention of illicit activities	To prevent money laundering, tax evasion, and other illicit financial activities.
Technological	To safeguard critical technologies in order to protect national interests and maintain technological advantages.
Political	To ensure that OFDI aligns with broader national interests, such as economic security, political alliances, or strategic resource acquisition.
ESG concerns	To ensure that companies follow ESG standards and avoid involvement in controversial activities.

Source: UNCTAD.

Over time, the imposition of restrictions on OFDI has been increasingly driven by efforts to combat money-laundering practices, such as the Financial Action Task Force (FATF) anti-money laundering policy framework. This requires countries to establish legal mechanisms for performing due diligence on business relationships of financial institutions.[2]

In recent years, developed country governments have also begun to reassess their traditionally liberal approach to OFDI. The changing geopolitical landscape and concerns over the national security implications related to access

[2] The framework mandates a comprehensive review of transactions occurring throughout the relationship to ensure their consistency with the investor's business activities, the source of funds, and their risk profile. See: The FATF Recommendations.

and control of critical technologies have led to closer scrutiny of overseas investments. As a result, the intersection of political and technological considerations has become a pivotal factor influencing the recent development of regulatory frameworks and the imposition of restrictions on OFDI (section 3).

Finally, home country measures can also be taken to restrict OFDI based on environmental, social and governance (ESG) considerations, encouraging sustainable and ethical business practices. By doing so, home countries aim to ensure their companies' global activities reflect domestic values and adhere to international frameworks, such as the 2030 Agenda. Even where countries are not restricting OFDI directly, they can restrict OFDI promotion schemes to companies that align with certain ethical social and environmental criteria (section 2).

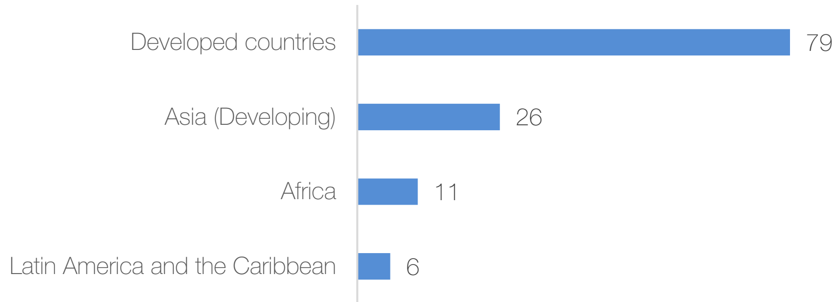
2. Outward investment promotion and facilitation

2.1. A review of OFDI promotion and facilitation policies around the world

OFDI promotion and facilitation policies have been a significant component of the economic strategies of developed countries for several decades. At least 31 of them (79 per cent) have adopted initiatives to promote outbound investment (figure 2). This reflects their role as traditional sources of FDI. Support for companies in investing abroad typically serves two main objectives. First, the development and internationalization of domestic businesses, particularly SMEs. This is usually overseen by entities affiliated with ministries responsible for trade, economic affairs, or finance. Second, the promotion of international cooperation and development efforts. As a result, OFDI promotion in developed countries typically involves a diverse range of stakeholders, including credit insurance companies, export credit agencies, development banks, and enterprise development or trade and export promotion agencies.

Figure 2. OFDI promotion mechanisms by region

(Per cent of countries)



Source: UNCTAD.

The number of developing countries that have adopted OFDI promotion mechanisms has expanded in line with their increasing role as sources of investment. While several Asian countries were early adopters of OFDI promotion schemes (particularly capital exporting ones such as China and India), a few African countries have also started promoting OFDI in the 2010s. In total, at least 19 developing countries (14 per cent of the total) have established formal mechanisms to promote OFDI. Regional disparities in the promotion of OFDI are marked, with at least 11 Asian countries (26 per cent) establishing OFDI promotion mechanisms, as opposed to 6 African countries (11 per cent). These countries primarily focus on investments within the continent. In Latin America, Brazil and Chile have introduced OFDI promotion mechanisms (figure 2). Export credit agencies usually play a key role in providing support to businesses that want to invest abroad in developing countries, particularly in Asia (box 1).

Box 1. OFDI promotion mechanisms (examples)

Africa

In 2018, *Egypt* created an investment risk insurance fund to encourage Egyptians to invest more in the African continent and to help strengthen and deepen relations with African countries.

In 2013, *Mauritius* established the "Mauritius Africa Fund", providing up to 10 per cent Government contribution for initial investments by Mauritian investors in African projects. Furthermore, the Government has established agreements with Côte d'Ivoire, Ghana, Madagascar and Senegal for the development and management of Special Economic Zones (SEZs) in these countries.

The Government of *Morocco* emphasizes investment in Africa as a key component of its strategy to broaden its commercial and trade networks across the continent and reinforce its role as a gateway to Africa. In line with this strategy, in 2010 Morocco established "Casablanca Finance City", aimed at attracting international investments for reinvestment within the continent.

In 2016, *South Africa* launched "Trade Invest Africa", a strategy to enhance intra-African trade and investment. This initiative supports businesses seeking expansion across the continent. Its primary offerings include access to capital, market opportunities, and non-financial support, including market intelligence research and business networking.

Asia

In *Brunei Darussalam*, local companies can receive tax benefits for investing in foreign companies that develop new technologies, provided that this investment contributes to the growth of Brunei's economy by bringing in new technology or expanding into global markets.

The promotion of OFDI in *China* aligns with the country's industrial strategy and plays a significant role in its international economic relationships. Since the late 1990s, with the launch of the 'Going Global' strategy or 'Go Out Policy', which encouraged domestic companies to invest abroad, China has progressively introduced norms and regulations governing overseas investments. The instruments utilized by China are varied, including financial incentives such as low-interest loans and export credits for companies investing abroad, provided by institutions like the China Development Bank and the Export-Import Bank of China. Another tool is the creation of SEZs overseas, serving as platforms for Chinese companies to invest and operate. The Belt and Road Initiative (BRI) stands as a central component of China's OFDI strategy. This initiative involves extensive investments in infrastructure across Africa, Asia, Europe and beyond, establishing a network of economic and political links.

In *India*, the Export-Import Bank (Exim Bank) offers both financing solutions and advisory services to Indian firms wishing to invest abroad. Additionally, the Export Credit Guarantee Corporation of India (ECGC) provides overseas investment insurance covering political risks for Indian investments abroad.

The *Japan* External Trade Organization (JETRO) supports the international growth of Japanese SMEs, including through investments in other countries. JETRO assists them in expanding into emerging and developing countries by providing information about investing in these countries through seminars and by sending groups of Japanese business representatives to specific countries. Additionally, the Japan Bank for International Cooperation, which is Japan's export credit agency, offers financial help and guarantees for Japanese investments abroad.

The Export-Import Bank of *Thailand* provides long-term financing solutions tailored for overseas investments made by Thai companies. Additionally, the bank offers comprehensive insurance coverage to protect these companies against political risks and associated losses that may arise in the course of their overseas investments.

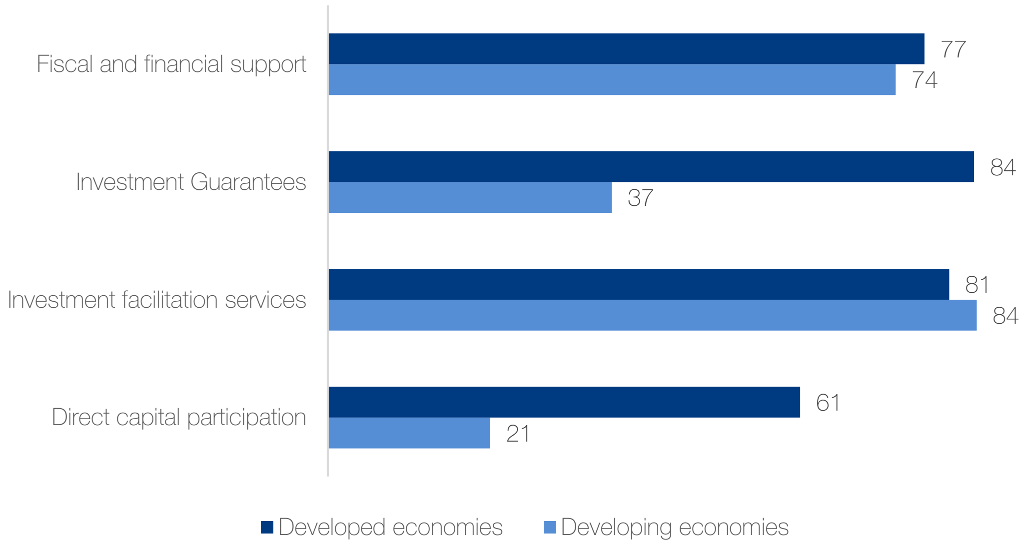
Source: UNCTAD.

Four principal types of direct promotion instruments to support OFDI exist: fiscal and financial support, investment guarantees, investment facilitation services, and direct capital participation (figure 3). Among the 50 countries with OFDI promotion and facilitation initiatives in place, many have adopted more than one of these instruments.

Fiscal or financial support encompasses loans, grants, and tax incentives for companies venturing into OFDI. Loans are usually provided by home country export promotion agencies, development banks, or similar institutions. They generally offer better conditions than market standards, or support projects that might otherwise struggle to secure private financing. This type of direct measure to support OFDI is adopted by 77 per cent of developed countries promoting investment abroad. It is also the second most common OFDI promotion instrument in developing countries, used by 74 per cent of them.

Figure 3. Main types of OFDI promotion instruments

(Per cent of countries with an OFDI mechanism in place)



Source: UNCTAD.

Foreign investment insurance or guarantees secure some level of political risk protection for domestic firm investing in more unpredictable and volatile markets. Among the economies offering OFDI promotion, 84 per cent of developed countries and 37 per cent of developing countries include guarantees for their domestic firms investing overseas.

Facilitation services assist domestic businesses in establishing and maintaining a presence abroad. These services, which are available in 84 per cent of developing countries and 81 per cent of developed countries with OFDI promotion schemes, may include advisory assistance, support in participating in international events, coordination of economic missions abroad, connecting with partners in the host country, training, and preparing feasibility and country risk analyses. They are typically provided by investment and export promotion agencies.

Lastly, direct capital participation through State-sponsored programmes is offered in 21 per cent of developing countries and 61 per cent of developed countries that support OFDI. These programmes enable domestic firms to invest abroad by providing patient capital through direct equity participation and private enterprise funds. These are made available through import-export banks, development banks, or dedicated funds targeting particular sectors, countries, or types of firms, such as SMEs.

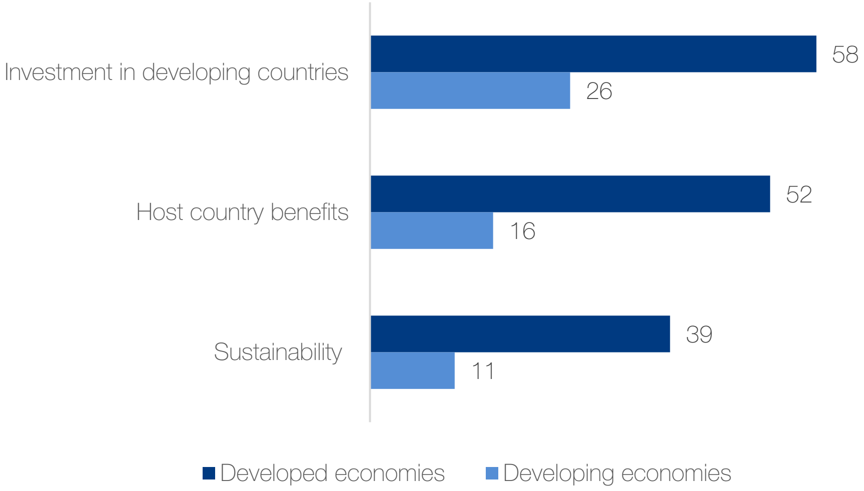
2.2. OFDI promotion as a tool for achieving the SDGs

While most OFDI promotion initiatives do not differentiate between destination countries (figure 4), a growing number of countries are leveraging OFDI as a tool to further the goals of Agenda 2030 (box 2).

Among the 50 countries with OFDI promotion mechanisms, 18 developed economies (58 per cent) and 5 developing economies (26 per cent) have put in place at least one instrument specifically designed to encourage OFDI in developing countries (figure 4). In addition, numerous developed economies, especially in Europe, have integrated OFDI promotion schemes into their broader development assistance strategies. They actively engage their private sector in development cooperation initiatives, so as to capitalize on its strengths and capabilities to advance development goals, while promoting growth and global competitiveness of domestic firms (box 2). Consequently, OFDI promotion schemes often incorporate criteria that emphasize the benefits to the host country, particularly as regards investments targeting developing countries. These criteria feature in over half of the OFDI promotion instruments of developed countries and in 16 per cent of those of developing countries (figure 4).

Figure 4. Criteria for accessing OFDI promotion mechanisms

(Per cent of countries)



Source: UNCTAD.

Box 2. OFDI promotion mechanisms targeting SDG projects (examples)

The Oesterreichische Entwicklungsbank AG, *Austria*'s Development Bank, founded in 2008, exclusively finances investment projects in developing countries and emerging markets through long-term loans. Support is provided to projects that are economically profitable and "make sense from a development perspective".

In *Denmark*, the Danish SDG Investment Fund, created in June 2016 and managed by the Investment Fund for Developing Countries (IFU), is a public-private partnership designed to support the SDGs. It offers advice and risk capital to businesses operating in strategic sectors in developing countries, with a focus on renewable energy, climate, agribusiness and food, the financial sector, water, and infrastructure.

Finnfund, a development fund owned by the Government of *Finland*, secures financing for profitable business projects that promote sustainable development in developing countries. In line with its strategy, approved in 2021, its main focus is on key sectors aligned with the SDGs, including clean energy, sustainable forestry and agriculture, financial institutions, and digital infrastructure and solutions. Moreover, the fund manages a €210 million loan aimed at supporting businesses in developing investment projects that address climate change mitigation, enhance adaptation capabilities in developing countries, and promote gender equality.

In *Germany*, the Federal Ministry for Economic Affairs and Climate offers investment guarantees to support long-term investments that are expected to yield positive impacts for both the host country and Germany. These may encompass various aspects, such as import substitution, generating employment opportunities respecting high social standards, or adopting advanced environmentally-friendly technologies. In addition, the German Development KfW Group, through its Business Support Services, offers conceptual and financial advisory assistance aimed at bolstering sustainability within foreign investment projects. This includes initiatives such as introducing environmental and social management systems, as well as providing services for resource and energy efficiency. Its "develoPPP" programme is dedicated to aiding companies interested in operating in developing countries, emphasizing training and employment initiatives that drive socio-ecological transformation.

The International Development Finance Corporation (DFC) of *the United States* provides a comprehensive suite of services, such as financing, guarantees, and facilitation, to bolster business investments overseas. Its focus is on driving impactful global development, furthering foreign policy, and producing adequate returns.

The European Fund for Sustainable Development Plus (EFSD+) supports the Global Gateway initiative, launched in December 2021, by providing investment tools like blending and guarantees. These tools help private investors fund clean energy, green infrastructure, and health projects in developing countries. With a budget of up to €300 billion from 2021 to 2027, the initiative aims to develop sustainable infrastructure globally in sectors like digital, energy, and health, benefiting both Europe and partner countries offering investment opportunities for *European Union* private sectors.

Source: UNCTAD.

In addition, entities overseeing OFDI promotion mechanisms increasingly integrate additional sustainability criteria in determining which projects qualify for public support and assistance (box 3). Currently, at least 39 per cent of developed countries and 11 per cent of developing countries have incorporated these criteria into at least one of their OFDI promotion schemes (figure 4). The requirements often align with corporate social responsibility (CSR) standards and environmental obligations. Proposed investments undergo assessment at the projects' initial stages and sometimes periodically throughout their implementation.

Box 3. Sustainability criteria in OFDI promotion mechanisms (examples)

In 2020, the European Development Finance Institutions have committed to substantial contributions towards the SDGs and the Paris Climate Agreement. To that aim, they have agreed to adhere to specific environmental and social standards in their financing investment projects, including a prohibition on financing fossil fuel projects.

The Austrian Development Bank provides equity investment to companies operating in developing countries, contingent upon a comprehensive environmental and social assessment.

The Czech Export Guarantee and Insurance Corporation offers investment insurance to companies investing abroad, mandating an environmental and social impact assessment. A dedicated questionnaire for investors is available for that purpose.

The Danish Investment Fund for Developing Countries publishes exclusion lists outlining specific activities and investment projects across sectors that are ineligible for financing from its resources. These exclusions incorporate sectors such as the extraction and processing of crude oil, fossil fuels infrastructure and power plants, unsustainable animal rearing, biomaterials that compromise food security, and unsustainable expansion of agricultural activity.

The Export and Investment Fund of Denmark (EIFO) offers loan financing to Danish companies venturing into new markets, provided that their operations adhere to environmentally and socially responsible practices.

Finnfund's evaluation of projects in developing countries includes environmental and social responsibility assessments based on relevant host country regulations, applicable International Labour Organization (ILO) conventions and labour standards, International Finance Corporation (IFC) Performance Standards, responsible tax policies, sector-specific guidelines and management systems. Additionally, it conducts development impact assessments throughout the investment life cycle.

The Government of the Netherlands, through Invest International, financially supports corporate entities expanding abroad, emphasizing five sectors: sustainable agriculture, energy transition, innovative healthcare, circular economy, and water infrastructure. It requires a positive impact on SDGs, with primary focus on SDGs 8 & 13, and adherence to ESG principles.

In Sweden, EKN provides investment guarantees to responsible businesses, conducting its own environmental impact assessment, considering social impact, and ensuring the presence of anti-corruption measures.

Source: UNCTAD.

3. Outward investment regulation

In parallel with the increasing adoption of OFDI promotion schemes, the regulatory landscape governing OFDI has undergone substantial changes in the past decades. While most of the regulatory measures adopted between 1999 and the early 2010s relaxed restrictions on OFDI, the past decade has been characterized by a surge in more restrictive measures across economies at all levels of development.

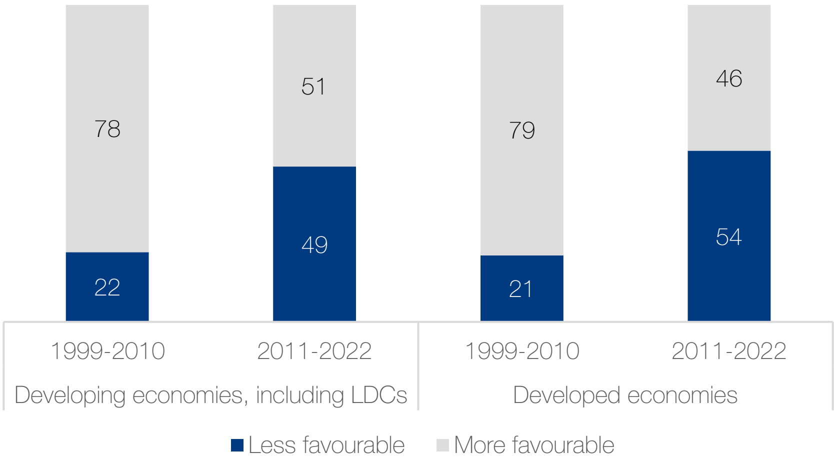
3.1. Key trends in OFDI regulation

Between 1999 and 2022, the total number of countries with OFDI restrictions remained relatively stable, fluctuating between 88 and 95. The analysis below focuses on 287 OFDI measures taken in that period.[3] Approximately two-thirds of these measures were designed to ease or eliminate existing OFDI restrictions, a trend consistent across all development levels.

[3] An additional 107 OFDI measures were adopted by countries as part of economic sanctions regimes, most of them in the last decade (80 per cent). These measures have been excluded from the analysis in this section. See also the Methodological Note in section 1 for data sources and description.

In the early 2000s, the liberalization of OFDI was gaining momentum, as countries increasingly removed foreign exchange restrictions. However, in the last decade, there has been an observable shift in the regulatory approach to OFDI, and restrictions increased by nearly one-third in both developing and developed countries (figure 5).

Figure 5. OFDI measures by type and country group, 1999-2022 (per cent)



Source: UNCTAD, based on IPM Database and IMF AREAER Database.

The increase in more restrictive OFDI measures observed since 2011 can be partially explained by growing concerns over money-laundering practices, tax evasion, and other illicit financial flows disguised as FDI. This is closely linked to governments' efforts to implement the recommendations of the FATF, which require countries to establish legal mechanisms for conducting due diligence on business relationships managed by financial institutions.

The overall trend towards increased regulation was further accentuated by the COVID-19 pandemic, which led to a general slowdown in (inward and outward) liberalization efforts. In addition, in recent years, concerns related to the potential risks that FDI could pose to national and economic security, particularly in relation to emerging critical knowledge and strategic technologies, have become prominent (see the latest editions of UNCTAD's World Investment Report), particularly among developed countries. This is reflected not only in the continued expansion of inward FDI screening mechanisms, but also in more stringent regulations on OFDI, especially in strategic sectors (section 3.3).

Today, out of the 194 economies examined, nearly half (94) have implemented regulations on OFDI, including 67 per cent of LDCs, 52 per cent of other developing economies and 26 per cent of developed countries. In terms of regional distribution, OFDI restrictions are prevalent in Africa and Asia (present in 69 per cent and 60 per cent of countries, respectively), and less common across Latin America and the Caribbean (39 per cent), Oceania (36 per cent) and Europe (20 per cent).

3.2. Main types of OFDI restrictions

As discussed in Section 1, restrictions on OFDI typically aim at one of the following objectives: 1) Maintaining a favourable balance of payments; 2) Ensuring domestic benefits; 3) Controlling the financial system and preventing money laundering; and 4) Safeguarding national sovereignty, security, and public interest, especially concerning OFDI related to strategic products or technologies (section 3.3). To achieve these objectives, countries utilize various mechanisms, often in combination. The main ones are discussed below.

Approval mechanisms

The approval system stands out as the most widespread form of OFDI restriction, necessitating investors to secure prior consent for their intended OFDI projects (box 4). Within the 94 economies enforcing OFDI restrictions, approximately two-thirds have adopted an OFDI approval procedure. This mechanism is especially prevalent in Africa and Asia, where it is employed by 57 and 38 per cent of economies, respectively. However, it is less common in Oceania (29 per cent), Latin America and the Caribbean (27 per cent), and Europe (9 per cent). When examining economic development levels, the OFDI approval system is primarily favoured by LDCs and developing economies, used by 53 per cent and 36 per cent of such economies, respectively.

Box 4. OFDI approval mechanisms (examples)

Bangladesh: On 9 January 2022, the Financial Institution Division (FID) of the Ministry of Finance introduced the Capital Account Transaction (Overseas Equity Investment) Rules. These rules permit residents to engage in OFDI, allowing them to invest up to 20 per cent of their average annual export earnings for a period of five years. To qualify, investors must demonstrate that the OFDI will complement their existing domestic investments, contribute to increased exports and employment, and be economically sustainable. A 15-member selection committee has been established to review applications, with decisions communicated to approved dealer banks and investors. Furthermore, any debts incurred abroad, such as profits, dividends, interests, and other financial transactions, must be repatriated to Bangladesh within 30 days of receipt.

Samoa: OFDI in Samoa are governed by the Exchange Control Regulations and require approval from the Central Bank of Samoa. To obtain approval, individuals and businesses must submit a comprehensive application, providing details on the OFDI, source of funding, financial accounts, and business operations. If a company seeks to establish a subsidiary overseas, it must furnish evidence to the Central Bank to demonstrate the positive impact on export volume and value. The Central Bank may request further documentation based on individual assessments and reserves the right to refuse any application at its discretion.

United Republic of Tanzania: The Foreign Exchange Regulations 2022 require Tanzanian residents who intend to engage in OFDI in any of the member country of the East African Community or Southern Africa Development Community (EAC or SADC) to submit supporting documents pertaining to the intended investment, including tax clearance, to a bank or financial institution for verification. The Regulations continue to restrict OFDI to territories outside the EAC and SADC and lending to any non-residents, acquiring real estate or other real assets. These transactions are subject to the approval of the Bank of Tanzania.

West African Economic and Monetary Union (WAEMU): OFDI by residents of the WAEMU (*Benin, Burkina Faso, Côte D'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo)* requires the approval of the Minister of Finance. The request should specify the approved intermediary chosen to proceed with the payment, as well as the designation of the company abroad, the nature of the investment, the amount of the investment, the terms of financing, the timeframe for carrying out the investment, the reasons and consequences of the planned investment. The investor should demonstrate that the investment will be financed at least seventy-five per cent by borrowing abroad. Authorization is not required for purchases of foreign securities whose issuance or offering for sale in WAEMU countries has been authorized by the Regional Council on Public Savings and Financial Markets.

Source: UNCTAD.

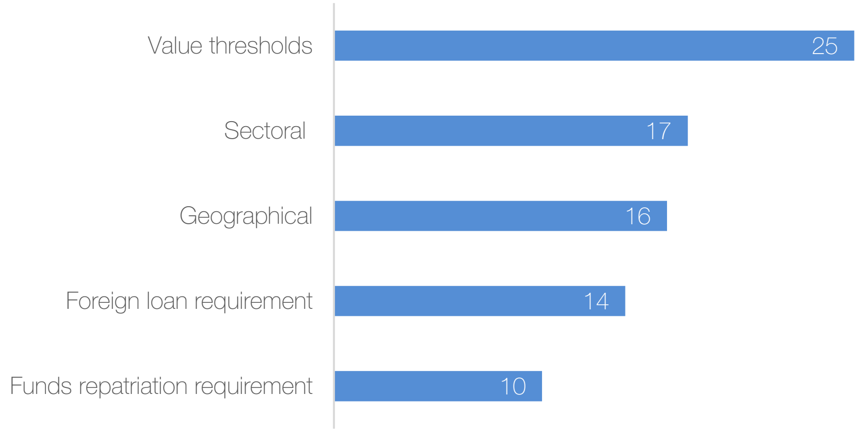
Approval systems in which all OFDI must undergo verification are uncommon. More frequently, countries establish a set of criteria and requirements to assess and regulate OFDI, identifying projects that should undergo closer scrutiny. These criteria and requirements can be grouped into the following categories: value thresholds, sectoral considerations, geographical factors, foreign loan requirements, and funds repatriation requirements (figure 6).

The most common assessment criterion for OFDI approval involves determining whether the OFDI project exceeds certain value thresholds. Accordingly, any OFDI above specified limits, such as certain equity shares, necessitates prior authorization. Thresholds are frequently linked to a percentage of the investor's net assets or annual earnings.

Economies focused on mitigating adverse impacts on their balance of payments often set limits on the allowable amount of OFDI within a given period (such as annually, over five years, or monthly) or per individual transaction. Additionally, in economies where a registration/notification process exists alongside the approval system, different value thresholds may trigger the need for distinct procedures, thereby tailoring the regulatory approach based on the size of the OFDI.

Figure 6. OFDI approval mechanisms: assessment criteria by type

(Number of countries)



Source: UNCTAD.

At least 17 economies have implemented sectoral restrictions on OFDI. Often, these restrictions are closely tied to prudential regulations and balance of payment considerations, in which cases restricted sectors tend to include real estate, banking and financial institutions, insurance companies, and pension funds. In other cases, restricted sectors are those considered crucial to the national interest of the economy, including media, high-technology and artificial intelligence, telecommunications, exploration, research and development companies, or manufacturing and maintenance of weaponry. This latter type of approval, which is based on national interest and national security, is discussed in section 3.3, in the context of OFDI screening.

Geographical limitations on OFDI are generally driven by balance of payment considerations, political motives, or the aim to curb illegal activities. More stringent requirements (e.g. prior approval or lower approval thresholds) are frequently enacted for investments destined beyond certain geographical limits, including common economic areas[4] or specific regions. Morocco, for instance, imposes more stringent criteria on OFDI that targets countries outside of Africa. Geographical restrictions can also apply to OFDI directed at countries that do not comply with the FATF's recommendations.

Another prevalent mechanism for restricting OFDI, particularly in African countries, is the requirement to finance investments, either wholly or partially, through foreign borrowing, profits generated by the foreign subsidiary, or externally sourced funds. Some countries prohibit OFDI financed with funds borrowed from a domestic commercial bank, while others establish limits on OFDI that is partially financed through local currency borrowing.

Finally, several economies permit overseas investments but mandate the repatriation of all profits and income from such investments. In the event of divestment, the respective investor is obliged to promptly repatriate the proceeds.

Notification and registration

The notification and registration system is employed by at least 14 per cent of countries. It requires investors to register planned OFDI with designated authorities or to submit post-investment notifications (box 5). Developed economies are more inclined to implement these procedures (10 per cent of them have adopted such measures, in contrast to 6 per cent of developing economies and 4 per cent of LDCs). The majority of these regimes are adopted for statistical purposes or to curb illicit activities.

[4] These include, for instance, the West African Economic and Monetary Union (WAEMU), the East African Community (EAC), the Southern African Development Community (SADC), the Common Monetary Area (CMA), the Caribbean Community (CARICOM), the European Economic Area (EEA) and the European Union (EU).

When registering or declaring OFDI for statistical reasons, investors are required to submit the statistical forms to the central bank or to a dedicated regulatory authority on a monthly, quarterly, or annual basis. To prevent illicit activities, some economies have instituted supplementary obligations, such as mandating the submission of information concerning OFDI contract execution or requiring routing OFDI transactions through foreign exchange market intermediaries or clearing accounts. Failure by an investor to fulfil registration obligations or to provide requisite documentation typically empowers the central bank to withhold foreign exchange transactions or apply other sanctions against the investor.

Box 5. OFDI notification and registration mechanisms (examples)

Poland: The Foreign Exchange Act of 27 July 2002 imposes restrictions on foreign exchange transactions with so called third countries, i.e. countries that are not members of the European Union (EU), the European Economic Area (EEA), or the Organization for Economic Co-operation and Development (OECD). Transferring funds intended for financing economic activities in third countries requires a foreign exchange permit, either general or individual. General foreign exchange permits are issued by the Minister responsible for public finance through an ordinance, which facilitates foreign exchange transactions with countries party to bilateral investment treaties. Individual foreign exchange permits are granted by the President of the National Bank of Poland.

Spain: On 1 September 2023, Royal Decree 571/2023 came into effect, implementing revisions concerning the mandatory reporting of OFDI in the Investment Registry of the Ministry of Industry, Trade, and Tourism. In compliance with the law, Spanish residents are obligated to report certain investments and subsequent disinvestments made abroad. This includes stakes in non-resident companies and shareholders' contributions where the resident holds or achieves a stake equal to or exceeding 10 per cent, as well as reinvestment of profits in non-resident companies. Declarations must be submitted to the Registry of Investments, typically by the investment holder, using specific forms and within deadlines to be determined by future regulations.

Turkmenistan: Transactions involving capital movements between residents and non-residents, exceeding the limit of freely negotiable currency require registration. This encompasses transactions like trade credits, direct investments, loans, borrowings, bank credits, and trust management of funds in accounts (deposits). Registration involves documenting the foreign exchange agreement and providing information about the currency transactions and any subsequent changes to the agreement. The investor must submit supporting documents along with the agreement. The regulations specify a closed list of cases for potential refusal of registration, explicitly stating that refusal based on reasons such as the lack of economic feasibility is not permitted. In cases of refusal, an appeal can be made to the court.

Source: UNCTAD.

Foreign exchange restrictions and OFDI prohibitions

Six per cent of countries implement foreign exchange control measures that affect OFDI, these foreign exchange restrictions can include measures such as phasing in large money transfers abroad or requiring the authorization of the central bank for the opening of a foreign currency account abroad.

Finaly, nine per cent of countries have established partial or total bans on OFDI. Such limitations typically prohibit OFDI beyond specific thresholds or sectors, such as banks or insurance companies. Total bans on OFDI are in place only in four countries: Ethiopia, Nepal, the Syrian Arab Republic, and Ukraine.

3.3. OFDI screening for national security

For several years already, UNCTAD has been reporting an increasing trend towards the introduction or tightening of national security mechanisms affecting FDI. Since 1995, at least 37 countries have introduced a regulatory framework for the screening of inward investments on national security grounds. This trend accelerated after the global economic crisis and peaked in 2020-2021, amid heightened concerns over potential foreign takeovers in sensitive sectors during the COVID-19 pandemic (UNCTAD, 2023).

The concept of "national security" has also undergone a transformation over the years, increasingly connecting national and economic security considerations. Governments have expanded their strategic assessments to incorporate critical knowledge and strategic technologies. The focus of such concerns is also broadening beyond inward investments, with an increasing number of countries scrutinizing OFDI and the national and economic security risks associated with them.

While screening mechanisms for OFDI — such as approval and notification requirements based on national security concerns — are less prevalent than those for inward FDI, some Asian countries have implemented them for decades (box 6). However, in recent years, the focus on the security aspects of OFDI has broadened to include other major sources of outward FDI, notably the United States and the European Union.

Box 6. OFDI and national security in Asia

In *China*, OFDI is regulated by various instruments. Domestic enterprises are prohibited from engaging in OFDI projects that pose a threat or potential threat to national interests or security. The outbound investor should go through the approval procedure for projects involving countries, regions or industries considered as sensitive, including research, production, or maintenance of arms, exploitation or utilization of cross-border water resources, export of core technologies and products of military industry, use of prohibited technologies, processes and products and news media. Investors must submit an impact assessment of the investment project on the country's national interests and security. In addition, the regulations require investors to commit to fulfilling necessary social responsibilities, paying attention to environmental protection and building a good image of Chinese investors abroad.

India, recognizing the positive role that OFDI plays as "important drivers of foreign trade and technology transfer" and understanding their significance "in boosting domestic employment, investment, and growth through such interlinkages," has implemented two routes for OFDI: the automatic route and the approval route. Investments in strategic sectors or specific geographies, require approval from either the Reserve Bank or the Central Government, along with investments exceeding $1 billion in a financial year. Strategic sectors encompass energy and natural resources, including oil, gas, coal, mineral ores, submarine cable systems, and startups, among others. In the approval application, investors are required to outline the benefits that may accrue to India through such investments. The policy also prohibits OFDI in real estate and gambling.

In *Japan*, the legal framework overseeing OFDI comprises the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949), along with various Cabinet orders and ministerial ordinances. If investors plan to engage in an OFDI that could negatively affect "the smooth operation of the Japanese economy or pose a threat to international peace and security", they must notify the Minister of Finance in advance, providing the reason and details of such OFDI and the time of execution. The Minister of Finance has the authority to recommend modifications or discontinuation of the investment within a 20-day period. Prior approval is required for OFDI in the following sectors: fisheries (harvesting of aquatic animals and plants), manufacturing of leather or leather goods, the weapons manufacturing industry, manufacturing of equipment related to the production of weapons, and the manufacturing of narcotics, among others.

Source: UNCTAD.

The United States has introduced several initiatives to monitor and regulate OFDI since 2020, culminating in the enactment of the "Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" in August 2023 (box 7).

Similar discussions on the need to assess risks associated with OFDI for national security are taking place in Europe (box 8). The European Commission released a "White Paper on Outbound Investments" on 24 January 2024,[5] in response to a Joint Communication of the European Council and the Council on "European Economic Security Strategy" of June 2023, which emphasised concerns about the security risks arising from OFDI.[6] The White Paper proposes to institute a framework within each member State for monitoring OFDI in the following sectors: advanced semiconductors, artificial intelligence, quantum technologies, and biotechnologies. The geographical scope of the monitoring is left to the discretion of member States, based on their evaluation of the risk profiles of various countries. Building upon the results of the proposed monitoring, member States are expected to provide the Commission with the initial risk assessment of OFDI in the designated sectors by mid-2025. Based on these assessments, the Commission will advise member States on the extent to which existing tools can mitigate these risks or whether additional proportionate policy actions at the European Union or national level are warranted.

[5] The White Paper on Outbound Investments: https://circabc.europa.eu/ui/group/aac710a0-4eb3-493e-a12a-e988b442a72a/library/51124c0d-58d8-4cd9-8a22-4779f6647899/details?download=true

[6] Joint Communication on a European Economic Security Strategy: EUR-Lex - 52023JC0020 - EN - EUR-Lex (europa.eu)

Box 7. OFDI and national security in the United States – current and planned initiatives

The CHIPS Act: enacted on 9 August 2022, the CHIPS Act allocates significant funding to enhance the semiconductor industry of the United States. Recipients of federal funds are required to enter in an agreement with the Secretary of Commerce and "may not engage in any significant transaction" involving the material expansion of semiconductor capacity in China or any other foreign "country of concern" for 10 years. The Act designated China, the Democratic People's Republic of Korea, the Islamic Republic of Iran, and the Russian Federation as such. Recipients are also required to notify the Department of Commerce of any prospective significant transactions during the agreement term. The Department of Commerce reviews these transactions and can approve, mitigate, or block them based on potential violations of the agreement. Additionally, the Act empowers the Department of Commerce to designate and regulate other foreign countries of concern and outlines an outbound investment screening process.[7]

The Executive Order of August 2023: On 9 August 2023, the President of the United States issued the Executive Order "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern", declaring a national emergency to deal with the "policies and actions of countries of concern, which seek to exploit outbound investments from the United States to develop sensitive technologies and products critical for military, intelligence, surveillance, and cyber-enabled capabilities".[8] The key concerns centre around the transfer of capital and the intangible advantages offered by OFDI, including "enhanced standing and prominence, managerial assistance, investments and talent networks, market access, and enhanced access to additional financing".[9] The Order established a framework to either restrict or mandate the notification of specific categories of outbound investments into entities operating within the jurisdiction of a designated country of concern engaged in semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors. The Order establishes a periodical review of the effectiveness of the regulatory framework within one year of the effective date of the adopted regulations. Under the Order, the Department of the Treasury is vested with the powers to investigate and make requests for information relative to notifiable and prohibited transactions and to nullify, void, otherwise compel the divestment of any prohibited transaction.

Advance Notice of Proposed Rulemaking of August 2023: To implement the mechanism established by the Executive Order above, the Department of the Treasury, on 14 August 2023 issued Advance Notice of Proposed Rulemaking (ANPRM)[10] for public notice and comment.[11] The Treasury Department outlines a program whereby transaction parties are expected to determine whether a transaction is prohibited, requires notification, or is permissible without notification. It stated that the program aims to avoid hindering all United States investments into countries of concern or imposing broad restrictions on the activity of United States persons. Covered transactions include equity acquisitions (mergers, acquisitions, private equity, venture capital), greenfield projects, joint ventures, and certain debt financing by the United States persons. To address risks to the national security of the United States posed by technological advances, specific transaction types may have carveouts or exceptions, like investments in publicly traded securities or exchange-traded funds. The program is not retroactive, but the Treasury Department may request information on post-order transactions to inform program development and implementation.

Source: UNCTAD.

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[7] United States of America - Restricts outward FDI in semiconductors in select countries | Investment Policy Monitor | UNCTAD Investment Policy Hub
[8] Executive Order, 9 August 2023, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern". 2023-17449.pdf (treasury.gov)
[9] *Ibid.*
[10] Federal Register: Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern
[11] At the time of drafting this paper, no official regulations had been adopted to implement the outbound investments screening program. The information presented here may be subject to changes or updates in accordance with future regulatory developments.

Box 8. OFDI and national security in Europe

The Government of *Germany*, within its "Strategy on China", recognized the importance of adopting measures to mitigate risks linked to OFDI. It emphasized that these measures could complement existing tools for targeted controls on exports and domestic investments.[12] The Government has further declared its intention to conduct its own national security analyses and engage in dialogue with businesses and international partners, including the European Union and G7, to address emerging risks.

In *Italy*, the so-called "Golden Power" regime, instituted by Decree-Law No.21 on 15 March 2012, expands screening to transactions related to the relocation of corporate headquarters outside Italy for companies involved in strategic activities. The Government holds the prerogative to evaluate and potentially block such relocations, aiming to safeguard vital defence and national security interests.

In *Spain*, Royal Decree 571/2023, dated 4 July 2023 stipulates that Spanish investments abroad and their divestment must be reported to the Investment Registry of the Ministry of Industry, Trade, and Tourism. Additionally, the wording of the Royal Decree suggests the potential extension of the national security screening regime to Spanish investments abroad.

On 8 June 2023, the Governments of the *United Kingdom* and the *United States* issued a joint statement on addressing the national security risks posed by certain types of outbound investments[13]. In particular, the Government of the United Kingdom committed to enhancing the evidence base for assessing national security risks associated with OFDI. The announcement emphasized the intention to engage in discussions with businesses, seeking feedback to formulate a well-calibrated response to emerging risks.

Source: UNCTAD.

[12] The Government of the Federal Republic of Germany, Strategy on China, 13 July 2023: [Strategy on China of the Government of the Federal Republic of Germany (auswaertiges-amt.de)]
[13] The Atlantic Declaration: A Framework for a Twenty-First Century U.S.-UK Economic Partnership, 8 June 2023: [THE_ATLANTIC_DECLARATION.pdf (publishing.service.gov.uk)]

4. Conclusion

This Investment Policy Monitor finds that, mirroring the situation of inward FDI policies, policies on outward investment promotion and regulation are increasingly influenced by sustainability considerations, geopolitical tensions and national security concerns.

OFDI promotion policies, particularly those adopted by developed countries, increasingly focus on sustainability criteria and on supporting the SDGs. However, the number of countries that actively promote OFDI to developing countries or that condition OFDI support on sustainability criteria remains limited. This highlights an opportunity for countries to expand OFDI programmes that support international development by encouraging and facilitating their domestic enterprises to engage in overseas investments that contribute to sustainable development in the countries that need it the most.

At the same time, OFDI restrictions are on the rise and increasingly focus on national security concerns. The current discussions on the adoption or reinforcement of national security mechanisms governing OFDI in key investor countries represent a turning point in the global OFDI landscape. While the implementation of these regulatory changes may take time, their adoption could prompt more countries to consider similar measures.

As in the case of inward FDI screening, the challenge posed by these new regulations lies in establishing a well-balanced framework capable of responding effectively to the potential risks posed by outward investments to national security, without unnecessarily limiting OFDI and its benefits for both the home and host country.

As regimes to monitor and regulate outward investment become more widespread, issues related to the complexity of applicable rules, the potentially wide margin of regulatory discretion and the lack of predictability they generate may become significant barriers to investment and represent an increasing administrative burden for home country authorities and investors. Predictability, transparency and administrative efficiency should be the core principles in guiding the adoption of these schemes.

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