25 October 2011

Sixth Report on G20 Investment Measures[1]

1. At their Summits in London, Pittsburgh, Toronto, and Seoul, G20 Leaders committed to forgo protectionism and requested public reports on their adherence to this undertaking. The present document is the sixth report on investment and investment-related measures in response to this mandate.[2] It has been prepared jointly by the OECD and UNCTAD Secretariats and covers investment policy and investment-related measures taken between 29 April 2011 and 6 October 2011.

I. Investment developments

2. The moderate recovery in global foreign direct investment (FDI) inflows continued in the first half of 2011, but increasing downside risks resulting from a fragile recovery of the global economy and rising financial market turbulence may slow FDI growth in the second half of 2011.[3]

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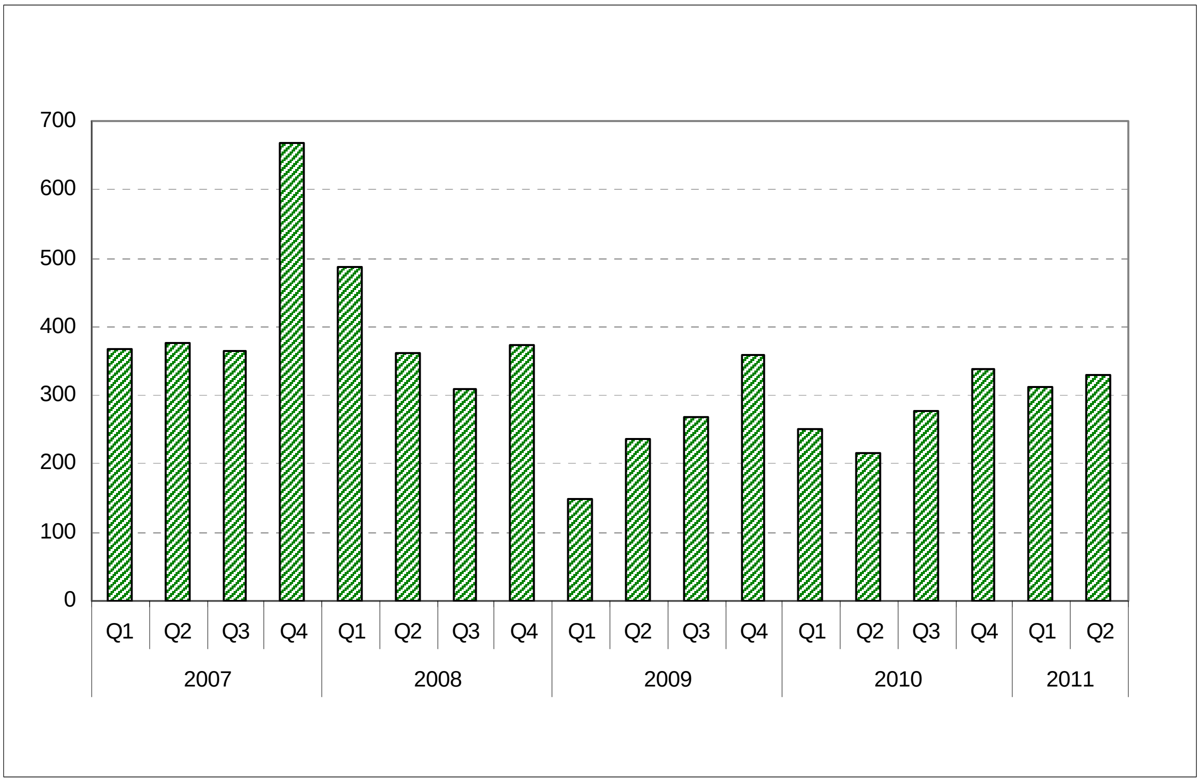
1 Information provided by OECD and UNCTAD Secretariats.

2 Earlier reports by WTO, OECD and UNCTAD to G20 Leaders are available on the websites of the OECD and UNCTAD.

3 For further information and analysis on recent trends, see UNCTAD's "Global Investment Trends Monitor", Issue No.18, October 2011 (http://www.unctad.org/en/docs//webdiaeia2011d13_en.pdf). See also OECD Investment News, Issue 16, October 2011 (www.oecd.org/daf/investment).

Figure 1. Global FDI inflows, 2007Q1-2011Q2 (USD billion)*



* Global FDI data are only for 75 countries that account for roughly 86% of global FDI flows in 2007-2010. Second quarter of 2011 data for the United Kingdom was estimated using quarterly outward data from four major investor countries (Belgium, Germany, Netherlands, and the United States). *Source*: UNCTAD.

II. Investment policy measures

3. During the 29 April to 6 October 2011 reporting period, nine G20 members took some sort of investment policy action such as investment-specific measures or investment measures relating to national security or concluded international investment agreements (Table 1).[4]

4. Emergency and related measures with potential impacts on international investment that some G20 members had introduced in response to the financial and economic crisis in late 2008 and early 2009 have for the most part been phased out. Countries continued to unwind positions resulting from such measures, a process that is expected to take more than a decade for the larger illiquid asset-pools located in “bad banks”. The unwinding of financial positions continues to have potential impacts on international investment, as has been highlighted in the previous OECD-UNCTAD reports to G20 Leaders. No major developments have taken place in this area in the reporting period, but the concerns related to these measures persist.

5. Recent resurgence of turbulence in financial markets resulting from fears over sovereign defaults, the reduced prospects for economic recovery and other factors may lead to renewal of pressure for governments to assist companies. As in the earlier round of emergency help, possible support could take a variety of forms. Because of their potential to distort markets and have long-lasting effects on investment, including FDI, any such measures should be designed with utmost care and include commitments to discontinue their use in a reasonable timeframe.

4 The Annex contains detailed information on the coverage, definitions and sources of the information in this report.

Table 1: Investment and investment-related measures taken or implemented between 29 April 2011 and 6 October 2011

	Investment-specific measures	Investment measures related to national security	International Investment Agreements (IIAs)
Argentina			
Australia			
Brazil	•		
Canada			•
China		•	
France			
Germany			
India	•		
Indonesia			•
Italy	•		
Japan			•
Korea	•		
Mexico			
Russian Federation			•
Saudi Arabia			
South Africa			
Turkey			
United Kingdom			
United States			
European Union			

(1) Investment-specific measures

6. Four countries amended investment-specific policies (those not designed to address national security) during the reporting period. Investment-specific policy changes were more common in emerging economies than in advanced economies.

7. Measures include the following:

- Brazil extended its existing tax on certain financial transactions to additional operations. Brazil also lifted the 49% cap on foreign ownership on telecoms network operators providing cable TV services.

- India introduced a number of liberalisation measures. These measures include: changes to the authorisation procedure for FDI in limited liability partnerships; an increase of the ceiling for FDI in FM radio broadcasting; a liberalisation of rules applicable to divestment of Indian outward FDI and to the issuance of shares of an Indian company to non-residents; an increase of the ceiling applicable to qualified foreign investors for the purchase of rupee-denominated units of equity schemes of domestic mutual funds; and a series of liberalisation measures concerning external commercial borrowing. India also issued a new consolidated FDI policy that liberalises, among others, FDI in construction-development in the education sector and in old age homes, as well as in apiculture.

- Italy announced the launch of the *Fondo Strategico Italiano Spa*. The State-owned Fund has a mandate to acquire stakes – usually minority stakes – in companies of “national interest”.

- Korea lowered the ceiling on banks’ foreign exchange forward positions by 20%.

8. Although policy changes in the reporting period were relatively limited, these measures show continued moves toward eliminating restrictions to international capital flows and improving clarity for investors (Brazil and India); there were also some steps towards discouraging, and possibly restricting international investment (Brazil and Korea).

(2) Investment measures related to national security

9. One G20 member, China, amended its investment policies related to national security. China issued revised rules on the implementation of the review procedure for inward investment proposals.

(3) International investment agreements

10. During the reporting period, G20 members continued to negotiate or pass new international investment agreements (IIAs) to further enhance the openness and predictability of their policy frameworks governing international investment.[5] Between 29 April 2011 and 6 October 2011, G20 members concluded four bilateral investment treaties (BITs) (Tables 1 and 3), and on 31 May 2011, Japan and Peru signed an Economic Partnership Agreement (EPA) which incorporates – by reference – the 2008 BIT between Japan and Peru.[6]

Table 3: G20 members' International Investment Agreements*

	Bilateral Investment Treaties (BITs)		Other IIAs		Total IIAs as of 6 October 2011
	Concluded 29 April -6 October 2011	Total as of 6 October 2011	Concluded 29 April-6 October 2011	Total as of 6 October 2011	
Argentina		58		16	74
Australia		22		16	38
Brazil		14		17	31
Canada	1	30		21	51
China		127		15	142
France		102		62	164
Germany		136		62	198
India		80		14	94
Indonesia	1	63		17	80
Italy		94		62	156
Japan	1	17	1	20	37
Korea, Republic of		91		15	106
Mexico		28		17	45
Russian Federation	1	70		4	74
Saudi Arabia		22		12	34
South Africa		46		9	55
Turkey		84		19	103
United Kingdom		104		62	166
United States		47		64	111
European Union				58	58

* UNCTAD's IIA database is constantly updated, including through retro-active adjustments based on a refinement of the methodology for counting IIAs.

III. Overall policy implications

11. On the whole, G20 members have continued to honour their pledge not to retreat into investment protectionism. Most of the few investment policy measures taken during the reporting period represent continued moves towards eliminating restrictions to international capital flows and improving clarity for investors. However, there have also been a few instances of new restrictions.

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5 During the reporting period G20 members also signed ten double taxation treaties (DTTs). As of 6 October 2011, globally there were over 2827 BITs, 3018 DTTs and approximately 314 "other IIAs", making a total of 6159 IIAs.

6 These include the BITs between Guinea and Russian Federation (6 June 2011); Indonesia and Serbia (6 September 2011); Colombia and Japan (12 September 2011); and Canada and Kuwait (26 September 2011). Several IIAs that were signed and reported earlier entered into force during the reporting period, including the treaties between India and Malaysia (1 July 2011); the EU and Korea (1 July 2011); Korea and Peru (1 August 2011); China and Costa Rica (1 August 2011); Japan and India (1 August 2011); and Canada and Colombia (15 August 2011).

12. G20 members have discontinued almost all support measures in response to the financial and economic crisis and are slowly winding down financial positions acquired during their earlier interventions. However, the recent resurgence of turbulence in financial markets and weakening growth prospects could create pressure for new government measures to support companies. At a time when the global economy urgently needs a boost from private investment to generate growth and jobs, short-term crisis management will need to be coordinated with efforts to boost long-term productive investment. Ensuring that any future crisis response measures are as transparent and non-discriminatory as possible will help limit damage to the functioning of global capital markets.

Reports on individual economies:
Recent investment measures (29 April 2011 – 6 October 2011)

	Description of Measure	Date	Source
Argentina			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
Australia			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
Brazil			
Investment policy measures	On 27 July 2011 and 16 September 2011, Brazil extended a 1% financial operations tax on transactions that raise short-dollar positions and on transactions that reduce long-dollar positions, respectively.		Decree 7,536/2011 of 26 July 2011; Decree 7,563/2011 of 15 September 2011.
	On 13 September 2011, Law No. 12485 came into force. The law lifts the 49% cap on foreign ownership on telecoms network operators providing cable TV services.	13 September 2011	Lei Nº 12.485, 12 September 2011.
Investment measures relating to national security	None during reporting period.		
Canada			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
China			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	On 25 August 2011, China's Ministry of Commerce (MOFCOM) released new "*Regulations on the Implementation of the Security Review System for M&As of Domestic Enterprises by Foreign Investors*". The rules, which replace the "*Interim Provisions on Issues Related to the Implementation of the Security Review System for M&As of Domestic Enterprises by Foreign Investors*", came into effect on 1 September 2011. They set out the procedure of security reviews that China introduced in March 2011.	1 September 2011	Regulations on the Implementation of the Security Review System for M&As of Domestic Enterprises by Foreign Investors, *MOFCOM Announcement No.53/2011*.
France			
Investment policy measures	None during reporting period.		
Investment measures relating to national	None during reporting period.		

	Description of Measure	Date	Source
security			
Germany			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
India			
Investment policy measures	On 11 May 2011, the Cabinet committee on economic affairs (CCEA) decided that LLPs with FDI will be allowed through the government approval route, in sectors or activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance related conditions.	11 May 2011	"*Government Permits FDI in LLP Firms*", press release, Ministry of Commerce and Industry, 20 May 2011.
	On 7 July 2011, the Union Cabinet approved the 'Policy Guidelines on Expansion of FM radio broadcasting services through private agencies (Phase-Ill)'.This new policy guidelines raised the ceiling of FDI in FM radio broadcasting to 26%, up from 20%.	7 July 2011	"*Policy Guidelines for expansion of FM Radio Broadcasting services through private agencies (Phase III)*", press release, Government of India, 7 July 2011.
	In the reporting period, the Reserve Bank of India released a series of circulars that liberalise cross-border capital flows. These include the following:		
	– On 27 May 2011 and 29 June 2011, the Reserve Bank of India released two circulars that consolidate and liberalise policies regarding the rules applicable for divestment of Indian outward FDI.	27 May 2011; 29 June 2011	"*Overseas Direct Investment – Liberalisation/ Rationalisation*", Reserve Bank of India Circulars RBI/2010-11/548 A.P. (DIR Series) Circular No. 69 and RBI/2010-11/584 A.P. (DIR Series) Circular No. 73.
	– On 30 June 2011, the Reserve Bank of India liberalised the issuance of shares of an Indian company to non-residents under the FDI scheme.	30 June 2011	"*Foreign Direct Investment (FDI) in India – Issue of equity shares under the FDI Scheme allowed under the Government route*", Reserve Bank of India Circular RBI/2010-11/586 A.P. (DIR Series) Circular No. 74.
	– On 1 July 2011, the Reserve Bank of India released a series of "Master Circulars" that consolidate existing policy at regular intervals – typically 12 months – for greater clarity. A series of the circulars released on 1 July 2011 concern cross-border transactions, such as External Commercial Borrowing, remittances, direct investment by residents abroad, and acquisition and transfer of real estate in India by foreigners.	1 July 2011	
	– On 21 July 2011, RBI Circular No. 3 allows non-resident importers and exporters to hedge their currency risk in respect of exports from and imports to India with certain banks in India.	21 July 2011	"*Facilitating Rupee Trade – hedging facilities for non-resident entities*", Reserve Bank of India Circular RBI/2011-12/115 A.P. (DIR Series) Circular No. 3.
	– On 9 August 2011, the Reserve Bank of India extended the possibilities for Foreign Institutional Investors (FII) registered with the Securities and Exchange Board of India (SEBI) and Non Resident Indian (NRI) to purchase, on repatriation basis, units of domestic Mutual Funds (MFs). Henceforth, Qualified Foreign Investors may purchase up to USD 10 billion in rupee-denominated units of equity schemes of domestic MFs issued by SEBI registered domestic MFs.	9 August 2011	"*Investment in the units of Domestic Mutual funds*", Reserve Bank of India Circular, 9 August 2011.
	In late September 2011, the Reserve Bank of India (RBI) released six announcements on the rationalisation and liberalisation of its External Commercial Borrowing (ECB) policy:		"*External Commercial Borrowing (ECB) Policy – Rationalisation and Liberalization*", Reserve Bank of India press release, 25 September 2011.
	– On 23 September 2011, RBI circular No. 25 announced a liberalisation of the end-use of ECB for companies operating in the infrastructure sector, which are henceforth allowed to utilise 25% of newly raised funds	23 September 2011	"*External Commercial Borrowings (ECB) for the Infrastructure Sector– Liberalisation*", Reserve Bank of India Circular RBI/2011-12/199 A.P.

	Description of Measure	Date	Source
	to refinance existing loans.		(DIR Series) Circular No. 25.
	– On 23 September 2011, RBI circular No. 26 announced a liberalisation of the end-use of ECB so that 25% of freshly raised funds may be used for refinancing IDR loans interest by companies in the infrastructure sector.	23 September 2011	"*External Commercial Borrowings (ECB) – Bridge Finance for Infrastructure Sector*", Reserve Bank of India Circular RBI/2011-12/200 A.P. (DIR Series) Circular No. 26.
	– On 23 September 2011, RBI circular No. 27 announced the enhancement of the ECB limit under the automatic route to USD 750 million per year, up from USD 500 million in the real, industrial and infrastructure sectors, and up to USD 200 million, up from USD 100 million, in specified service sectors. The same circular also expands the permissible end-use of ECB for interest during construction by companies in the infrastructure sector.	23 September 2011	"*External Commercial Borrowings (ECB) – Rationalisation and Liberalisation*", Reserve Bank of India Circular RBI/2011-12/201 A.P. (DIR Series) Circular No. 27.
	– On 26 September 2011, RBI circular No. 28 announced the liberalisation of the policy relating to structured obligations to permit direct foreign equity holders and indirect foreign equity holders, holding at least 51% of the paid-up capital, to provide credit enhancement to Indian companies engaged exclusively in the development of infrastructure.	26 September 2011	"*External Commercial Borrowings (ECB) Policy – Structured Obligations for infrastructure sector*", Reserve Bank of India Circular RBI/2011-12/203 A.P. (DIR Series) Circular No. 28.
	– RBI Circular No. 29, released on 26 September 2011, clarifies the application of an existing rules on ECB from foreign equity holders.	26 September 2011	"*External Commercial Borrowings (ECB) from the foreign equity holders*", Reserve Bank of India Circular RBI/2011-12/204 A.P. (DIR Series) Circular No. 29.
	– Finally, RBI Circular No. 30 of 27 September 2011 allows companies in the infrastructure sector to borrow up to USD 1 billion per year in Renminbi under the approval route.	27 September 2011	"*External Commercial Borrowings (ECB) in Renminbi (RMB)*", Reserve Bank of India Circular RBI/2011-12/205 A.P. (DIR Series) Circular No. 30.
	On 30 September 2011, the Government of India released a new Consolidated FDI Policy, which came into effect on 1 October 2011. Some new liberalization measures have been announced directly through this Circular, including the exemption of construction-development activities in the education sector and in old-age homes, from the general conditionalities in the construction-development sector; inclusion of 'apiculture', under controlled conditions, under the agricultural activities permitted for FDI; and inclusion of 'basic and applied R&D on bio-technology pharmaceutical sciences/life sciences', as an 'industrial activity', under industrial parks.	1 October 2011	"*Consolidated FDI Policy*", Circular 2 of 2011, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry; 30 September 2011.
Investment measures relating to national security	None during reporting period.		
Indonesia			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
Italy			
Investment policy measures	On 28 July 2011, Italy announced the launch of the *Fondo Strategico Italiano* Spa (FSI). The Fund has a mandate to acquire stakes – usually minority stakes – in companies of "national interest". Based on Ministerial Decree of 8 May 2011, strategic enterprises are those that operate in the defence, security, infrastructure and public services, transport, communication, energy, insurance, financial services, research and high-technology. At the launch, the fund had EUR 4 billion at its disposal. Its investment policies stipulate that it would invest with a long term perspective and get involved actively into the governance	28 July 2011	"*Lanciato il 'Fondo Strategico Italiano'*", Italian Treasury Department media release, undated. "*Fondo Strategico Italiano*", Cassa depositi e prestiti website, undated.

	Description of Measure	Date	Source
	of the target enterprises.		
Investment measures relating to national security	None during reporting period.		
Japan			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
Korea			
Investment policy measures	In a statement released on19 May 2011, the Ministry of Strategy and Finance, the Financial Supervisory Commission, the Bank of Korea and the Financial Supervisory Service lowered the ceiling on banks' foreign exchange forward positions by 20%. The ceiling on the foreign exchange forward position by local branches of foreign banks will be cut to 200% of their capital, down from 250% ; the ceiling for domestic banks was be lowered from 50% to 40%. The new ceilings took effect on 1 June 2011.	19 May 2011; 1 June 2011	"*Government to Tighten Caps on FX Forward Position*", Ministry of Strategy and Finance press release, 19 May 2011.
Investment measures relating to national security	None during reporting period.		
Mexico			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
Russian Federation			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
Saudi Arabia			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
South Africa			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		

	Description of Measure	Date	Source
Turkey			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
United Kingdom			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
United States			
Investment policy measures	None during reporting period.		
Investment measures relating to national security	None during reporting period.		
European Union			
Investment policy measures	None during reporting period.		

ANNEX: Methodology—Coverage, definitions and sources

Reporting period. The reporting period of the present document is from 29 April 2010 to 5 October 2011. An investment measure is counted as falling within the reporting period if new policies were prepared, announced, adopted, entered into force or applied during the period.

Definition of investment. For the purpose of this report, international investment is understood to include all international capital movements, including foreign direct investment.

Definition of investment measure. For the purpose of this report, investment measures by recipient countries consist of those measures that impose or remove differential treatment of foreign or non-resident investors compared to domestic investors. Investment measures by home countries are those that impose or remove restrictions on investments to other countries (e.g. attaching restrictions on outward investments).

National security. International investment law, including the OECD investment instruments, recognises that governments may need to take investment measures to safeguard essential security interests and public order. The investment policy community at the OECD and UNCTAD monitors these measures to help governments adopt policies that are effective in safeguarding security and to ensure that they are not disguised protectionism.

Emergency measures with potential impacts on international capital movements. Earlier inventories in this series listed emergency measures, including *ad hoc* rescue and restructuring operations for individual firms and various schemes that gave rise to capital injections and credit guarantees as well as emergency schemes that provided cross-sectoral aid to companies. As almost all such measures related to the crisis that broke in 2008 have now been phased out and the mechanisms and implications of the unwinding process have been described in detail in earlier reports, this 6th edition does not list the status of earlier emergency measures and their unwinding. Any new emergency measures that G20 members may take in the future will again be reported in this series of inventories.

Measures not included. Several types of measures are not included in this inventory:

- *Fiscal stimulus.* Fiscal stimulus measures were not accounted for unless these contained provisions that may differentiate between domestic and foreign or non-resident investors.
- *Local production requirements* were not included unless they apply *de jure* only to foreign firms.
- *Visas and residence permits.* The report does not cover measures that affect visa and residence permits as business visa and residency policy is not deemed likely to be a major issue in subsequent political and economic discussions.
- *Companies in financial difficulties for other reasons than the crisis.* A number of countries provided support to companies in financial difficulties – in the form of capital injections or guarantees – in particular to state-owned airlines. Where there was evidence that these companies had been in substantive financial difficulties for other reasons than the crisis, these measures are not included as "emergency measures".
- *Central Bank measures.* Many central banks adopted practices to enhance the functioning of credit markets and the stability of the financial system. These measures influence international capital movements in complex ways. In order to focus on measures that are of most relevance for investment policies, measures taken by Central Banks are not included unless they involved negotiations with specific companies or provided for different treatment of non-resident or foreign-controlled enterprises.

Sources of information and verification. The sources of the information presented in this report are:

- official notifications made by governments to various OECD processes (e.g. the Freedom of Investment Roundtable or as required under the OECD investment instruments);
- information contained in other international organisations' reports or otherwise made available to the OECD and UNCTAD Secretariats;
- other publicly available sources: specialised web sites, press clippings etc.