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IIA Issues Note

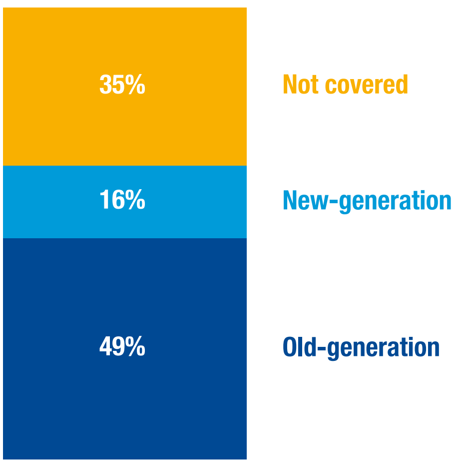
International Investment Agreements

International investment agreements trends: the increasing dichotomy between new and old treaties

HIGHLIGHTS

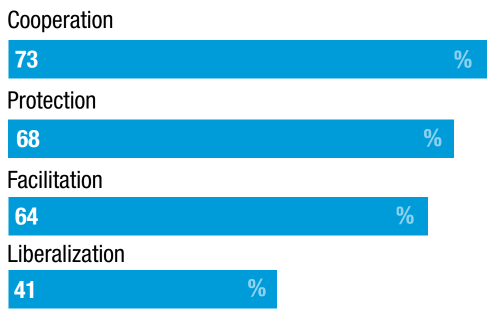
- International investment agreements (IIAs) signed in 2023 cover new investment governance issues such as facilitation and cooperation. Yet old-generation treaties persist raising the risk of investor-State disputes and rendering IIA reform more urgent.
- Old-generation IIAs cover about half of global foreign direct investment stock. This share is higher for developing and least developed economies, leading to greater exposure to investor-State disputes for them.
- Investment facilitation plays an increasingly prominent role in IIAs, often encouraging digitalization. Yet, much more is needed to gear facilitation commitments in IIAs towards sustainable investment and to render them operational on the ground.
- UNCTAD has developed a set of policy options that enable governments to leverage the facilitation commitments in their IIAs towards sustainable investment, with the support of strategic digitalization.

Global FDI stock: IIA coverage



Source: UNCTAD.

Commitments in 2023 IIAs



Trends in international investment agreements

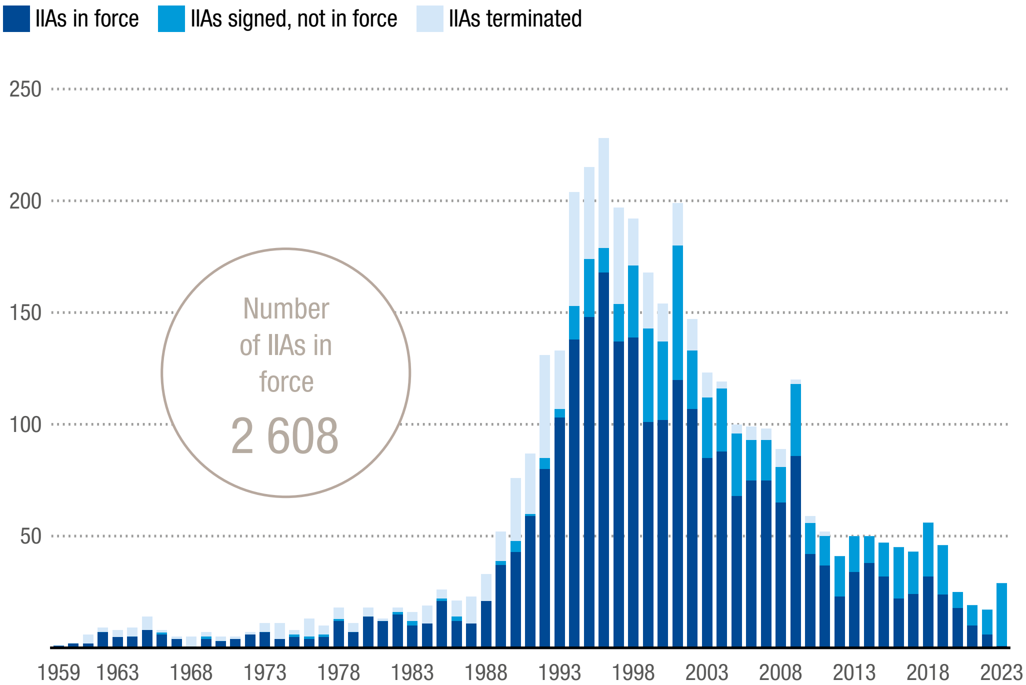
In 2023, new-generation international investment agreements (IIAs) included innovative provisions on investment facilitation and cooperation and tended to safeguard States' right to regulate. However, old-generation IIAs still cover about half of global FDI stock, making IIA reform more urgent. The year was also marked by intensified efforts to reform the IIA and ISDS regimes.

Conclusion and termination of investment agreements

In 2023, countries and regional organizations concluded at least 29 IIAs – 12 bilateral investment treaties (BITs) and 17 treaties with investment provisions (TIPs). This brought the size of the IIA universe to 3,291 (2,831 BITs and 460 TIPs), according to the UNCTAD IIA Navigator (figure 1).

In addition, at least 15 IIAs entered into force and 4 were terminated in 2023, bringing the total number of IIAs in force to at least 2,608 by the end of the year. These IIAs are largely dominated by old-generation treaties, signed in the 1990s and 2000s.

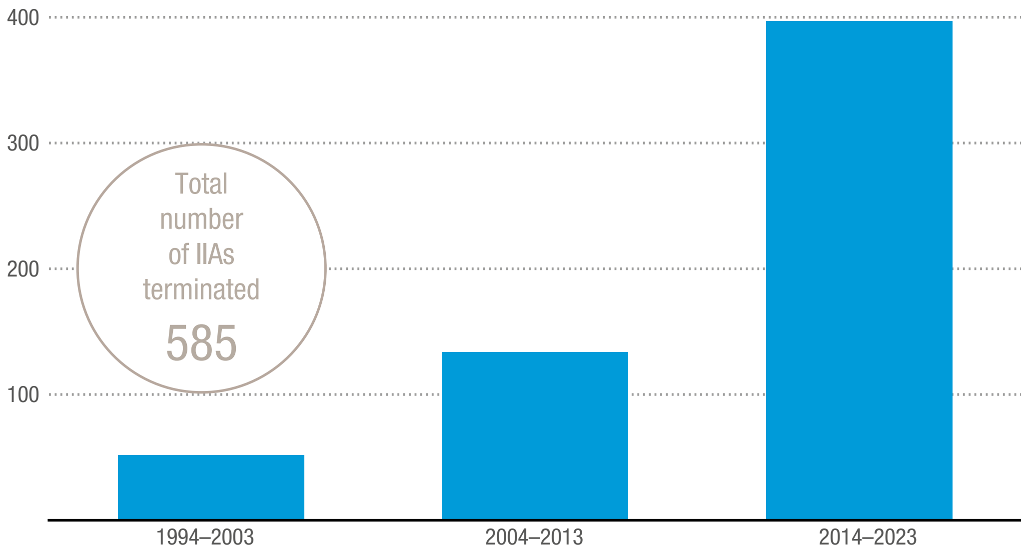
Figure 1
Agreements from the 1990s and 2000s continue to dominate the international investment agreements universe
(Annual number of agreements signed)



Source: UNCTAD, IIA Navigator database, accessed 25 March 2024.
Note: The UNCTAD IIA Navigator is updated continuously as new IIA-related information becomes available.
Abbreviations: IIA = international investment agreement.

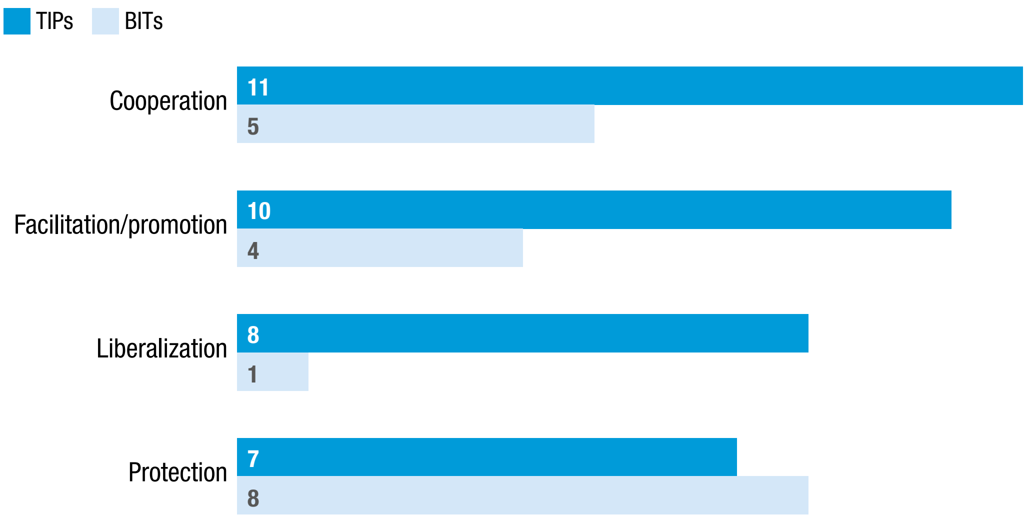
The total number of terminations reached at least 585 by 2023; about 70 per cent of these IIAs were terminated in the last decade (figure 2). Under sunset clauses, IIAs may continue to protect investments in existence at the time of termination or withdrawal and grant investors access to investor–State dispute settlement (ISDS) for up to 20 years afterward.

Figure 2
Terminations of investment agreements reach nearly 600
(Annual number of terminations)



Source: UNCTAD, IIA Navigator database, accessed 25 March 2024.
Abbreviations: IIA = international investment agreement.

Figure 3
Content of investment agreements is becoming more diverse
(Number of agreements signed in 2023 by type of commitment)



Source: UNCTAD, IIA Navigator database, accessed 25 March 2024.
Notes: Based on 22 IIAs (14 TIPs and 8 BITs) signed and/or adopted in 2023 for which text or other public information on content is available. Cooperation commitments refer to the establishment of institutional frameworks to cooperate on investment activities (investment committee) and/or undertakings to conduct joint activities on investment in one or more economic sectors.
Abbreviations: BIT = bilateral investment treaty, IIA = international investment agreement, TIP = treaty with investment provisions.

Box 1
AfCFTA Investment Protocol (2023)

The Investment Protocol to the AfCFTA, which involves 54 countries, is the first megaregional IIA covering the African continent in its entirety. It was adopted by the Heads of the State and Government during the Assembly of the African Union on 18–19 February 2023.

The Protocol builds on existing investment treaty reform objectives and best practices recognized by the African Union and the regional economic communities, as well as UNCTAD. UNCTAD's work on IIA reform is recognized in the preamble of the Protocol. The Protocol provides a balanced approach to international investment governance and contains the following elements:

- Proactive promotion and facilitation commitments for investment that fosters sustainable development
- Refined investment protection provisions that preserve the contracting parties' right and duty to regulate in the public interest and are extended to sustainable investments only
- A dedicated chapter on investment and sustainable development, with proactive commitments on climate action, health and pandemics, human capital development and technology transfer
- Enforceable investor obligations related to environmental and labour protection, human rights, the rights of local communities, transparent corporate governance, tax and non-interference in local governance
- Firm commitments on technical assistance and capacity-building for contracting parties, as well as support for implementation by the Pan-African Trade and Investment Agency established under the Protocol.

Upon entry into force, the Protocol will consolidate the IIA regime in Africa. Under its terms, 183 intra-African BITs will be replaced and regional economic organizations in Africa undertake to harmonize regional IIAs with the content of the Protocol.

UNCTAD is a member of the task force that assisted the AfCFTA Secretariat in the negotiation of the Investment Protocol and continues to assist in the negotiation of the Investment Dispute Settlement Annex to it.

Source: UNCTAD.

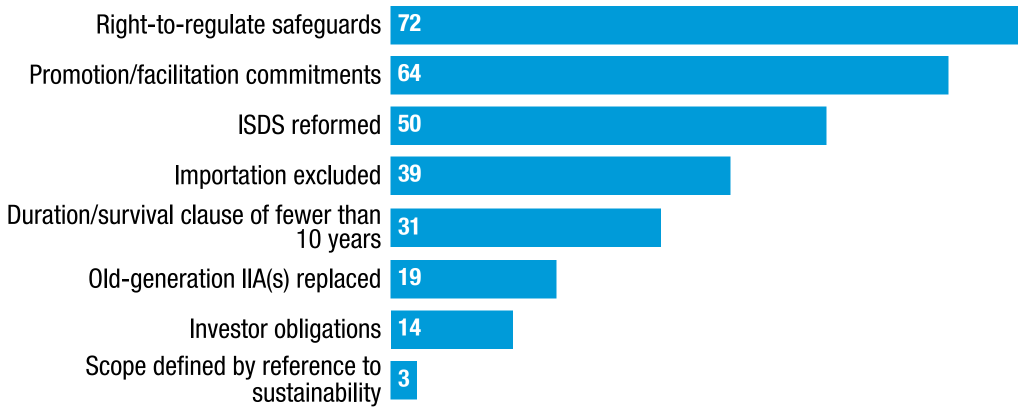
IIAs signed and/or adopted in 2023 cover a range of investment governance issues that go beyond protection, such as investment facilitation, cooperation or liberalization (figure 3). Notably, the majority of TIPs signed or adopted in 2023 included commitments on facilitation or cooperation. About half contained protection or liberalization provisions. In the Agreement Establishing the African Continental Free Trade Area (AfCFTA), the Protocol on Investment – adopted in February 2023 – provides an example of this nascent shift (box 1).

Newly concluded protection-focused IIAs continued the trend towards safeguarding States' right to regulate as well as reforming or omitting ISDS. It remains to be seen whether these refinements will be interpreted in line with the treaty parties' intent in ISDS. A lot remains to be done to focus the coverage of IIAs on sustainable investment and foster responsible business conduct by investors. New IIAs also commonly continue to bind countries for long periods of time, limiting their ability to adapt to changing economic realities and new regulatory imperatives (figure 4).

Figure 4

Recently signed investment agreements include reform features

Agreements signed between 2020 and 2023 with selected reform features
(Percentage)



Selected features of IIAs

Right to regulate safeguards. Reforms language of the majority of key substantive IIA provisions, as defined in UNCTAD's IIA Reform Accelerator, including those most often invoked in ISDS.[a]	**Duration/survival clause of fewer than 10 years.** Provides for initial duration of validity and survival clause of fewer than 10 years or omits them.
ISDS reformed. Contains procedural improvements, limits the access to ISDS for certain types of claims or omits ISDS altogether.	**Old-generation IIA(s) replaced.** Provides for the termination or suspension of at least one IIA upon entry into force.
Promotion/facilitation commitments. Includes commitments to transparency and/or the improvement of the regulatory environment, stakeholder engagement on investment policies or cooperation.	**Investor obligations.** Contains obligations applicable to investors, such as responsible business conduct, avoiding corruption, environmental management and the like.
Importation of elements from unreformed IIAs excluded. Excludes application of most-favoured-nation and non-derogation provisions to obligations in other IIAs.	**Scope defined by reference to sustainability.** The IIA scope of coverage is defined by reference to "sustainable development" and/or "sustainable investment".

Source: UNCTAD.
Notes: Based on 36 IIAs concluded in 2020–2023 for which texts are available, not including agreements that lack investment protection provisions.
Abbreviations: IIA = international investment agreement, ISDS = investor–State dispute settlement.
[a] The IIAs counted contain reform language for five or more key substantive provisions, including at least a circumscribed fair and equitable treatment standard and a clarified indirect expropriation clause, or a general exceptions clause with other reformed clauses, in line with the UNCTAD IIA Reform Accelerator (UNCTAD, 2020).

The reform of old-generation IIAs continues to advance at a slow pace. Only 19 per cent of the IIAs signed since 2020 replace an old-generation IIA; only 39 per cent ensure that the reformed provisions they contain would be effectively applied where parallel old-generation IIAs exist.

IIAs in force cover 65 per cent of global FDI stock. TIPs, which include regional and megaregional agreements and relate to a broad range of economic issues beyond investment disciplines, account for the largest share – 53 per cent. BITs, which typically include investment protection provisions only and apply bilaterally, cover about 7 per cent. The remaining 5 per cent are covered simultaneously by a TIP and a BIT (figure 5). The coverage of TIPs has increased by at least 10 per cent in the past decade, following the growing prominence of regional investment policymaking.

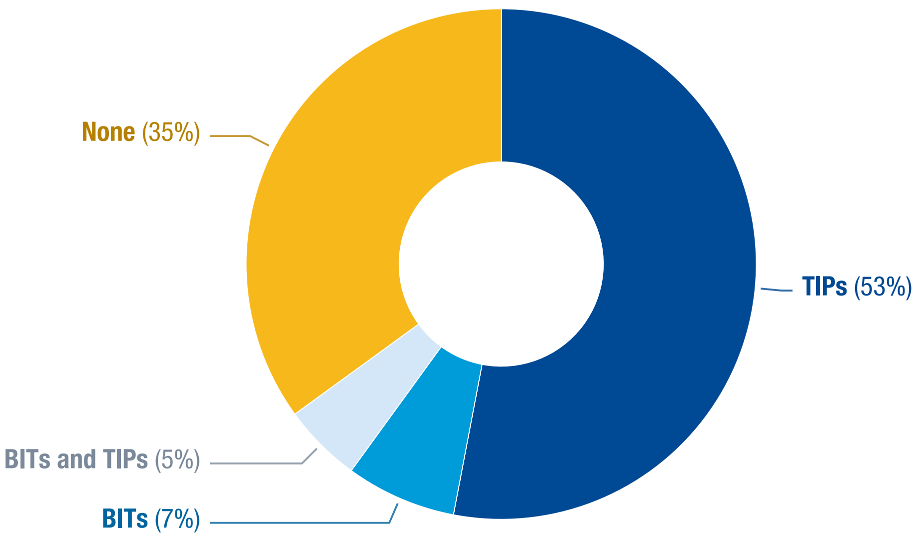
Old-generation IIAs, which provide broad and unrefined provisions that often expose host countries to greater risk of ISDS, cover 49 per cent of the total global FDI stock. For 53 countries, more than 80 per cent of total FDI stock is covered by an old-generation IIA. The exposure to ISDS is overall higher for developing economies and LDCs. Old-generation IIAs cover 65 per cent of developing countries' FDI stock. This is 16 per cent higher than the global average and more than 20 per cent higher than the share for developed economies. The difference is even higher for LDCs, for which old-generation treaties cover 71 per cent of their FDI stock (figure 6).

IIA terminations and replacements since 2012 have affected the IIA coverage of about 13 per cent of the total FDI stock.[1] Following terminations, 6 per cent of the stock is no longer covered; 4 per cent relates to developed economies and 2 per cent to developing economies. The remaining 7 per cent are now covered by a new-generation IIA. Barely any FDI stock of LDCs has been affected by terminations or replacements.

Figure 5

Investment agreements in force cover 65 per cent of global stock of foreign direct investment

Share of stock covered, by type of IIA (Percentage)



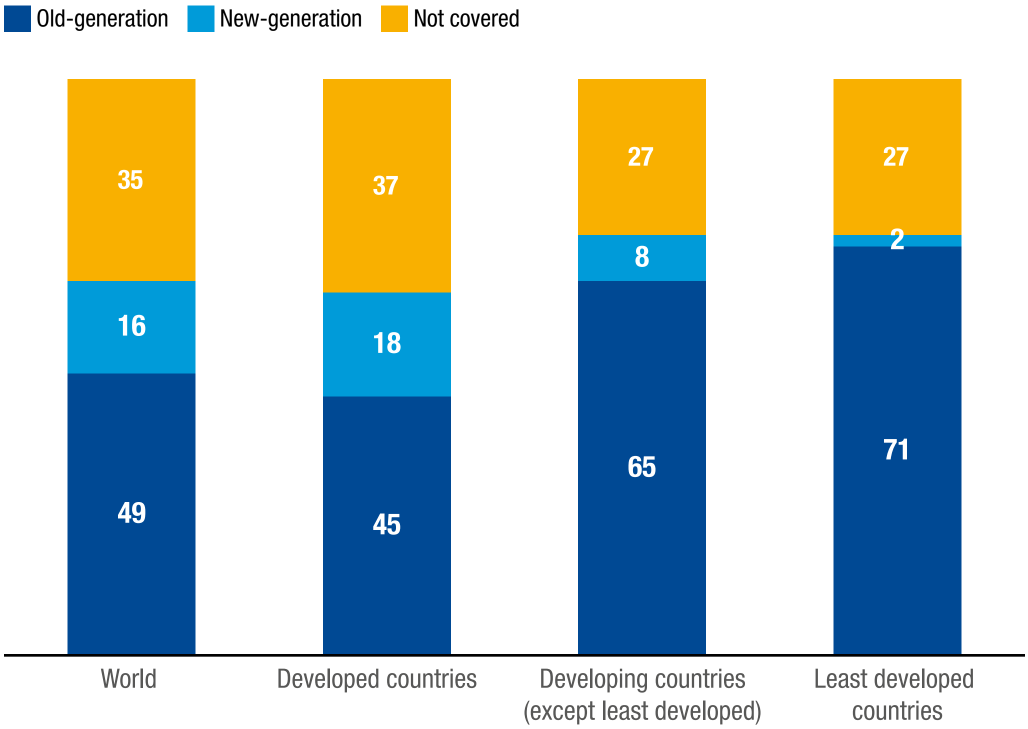
Source: UNCTAD, IIA Navigator database, accessed 25 March 2024, and IMF Coordinated Direct Investment Survey database, accessed 19 March 2024.
Notes: FDI stocks estimated on the basis of information about 193 United Nations Member States' shares of world FDI inward stock for 2022. Does not include confidential and unspecified stock data. Analysis based on 2,429 IIAs in force (2,220 BITs and 209 TIPs) with substantive investment commitments. For TIPs that include a relevant regional economic integration organization, only the FDI stock of members for which the IIA is in force was counted. Excludes the Energy Charter Treaty (1994) in view of its sector-specific scope.
Abbreviations: BIT = bilateral investment treaty, FDI = foreign direct investment, IIA = international investment agreement, TIP = treaty with investment provisions.

[1] Analysis based on 424 IIAs (415 BITs and 9 TIPs) terminated since 2012 (including IIAs that were terminated by mutual consent, unilaterally terminated, expired or replaced by a new treaty).

Figure 6

Old-generation investment agreements cover the majority of foreign direct investment stock in developing and least developed countries

Stock covered, by economic grouping and generation of agreement
(Percentage)



Source: UNCTAD, IIA Navigator database, accessed 25 March 2024, and IMF Coordinated Direct Investment Survey database, accessed 19 March 2024.
Notes: FDI stocks estimated on the basis of information about 193 United Nations Member States' shares of world FDI inward stock for 2022. Does not include confidential and unspecified stock data. Analysis based on 2,429 IIAs in force (2,220 BITs and 209 TIPs) with substantive investment commitments. For TIPs that include a relevant regional economic integration organization, only the FDI stock of members for which the IIA is in force was counted. Excludes the Energy Charter Treaty (1994) in view of its sector-specific scope. Where a new-generation IIA coexists with an old-generation IIA covering the same FDI stock without suspending its effect, the relevant FDI stock is considered covered by an old-generation IIA.
Abbreviations: BIT = bilateral investment treaty, FDI = foreign direct investment, IIA = international investment agreement, TIP = treaty with investment provisions

Taken together, these data suggest that to date IIA reform has had a limited effect on mitigating the risk of ISDS in developing countries and has largely left the FDI stock of LDCs subject to old-generation IIAs.

Old-generation IIAs have served as the basis for almost all ISDS cases to date (about 97 per cent), and developing countries have been respondents in the majority of them (about 62 per cent). Of these, at least 58 cases based on old-generation IIAs were initiated against LDCs. ISDS proceedings represent a significant financial risk for developing countries and LDCs, in particular. The average amount sought by investors in ISDS cases is $1.1 billion and the average amount awarded is $385 million. In at least eight ISDS cases developing countries were required to pay compensation of more than $1 billion. At the end of 2023, the amount that LDCs were required to pay totalled $595 million, with one case alone accounting for $270 million.

Other developments relating to investment rule-making

The withdrawals of France, Germany and Poland from the Energy Charter Treaty (ECT) (1994) became effective in 2023. Luxembourg's withdrawal took effect on 17 June 2024. At least five more countries have deposited notices to exit the ECT over concerns related to climate change, and the European Union formally notified its withdrawal in June 2024.

The trend towards negotiating flexible international instruments aimed at channelling investment towards the green economy continued. Partners concluded negotiations on the Clean Economy Agreement in the context of the Indo-Pacific Economic Framework for Prosperity.

The year witnessed the first outputs of the work of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on ISDS reform. In July 2023 the UNCITRAL Commission adopted the Model Provisions and the Guidelines on Mediation for International Investment Disputes, and the Code of Conduct for Arbitrators in International Investment Dispute Resolution. In April 2024, Working Group III finalized the draft statute for the establishment of an advisory centre on investment disputes.

Box 2
UNCTAD World Investment Forum 2023 – IIA track highlights

The events in the IIA track at the UNCTAD World Investment Forum 2023 brought together key actors in IIA reform:

High-level IIA conference 2023 (18 October 2023). Investment policymakers and experts from governments, international organizations, think tanks, academia and the private sector noted the challenges that the current IIA regime may pose to climate action, explored options for aligning IIAs with climate mitigation and adaptation goals, and called for the urgent reform of the stock of old-generation treaties. Based on requests by participants to identify ways to fast-track investment treaty reform for sustainable development and climate action, UNCTAD launched a Multi-Stakeholder Platform for IIA Reform.

International policy developments in investment facilitation (19 October 2023). The session united key actors in investment facilitation from Governments, development partners, private sector representatives and regional/international organizations, to analyse global trends and challenges in investment facilitation policies for sustainable development. Speakers welcomed UNCTAD's policy options for facilitating investment in sustainable development, part of the IIA Issues Note Investment Facilitation in IIAs: Trends and Policy Options (UNCTAD, 2023a).

Regional sessions (16–18 October 2023). Three sessions co-organized with key regional partner organizations complemented the UNCTAD World Investment Forum IIA track and highlighted the role that such organizations can play in shaping coherent international investment policies among their members:

- D-8 Organization for Economic Cooperation – UNCTAD Guiding Principles for Investment
- AfCFTA Investment Protocol: towards a new generation of investment policies in Africa
- Islamic Development Bank–UNCTAD Investment Policy Principles

Source: UNCTAD.
Notes: For more information on the UNCTAD World Investment Forum, see https:// worldinvestmentforum.unctad.org/wif-events-programme. For information on the UNCTAD Multi-Stakeholder Platform for IIA Reform, see https://investmentpolicy.unctad.org/news/ hub/1732/20231020-launch-of-multi-stakeholder-platform-for-investment-treaty-reforms.

The text of the Investment Facilitation for Development (IFD) Agreement was made public on 25 February 2024 by the ministers of 123 participating members of the World Trade Organization (WTO). The status of the text in relation to the Organization's architecture remains to be determined.

The UNCTAD World Investment Forum 2023 took place in Abu Dhabi on 16–20 October 2023 ahead of the twenty-eighth Conference of the Parties (COP28). At the Forum investment policymakers and experts discussed urgent reforms of the IIA regime in light of the climate crisis, resulting in the launch of the UNCTAD Multistakeholder Platform for IIA Reform (box 2).

Work on diverse aspects of international investment governance continued in several international forums, including OECD, UNCITRAL and UNCTAD. Notably, Brazil – which holds the Group of 20 Presidency in 2024 – identified sustainable development in IIAs as one of the key priorities for the Group of 20 Trade and Investment Working Group.

Facilitation in international investment policies

Investment facilitation plays an increasingly prominent role in IIAs and many of them encourage digitalization. Yet, much more is needed to gear facilitation commitments in IIAs towards sustainable investment and to render them operational on the ground. UNCTAD has developed a set of policy options that enable governments to leverage the facilitation commitments in their IIAs towards sustainable investment, with the support of strategic digitalization.

Recent IIAs increasingly contain provisions aimed at improving the regulatory environment in host countries, encouraging stakeholder engagement, setting up regular cooperation mechanisms between the contracting parties and facilitating investment for sustainable development (figure 7). Prominent examples of these provisions appear in treaties and instruments concluded at the plurilateral, regional and bilateral levels.

The text of the IFD Agreement in the context of the WTO strongly emphasizes transparency and streamlining of administrative procedures and contains elements to support sustainable development, responsible business conduct and international cooperation. At the regional level, the Protocol on Investment (2023) to the AfCFTA, as well as the Association of Southeast Asian Nations (ASEAN) Investment Facilitation Framework (IFF) (2021) and the Intra-MERCOSUR Cooperation and Facilitation Investment Protocol (2017), contain proactive commitments to sustainable investment, digitalization and cooperation. At the bilateral level various models promote investment facilitation, including the Cooperation and Facilitation Investment Agreements concluded by Brazil, the Angola–European Union Sustainable Investment Facilitation Agreement (SIFA) (2023) or the framework agreements such as the Australia–Singapore Green Economy Agreement (2022).

Digitalization, expressly encouraged in several recent IIAs, can serve as a tool for effectively implementing IIA facilitation commitments. It is the natural implementation mechanism for transparency commitments, the most common facilitation feature in recent IIAs.

Figure 7

Recent IIAs include a wide range of facilitation commitments

Share of IIAs signed during 2015–2023, by investment facilitation feature
(Percentage)

Selected features of IIAs

Transparency of investment-related measures. Commitment to publish investment-related measures and/or measures that affect the application of the IIA, including online.	**Right to comment on proposed regulatory measures.** Commitment to provide investors the opportunity to comment on proposed measures.
Entry and stay of personnel. Commitment to streamline and/or render more transparent procedures for granting entry and stay of investors, including sympathetic consideration commitments.	**Focal points for investors.** Commitment to establish institutions available to investors with information, aftercare, dispute avoidance and/or broader functions.
Objective application of investment-related measures. Commitment to objective and predictable application, independence of administering authorities and/or maintenance of appeal and review mechanisms.	**Institutional framework for cooperation.** Establishment of a cooperation mechanism under the IIA, including for contracting parties' institutions responsible for investment.
Streamlining of administrative procedures. Commitment to eliminate redundant bureaucratic steps and clarify the administrative process, including through digitalization and eGovernment tools.	**Technical assistance and capacity-building.** Reference to technical assistance and/or capacity-building activities in the IIA.
Regulatory practices and coherence. Encouragement of good rule-making practices (e.g. regulatory impact assessment, periodic review) and/or inter-agency coordination.	**Proactive provisions facilitating sustainable investment.** Commitment to proactive measures aimed at promoting and facilitating investment linked to the Sustainable Development Goals (e.g. environment, health, climate action).

Source: UNCTAD.
Notes: Based on 235 IIAs, 148 BITs and 87 TIPs concluded in the period 2015–2023 for which texts are available.
Abbreviations: BIT = bilateral investment treaty, IIA = international investment agreement, TIP = treaty with investment provision.

It can also operationalize IIA commitments to streamline investment administrative procedures and improve stakeholder engagement. Recent treaties increasingly encourage digitalization or include commitments regarding online information provision or single windows (figure 8).

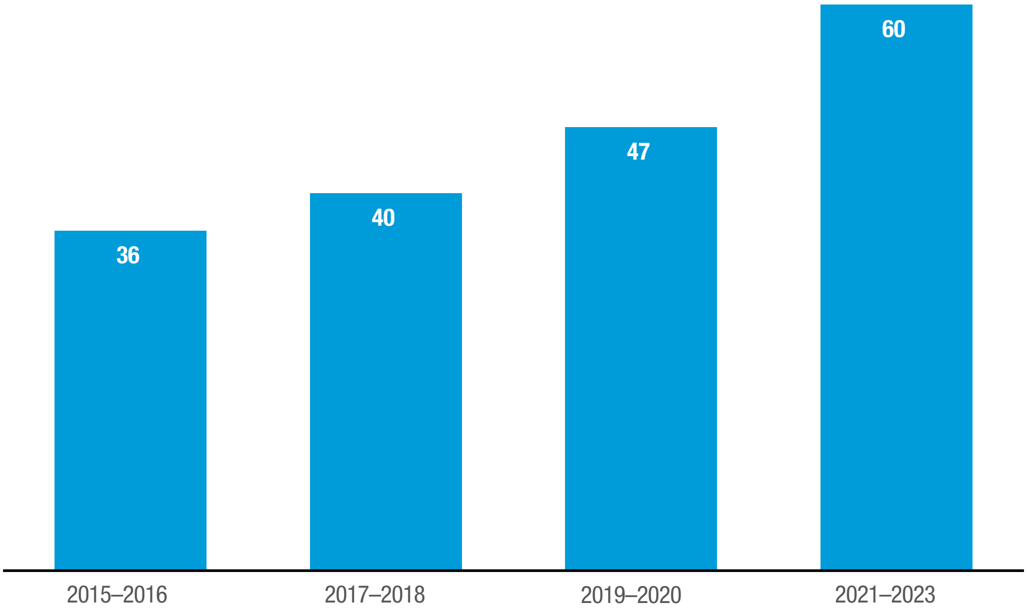
Over half of all IIAs signed since 2015 contain a commitment to publish investment-related measures. Such transparency provisions are among the earliest investment facilitation commitments to appear in IIAs, and the share of IIAs that contain them has grown steadily. IIAs commonly extend this commitment to proposed measures and at times include a detailed indicative list of measures to publish. These can cover regulations directed specifically at investors, such as incentive schemes, as well as measures or laws that are likely to affect investments indirectly, such as regulations concerning corporate governance, insolvency, property or taxation. Examples of such detailed provisions can be found in the Angola– European Union SIFA, the IFD agreement, the Türkiye–United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA) (2023) and the ASEAN IFF, among others. These treaties illustrate the catalytic role that international agreements can play in the adoption of facilitation measures and digital government tools.

Digital government tools are the most effective way to operationalize transparency commitments. About half of IIAs with transparency provisions signed in the past five years contain a commitment to online publication, and several expressly encourage the contracting parties to create a digital information portal. For example, under the Angola–European Union SIFA, each contracting party commits to make a wide range of information available to investors by electronic means and, where practicable, through a single portal.

A key national policy component that recent IIAs have begun to incorporate is the simplification and streamlining of investment-related administrative procedures. These provisions usually aim to eliminate redundant bureaucratic steps and to clarify the administrative process for investment-related application procedures. They often require a reasonable time frame and cost for licence applications, encourage countries to consolidate the application process under a single agency and establish certain procedural commitments for the application process. Recent examples include the Angola–European Union SIFA, the China–Ecuador Free Trade Agreement (FTA) (2023), the IFD agreement, the Türkiye–United Arab Emirates CEPA and the ASEAN IFF.

More recently, treaty partners have also begun to commit to streamlining procedures in the energy sector to support energy transition efforts or to facilitate investment in the energy transition (see the AfCFTA Investment Protocol and the European Union–New Zealand FTA) (UNCTAD, 2023a; UNCTAD, 2023b). Another provision that can benefit from digitalization is the streamlining of procedures for the entry and stay of investors and key personnel (see, for example, the Regional Comprehensive Economic Partnership Agreement (2020) and the Israel–Republic of Korea FTA (2021)).

Figure 8
IIAs increasingly encourage digitalization
Facilitation provisions in IIAs that refer to digital tools
(Percentage)



Source: UNCTAD.
Notes: Based on 131 IIAs, 70 BITs and 61 TIPs concluded in 2015–2023 that contain at least one facilitation provision. Data based in part on International Economic Law Clinic (2024).
Abbreviations: BIT = bilateral investment treaty, IIA = international investment agreement, TIP = treaty with investment provision.

Digital government solutions can help eliminate redundant bureaucratic steps and streamline the administrative process. The ASEAN IFF (2021) offers a regional example in which parties endeavour to establish and maintain single online digital platforms for investor applications. Similarly, at the bilateral level, the Türkiye–United Arab Emirates CEPA contains a commitment to work towards the "the highest possible level of digitalization of procedures related to investments". Parties also refer to measures that have proven to be effective, such as one-stop shops, single portal submissions or commitments to accept the submission of electronic applications, documents and payments (see the AfCFTA Protocol on Investment and the Angola–European Union SIFA, among others).

Used strategically, digitalization can improve the overall investment climate and also contribute to operationalizing IIA provisions aimed at facilitating sustainable investment. For example, to render tangible recent IIA commitments to facilitate investment in renewable energy, parties may prioritize the digitalization of licencing processes related to construction of energy installations or laying of cables, disbursement of renewable energy incentives or connections to electricity grids (UNCTAD, 2023c).

About 30 per cent of IIAs signed since 2015 include a commitment to offer investors and relevant other stakeholders the opportunity to comment on proposed investment-related measures (see for example the Australia–United Kingdom FTA (2021)). Some 17 per cent also require the creation of focal points for investors, with informational or grievance functions. Examples include the Cooperation and Facilitation Investment Agreements of Brazil, the intra-MERCOSUR Protocol on Investment Facilitation and the Regional Comprehensive Economic Partnership Agreement (2020). Some recent IIAs also encourage the establishment of local supplier databases (see the Angola–European Union SIFA and the IFD agreement, which are by default digital).

The use of digital tools can improve the efficiency of all these commitments, as well as their accessibility, including for underrepresented economic actors and civil society. The work of focal points can be optimized by, for example, a first-response automated chat assistant for simple information requests and a mechanism to direct grievances to relevant officers, which allows an overall higher number of inquiries to be processed. Similarly, maintaining an online portal for investor and civil society comments on proposed investment-related measures can allow a broader range of stakeholders to access it and improve the efficiency of collecting, processing and disaggregating comments.

Building on best practices, UNCTAD has developed a set of policy options that enable governments to leverage their IIAs to facilitate investment for sustainable development, with the support of strategic digitalization (table 1).

Countries have several policy options to gear investment facilitation provisions in their IIAs towards sustainable development in a more explicit manner. An overarching option is to define the scope of IIAs through the lens of sustainable development. This could take the form of listing specific and measurable indicators to identify economic, social and environmental sustainability characteristics under the definition of investment. IIA partners could complement this approach by incorporating proactive facilitation commitments targeted at sustainable investment, and by prioritizing regulatory facilitation measures that have the highest sustainable impact. IIAs can also include provisions ensuring that stakeholder engagement mechanisms and cooperation mechanisms (e.g. investment committees) have a positive impact on sustainability, and condition home country support for investment on meeting sustainability criteria.

Digitalization can play a key role in operationalizing all of the policy options above. E-government tools can enable countries to render their general investment environment more transparent and streamline it (for procedures such as setting up a business, admission of investment, licence applications). Complementary efforts to digitalize the information and procedures specific to priority SDG sectors can further boost the ground-level effect of IIA provisions targeted at sustainable investment.

Implementing investment facilitation provisions in IIAs can be resource- and capacity-intensive, rendering them burdensome for developing countries. Such provisions are most effective when accompanied by firm commitments on the part of the more developed party to provide technical assistance and capacity-building (and concomitant resources) aligned with the recipient country's developmental priorities.

In doing so, countries may benefit from coordinating their IIA negotiating objectives and priorities with their national focal points for investment promotion and facilitation (usually the Investment promotion agency), to align IIA facilitation content with the country's overall investment facilitation agenda.

Table 1
IIA policy options for facilitating investment in sustainable development

Policy options	Policy actions
Define the scope of IIAs in line with sustainability criteria	• Define "investment" in IIAs in line with sustainable development criteria. • List specific and measurable indicators to identify economic, social and environmental sustainability characteristics.
Focus facilitation commitments on sustainable investment	• Privilege IIA commitments that aim to proactively facilitate investment in priority SDG sectors (e.g. renewable energy, agriculture, health, water and sanitation etc.) or of relevance to sustainable investment projects (e.g. favouring underrepresented communities, leading to technology transfer and/or human resources development etc.) (on SDG sectors see UNCTAD, 2014). • Endeavour to reduce the time and cost burden on investors wishing to enter priority SDG sectors, e.g. by undertaking measures to streamline and digitalize the application processes specific to those sectors, in addition to general streamlining of the regulatory environment. • Complement these facilitation commitments with investment promotion tools specific to priority SDG impactful investments.
Prioritize general regulatory environment commitments aligned with sustainable development and the IIA partners' capacities	• Privilege IIA commitments on streamlining and digitalizing the general investment climate, particularly through measures that: (i) benefit all sustainable investors (independently of their size or nationality); (ii) are always available (not only in case of dispute); (iii) use resources effectively by building on existing legal and institutional infrastructure. • Include safeguards preserving the IIA partners' regulatory space to take measures in the public interest. • Include special and differential treatment provisions, to ensure that commitments are adapted to less developed IIA partners.
Focus stakeholder engagement mechanisms on sustainable outcomes	• Use digitalization for stakeholder engagement commitments in IIAs – such as focal points, local supplier databases, opportunity to comment on proposed regulatory measures – to render them more efficient and inclusive for all stakeholders in investment activities (e.g. all investors, independently of size and nationality, as well as civil society). • Leverage the digitalization of stakeholder engagement mechanisms to gather SDG-relevant data on users (e.g. gender, geographical distribution, etc.), to enable informed policy decision-making for sustainable development.
Strengthen the sustainable development aspect of cooperation mechanisms (e.g. investment committees)	• Create frameworks for direct cooperation between the parties' institutions responsible for investment, as well as the ones working on the SDG-relevant investments targeted by the IIAs (e.g. e-government agencies, relevant sectoral ministries, development finance institutions, research and development stakeholders, human capital development bodies etc.). • Include a strong cooperation mechanism regarding the IIA's facilitation commitments, by: (i) defining a clear workplan for cooperation; (ii) requiring periodic meetings and encourage reporting on implementation progress; (iii) establishing an «investment committee» responsible for reporting and implementation functions; (iv) determining the strength of the committee's decisions and recommendations. • Include firm commitments to provide technical assistance and capacity-building (and concomitant resources) for digitalization of the investment environment and specifically of the priority SDG sectors and for priority categories of investments.
Facilitate access for all IIA partner investors to outward support/de-risking instruments	• Facilitate for sustainable investors from all IIA partners the access to outward support instruments such as development finance or investment guarantees, especially for partners at different levels of economic development, and include information on such programmes (see e.g. Kenya–United Kingdom EPA, 2020).

Source: UNCTAD.

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Newly concluded IIAs increasingly incorporate proactive commitments aimed at improving the investment climate in the contracting parties. Many recent IIAs and investment governance instruments steer towards investment facilitation commitments and tend to encourage digitalization to implement them. There is also growing interest in establishing continuous cooperation mechanisms for investment activities, sometimes directed at specific development objectives. As to newly concluded IIAs with investment protection elements, the majority included refinements, clarifications and flexibility mechanisms that aim to preserve countries' right to regulate in the public interest.

IIA reform continues to advance at a slow pace, accentuating the dichotomy in the IIA regime between newer and older treaties. Old-generation IIAs continue to dominate the regime as much in terms of number of IIAs in force as in coverage of FDI stock. They also form the basis of most ISDS cases, including for new cases initiated in 2023. Developing countries – and LDCs in particular – are the most disadvantaged by the slow pace of reform, as their exposure to the risks of ISDS is significantly higher than that of developed economies. In addition, the dichotomy is producing a progressively more complex IIA regime with overlapping and sometimes contradictory commitments, making it difficult for countries to navigate, especially developing ones and least developed ones.

UNCTAD's *Multi-Stakeholder Platform for IIA Reform*, established in 2023 as an outcome of UNCTAD's World Investment Forum, aims to fast-track IIA reform and underscores the importance of providing an inclusive forum that promotes the alignment of investment governance with sustainable development priorities. Since 2012, UNCTAD has played a leading role in facilitating IIA reform action by developing core policy guidance tools. UNCTAD will continue to work with all stakeholders to build the capacity of country negotiators and policymakers to ensure that the IIA regime works for – rather than impedes – sustainable development objectives.

This IIA Issues Note was prepared by UNCTAD's IIA team, based on research published in UNCTAD's World Investment Report 2024 (UNCTAD, 2024). The research was conducted by Dafina Atanasova, Vincent Beyer, Lucas Ricardo, Diana Rosert and Yihua Teng under the direction of Hamed El-Kady. Overall guidance was provided by Nan Li Collins.

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