

INVESTMENT, ENTERPRISE AND DEVELOPMENT COMMISSION
9th Session

*Geneva, Palais des Nations,
20 November 2017*

Agenda Item 4

*From decisions to actions – Investment and enterprise development as
catalysts for accomplishing the 2030 Agenda for Sustainable Development:
(a) Investment*

**Recent Trends and Policies in Investment
and Enterprise Development**

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

Structure of the presentation is as follows:

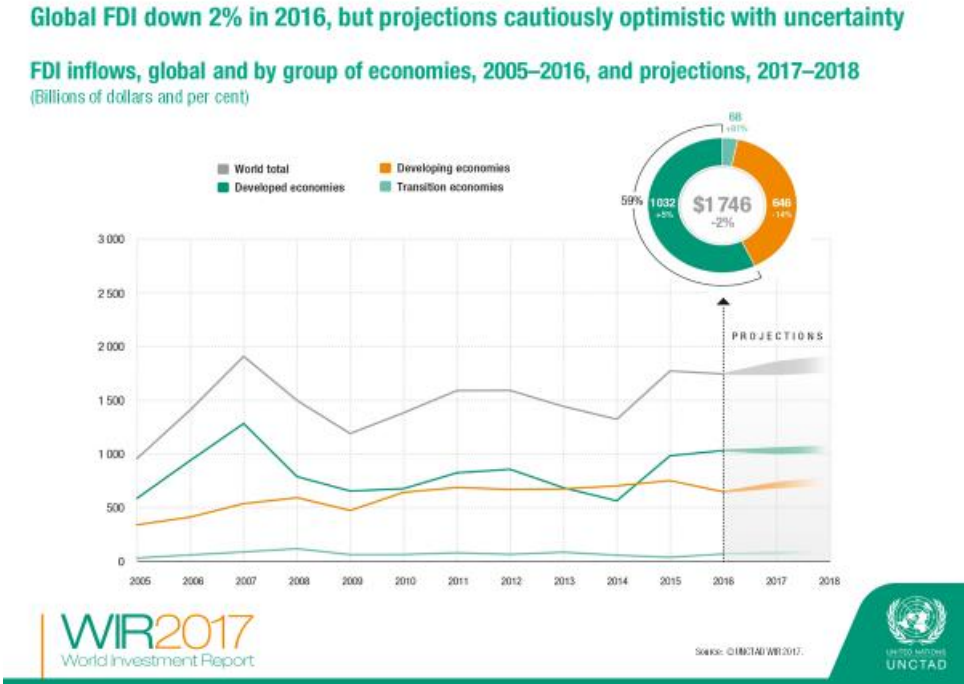
- The main foreign direct investment (FDI) trends at the Global and Regional levels, and recent new insights.
- Trends in national and international investment policymaking, and UNCTAD’s most recent work on this area.

The topical issue of Investment and the Digital Economy was already discussed at the TDB in September – so no need to repeat that today. The trends in enterprise development will be explored under agenda item 4 on Wednesday.

A. Global and Regional FDI Trends

After a strong rise in 2015, global FDI flows lost growth momentum in 2016. FDI inflows decreased by 2 per cent to \$1.75 trillion, amid weak economic growth and significant policy risks perceived by multinational enterprises. At the time of writing of WIR, projections for 2017 were cautiously optimistic. Expectations were for at least stable flows in 2017.

However, the latest data for the first half of 2017, combined with trends in greenfield investment and M&As for the first three quarters of 2017, announce the possibility of a significant further decline of FDI this year and next.



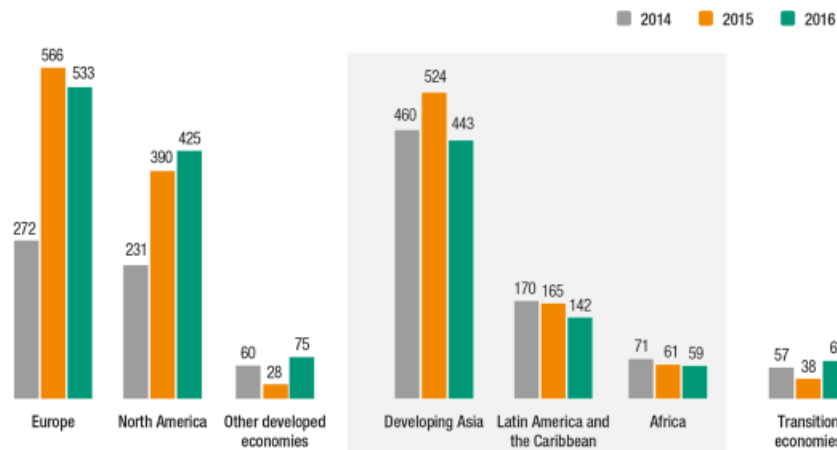
The most worrying aspect of the FDI trends reported in this year’s WIR is that flows to developing countries were especially hard hit in 2016, with a decline of 14 per cent to \$646 billion:

- FDI flows to developing Asia contracted by 15 per cent to \$443 billion in 2016, the first decline in five years.
- FDI flows to Africa continued to slide, reaching \$59 billion, down 3 per cent from 2015, mostly owing to low commodity prices.
- The downward trend in FDI flows to Latin America and the Caribbean accelerated, with inflows falling 14 per cent to \$142 billion, due to continued economic recession, weak commodity prices and pressures on exports.

- FDI in structurally weak and vulnerable economies remained fragile. Flows to the least developed countries fell by 13 per cent, to \$38 billion. Similarly, those to small island developing States declined by 6 per cent, to \$3.5 billion. Landlocked developing countries saw stable FDI, at \$24 billion.

Flows to developing regions shrink by 14% to \$646 billion

FDI inflows by region, 2014–2016 (Billions of dollars)



WIR2017
World Investment Report

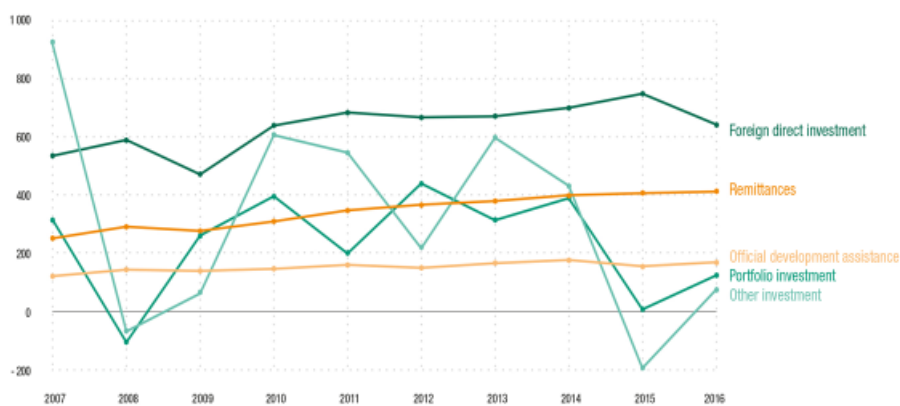
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Despite these downward trends last year, FDI remains the largest and constant external source of finance for developing countries – compared with portfolio investments, remittances and official development assistance. Global external financial flows to developing economies were about \$1.4 trillion in 2016, down from more than \$2 trillion in 2010. FDI accounts for almost half of that amount. However, overall these flows sit well below the level of annual investment required to achieve the SDGs.

FDI remains a key source of finance for developing economies

External sources of finance for developing economies, 2007–2016 (Billions of dollars)



WIR2017
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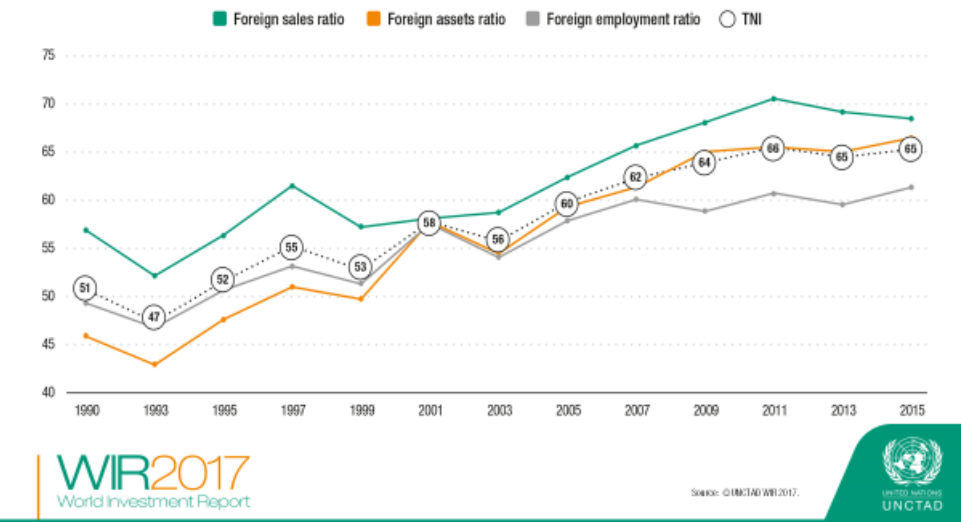
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The slowdown in the growth of international production over the last few years may well have been a factor in lacklustre global trade expansion. International production by foreign affiliates of MNEs is still expanding, but the rate has slowed significantly. The average annual growth rates over the last five years of foreign affiliate sales, value added and employment were all lower than in the equivalent period before 2010.

Growth in international production plateaus, affecting trade

Internationalization trends in the top 100 MNEs, 1990–2015 (Per cent)



The Investment Division presented a new database on State-owned MNEs. It shows their growing role in the global economy. About 1,500 State-owned MNEs (1.5 per cent of all MNEs) own more than 86,000 foreign affiliates, or close to 10 per cent of all foreign affiliates worldwide. They announced greenfield investments accounting for 11 per cent of the global total in 2016, up from 8 per cent in 2010.

State-owned MNEs become major FDI players

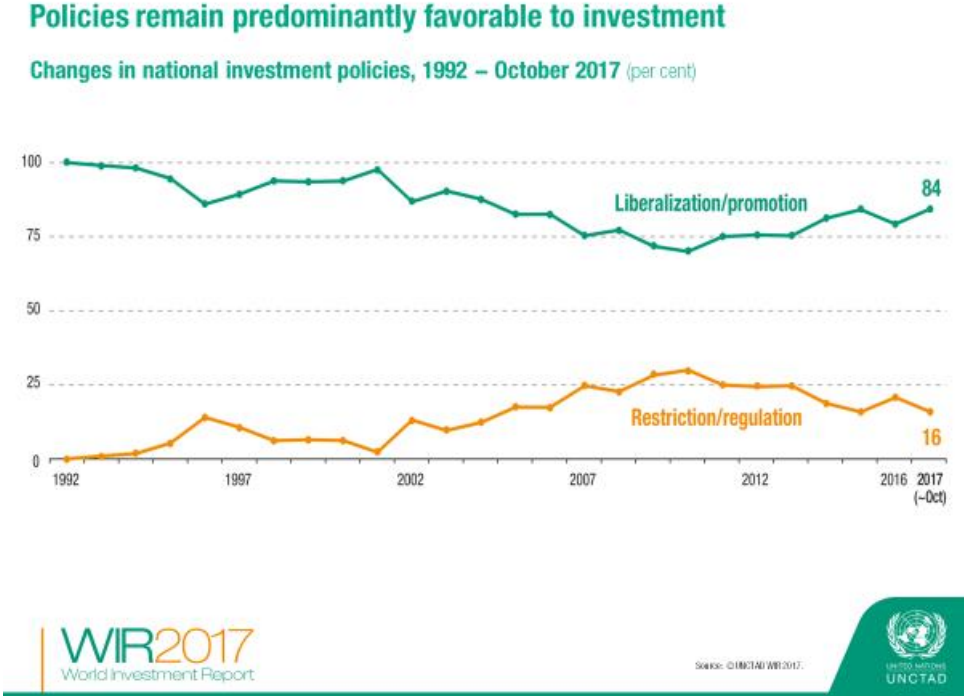
SO-MNEs: Distribution by major home economy, 2017 (Number of companies)



Their headquarters are widely dispersed, with more than half in developing economies and almost a third in the European Union. China is the largest single home economy.

B. National and International Investment Policy Trends

1. National policy trends



At the National level, countries' investment policy measures continue to be geared towards investment liberalization, promotion and facilitation. In 2016, almost 80 per cent of investment policy measures were favourable to investors. For the first ten months of 2017, preliminary figures show a similar picture; 84% of the measures taken were about investment liberalization, promotion or facilitation.

On the surface, therefore, the policy environment for investment remains broadly positive. However, about one fifth of measures in 2016 and the first ten months of 2017 introduced were new investment restrictions or regulations, considerably more than in the early stages of UNCTAD's annual reporting in the 1990s. New restrictions or regulations largely reflect concerns about foreign ownership of strategic industries, national security and the competitiveness of local producers.

Moreover, restrictions manifest themselves not only in new legislation, but also in administrative decisions of host countries, in particular in the context of merger controls involving foreign takeovers.

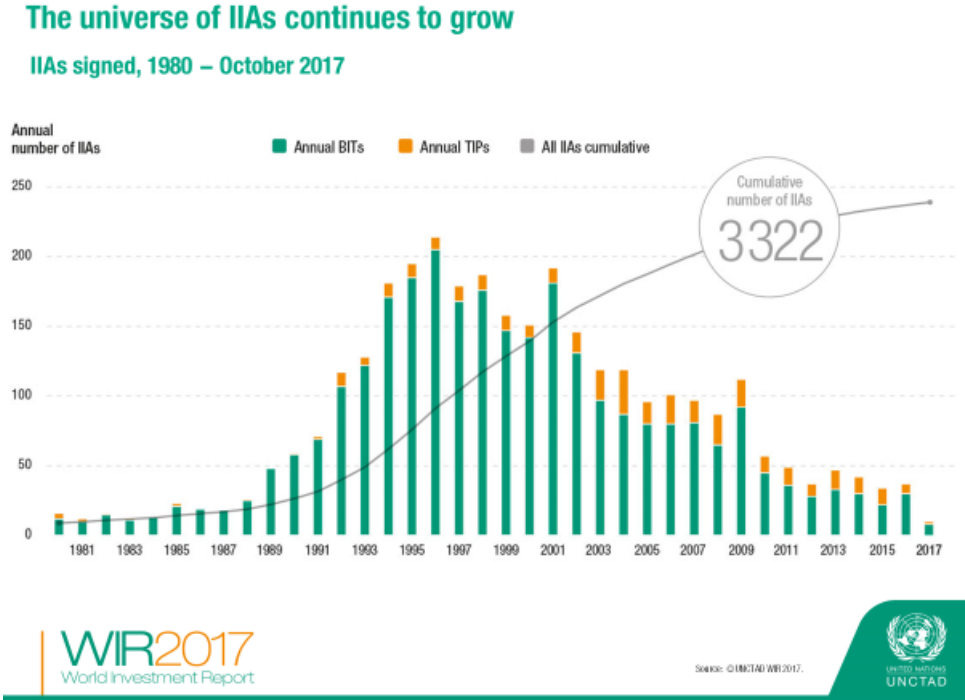
Companies are also exposed to political pressures and retention measures discouraging them from investing abroad. All this affects the picture of an overall favourable policy environment for foreign investment.

Many countries govern cross-border investment through dedicated national investment laws that address a similar set of issues as international investment agreements (IIAs). At least 108 countries have such a law – mostly developing and transition economies.

Followers of our World Investment Network newsletters will have seen that, in October, we launched the online version of our database on national investment laws. You can now browse all available investment laws, mapped in detail by key characteristics.

Both national investment laws and IIAs contain provisions on definitions, entry and establishment of investment, treatment and operation, investment promotion and dispute settlement. But while investment laws and IIAs have many commonalities, they show considerable diversity with respect to specific provisions and drafting details. Therefore, reform of IIAs – and the modernization of corresponding clauses in investment laws should go hand in hand.

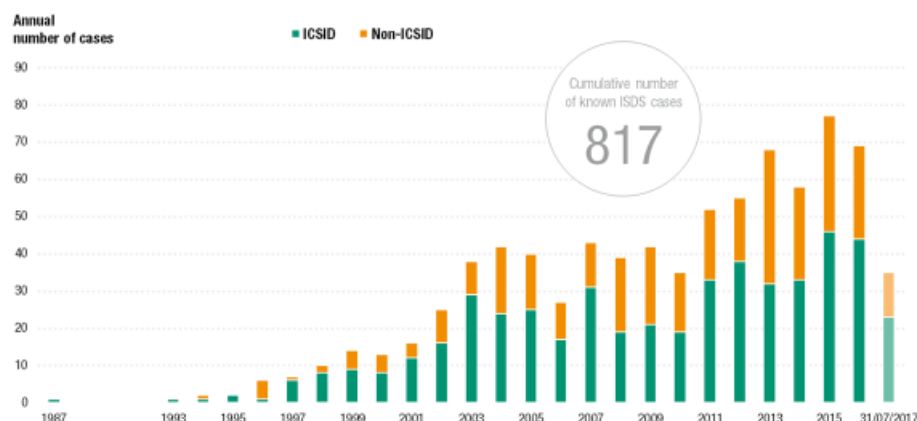
2. Latest trends in International investment policies.



The universe of International Investment Agreements (IIAs) continues to grow amid greater complexity. In 2016, 37 new IIAs were concluded, while the first 10 months of 2017, yielded at least 11 new IIAs - seven BITs and four TIPs. Countries terminated at least 16 BITs, and for at least 15 BITs, termination took effect. At the end October, the cumulative number of IIAs was 3,322 treaties.

The number of new ISDS cases continues to increase

Known ISDS cases, annual and cumulative, 1987 – July 2017



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The rate of new treaty-based investor–State dispute settlement (ISDS) cases also continues to expand unabated. In 2016, 69 new cases were initiated, while another 35 cases were brought in the first seven months of 2017. Additional cases for other years have also surfaced. As of July 2017, the total number of publicly known arbitrations against host countries had reached 817. Investors won 60 per cent of all cases decided on merits. There is a lot of movement in IIAs today, and a growing basis for consensus on the need for a broad reform in international investment policymaking.

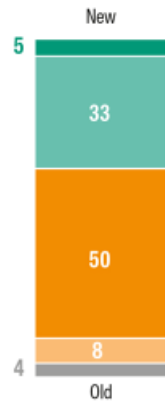
One manifestation of that last year was the adoption by the G20 of a set of non-binding Guiding Principles for Global Investment Policymaking. Drawing on UNCTAD’s Investment Policy Framework for Sustainable Development, the G20 Principles represent the first time that multilateral consensus on investment matters was reached between a varied group of developed, developing and transition economies, accounting for over two-thirds of global FDI.

This year, the UNCTAD and ACP Secretariats jointly formulated the ACP-UNCTAD Guiding Principles for Investment Policymaking. The set of principles are based on the Guiding Principles contained in UNCTAD’s Investment Policy Framework for Sustainable Development.

IIA reform has already made significant progress. Most new treaties now follow UNCTAD’s Road Map for IIA Reform, which sets out five action areas: safeguarding the right to regulate; reforming investment dispute settlement; promoting and facilitating investment; ensuring responsible investment, and enhancing systemic consistency. Investment facilitation has also become an area of increased interest in IIAs, and UNCTAD’s Global Action Menu for Investment Facilitation has obtained strong support from all investment-development stakeholders.

Almost all ISDS cases are based on old treaties

Age of IIAs: share of IIAs in force, by year of signature (Per cent)



“Bite” of IIAs: IIAs invoked in known treaty-based ISDS cases, by year of signature of the IIA



90% of cases based on pre-2000 treaties



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While reform efforts have taken firm hold in new treaty practice, old treaties make up the bulk of the IIA universe.

Overview of Phase 2 IIA reform options



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Phase 2 of IIA reform is now unfolding: that is, to modernize the existing stock of old generation treaties. Old treaties are many: more than 2,500 IIAs (95 per cent of all treaties in force today) were concluded before 2010. Old treaties “bite”: almost all of today’s known ISDS cases are based on those treaties. And old treaties cause inconsistencies: their continued existence creates overlaps and fragmentation in treaty relationships.

The WIR17 presents and analyses 10 policy options for phase 2 of IIA reform. The ten options include actions such as:

- i) consolidating old treaties (something that is happening in the context of much-discussed mega-regionals, notably those that are negotiated by the European Union);
- ii) terminating or abandoning old treaties (we see some major developing countries pursue this path); or
- iii) engaging multilaterally (this might be the most effective option, but also the most difficult one to pursue).

Importantly, our report presents the full set of policy options, with their pros and cons set against the backdrop of a series of broader, strategic considerations. With this, we aim to help countries make informed choices about what is the best option – or combination of options – for them to pursue.

These policy options have been the subject of intense discussions at our recent IIA conference. Addressing the deficiencies of old-generation IIAs will be particularly hard for smaller countries and LDCs. Comprehensive regime reform would therefore benefit from intensified multilateral backstopping. UNCTAD, through its three pillars of work – research and policy analysis, technical assistance and intergovernmental consensus-building – can play a key role, as the United Nations’ focal point for international investment and the international forum for high-level and inclusive discussions on today’s IIA regime.