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**PRESERVING FLEXIBILITY IN IIAs:  
THE USE OF RESERVATIONS**

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**CONCLUDING REMARKS**



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## CONCLUDING REMARKS

It is the very nature of IIAs to constrain the policy options available at the national level. Despite such constraints, host country governments in developed and developing countries alike have entered into an ever-increasing number of IIAs at the bilateral, regional and interregional levels. To a considerable degree, they have done so because they view IIAs as useful tools for enhancing domestic investment climates, for locking-in recently enacted (and typically liberalizing) policy reforms and for signalling the future direction of their investment policies. While legally binding obligations can indeed prove beneficial for consolidating ongoing reform efforts and for increasing the transparency and predictability of national investment regimes, IIAs have long recognized, in various forms, the need of host countries to preserve flexibility for putting in place national development policies.

Among the key means through which IIAs can satisfy host countries' needs for flexibility is the scope they afford for lodging reservations with a view to maintaining existing (or introducing future) policy measures that do not conform to substantive treaty obligations. The need for flexibility is arguably greatest in developing countries, given prevailing weaknesses in regulatory frameworks and institutions and the task to support the development of indigenous productive capacity in key sectors. Moreover, developing countries do not always have sound and established policies in place, and, therefore, trial-and-error regulatory experimentation may still take place in key (and, usually, heavily regulated) activities. In such cases, precautionary reservations (i.e. those relating to future measures) may be a tool for ensuring that international disciplines do not limit the regulatory flexibility of present and future governments. This in turn should allow them to resort to measures that may prove crucial for a solid and pro-development regulatory framework.

The ability to schedule reservations and to maintain or introduce existing or future non-conforming measures can provide a form of "insurance policy" with regard to host countries' obligations on investment liberalization and protection in IIAs. Making adequate use of reservations may help a host country to reap the benefits potentially associated with liberalized investment conditions and help build domestic support for the nature, level and pace of market opening policies.

The administrative burden that the preparation of reservation lists implies is a matter that can and should be addressed through more capacity building, policy research and technical assistance from capital exporting countries or regional and multilateral agencies. A better understanding of the scope and content of IIAs, as well as of host countries' economic standing, regulatory frameworks and implementation capacities may help developing country officials to discern more precisely the areas where reservations may be desirable and necessary. It may also assist them to identify the types of reservations that are best suited for meeting domestic policy objectives. Longer transition periods for developing countries could be another tool. As one element of special and differential treatment, they may help alleviate some of the difficulties related to the conclusion of IIAs.

This study has focused attention on aggregate trends in the nature and sectoral incidence of reservations lodged by different countries under a sample of important IIAs. It aims to provide a starting point for understanding (by comparing what countries have done in the past) what measures and sectors require particular attention with respect to preserving the necessary flexibility in future IIAs. Data limitations prevented a more refined study of "in-sector" trends in reservation patterns, e.g. to distinguish trends in non-conforming measures in banking and comparing them with results obtaining in insurance or securities services. Future work

could shed further light into the revealed preferences for flexibility on the part of host countries in those key service sectors where the overall incidence of non-conforming measures is most pronounced (i.e. transportation, financial services, telecommunications and professional services).