INVESTMENT POLICY MONITOR

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Introduction

This Monitor is the first of a new series launched by the UNCTAD Secretariat. Its objective is to provide policy-makers and the international investment community at large with up-to-date information about the latest developments in foreign investment policies at the national and international level. It also seeks to identify the overall trends and salient features of these developments. By doing so, the Monitor aims to assist policy makers and other interested stakeholders in their discussions of foreign investment policy issues, and contribute to preparing the ground for future policymaking in the interest of making foreign investment work for growth and development.

This new UNCTAD project originates from the financial and economic crisis and the strong interest expressed by governments in up-to-date reporting on recent trade and investment policies. It implements the mandate from the UNCTAD Commission on Investment, Enterprise and Development,[1] and responds to the call by the G20 (in its London and Pittsburgh summits) for quarterly reporting on G20 members' adherence to their pledge not to raise barriers to trade and investment.[2]

Highlights of main developments and policy implications

- Between July and November 2009, 51 countries worldwide made changes to their policy frameworks affecting investment.
- The majority of these policy changes – both in G20 and non-G20 countries – were in the direction of liberalization, promotion and facilitation of foreign investment. This demonstrates that countries continue to consider foreign investment as an important means to finance their economic recovery and boost growth.
- However, several countries also adopted measures less favourable to foreign investment, including increased screening requirements, new limitations on foreign equity, and – in some cases – nationalizations. Furthermore, where margins of discretion are given, countries may discriminate against foreign investors in the implementation and administration of their existing and new investment policies.
- Major countries prolonged their State aid and stimulus packages, which continue to affect the direction of foreign investment flows. The execution of stimulus packages and State aid sometimes provides opportunity for hidden protectionism against foreign investment.
- Increasing policy slippage in the area of trade protectionism may exert an impact on foreign investment flows, particularly on the global value chains of transnational corporations.
- At the international level, 48 new investment agreements were concluded between 82 economies – further expanding the international investment regime that protects and facilitates foreign investment. A number of double taxation treaties (DTTs) were concluded as a result of G20 efforts to eliminate international tax havens.

1 See Commission on Investment, Enterprise and Development, First session, 4-8 May 2009, TD/B/C.II/5, 22 May 2009, paragraph 5.

2 See http://www.pittsburghsummit.gov/mediacenter/129639.htm. See in this context also the earlier UNCTAD report on G20 policy measures (http://www.unctad.org/en/docs/wto_oecd_unctad2009_en.pdf), as well as the joint WTO-OECD-UNCTAD report on this matter (http://www.unctad.org/en/docs/webdiaeia20099_en.pdf.)

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1. Investment-specific policy measures [3]

Between July and November 2009, 29 countries adopted investment-specific policy measures (see annex tables). Mostly, these measures go into the direction of liberalizing, facilitating and promoting investment, suggesting that countries continue to consider foreign investment as a means to finance the recovery and boost economic growth. However, several countries also adopted measures less favourable to foreign investment.

Concerning the **entry of foreign investors**, favourable measures outnumber those that are less favourable to foreign investment.

The measures **liberalizing entry of foreign investment** undertaken by G20 countries[4] include the opening of previously closed sectors, State-owned companies and monopolies to foreign investment; liberalizing screening requirements for small foreign investors to lower their compliance costs; and clarifying applicable anti-monopoly laws in mergers and acquisitions involving foreign companies. Measures facilitating the entry of foreign investors also include enhancing cooperation among national and sub-national investment authorities in approval procedures, streamlining approval procedures at the sub-national level, accelerating the licensing processes for investments and acquisition projects, and simplifying notification and reporting procedures for inward foreign investment.

Outside the G20 context, countries liberalized the acquisition of land or implemented changes that make it easier for foreign investors to acquire stakes in domestic companies (i.e. abolishing a requirement to offer minority stakes to local or indigenous peoples). Some countries continued the privatisation of particular industries, such as telecommunication and sugar.

On the other hand, several G20 countries adopted measures that make their policy framework **less favorable to foreign investment.** Such measures include prohibiting foreign participation in the operation of online games, adjusting investment screening requirements to ensure that reviews capture foreign investment made through complex investment structures, allowing for investment reviews on national security grounds, introducing new maximum limits and new approval procedures for foreign equity participation in small and medium-sized enterprises, and tightening the foreign investment regime for sectors sensitive to national security.

Outside the G20, a few countries introduced new regulations in the mining and oil sector, and adopted new laws to reinforce state control over the oil, petrochemical and banking industries. In another case, a new law was adopted that (1) limits the equity share of foreign companies investing in the production of goods and services to 49 per cent, (2) stipulates local financing and reinvestment requirements, and (3) tightens approval procedures.

Several G20 countries acted to further **promote and facilitate foreign investment**. This included measures encouraging foreign investment in particular sectors, providing rent-free land and financial support to foreign schools, clarifying when enterprises are eligible for income tax preferences (i.e. in the context of regional development), and granting fiscal incentives coupled with local employment requirements.

New financial and fiscal incentives to inward investors were also provided outside the G20 context. The measures particularly apply to companies located in economic free zones. One country established an investor-State dispute settlement center.

Concerning the **operation of foreign investors,** a few G20 countries undertook measures, including new regulations for the foreign exchange administration of foreign investors, or new standards for public services providers dealing with foreign investors. One country revised its tax regulations concerning foreign profits, abolishing and/or amending exemptions, and reducing chargeable profits for certain financing incomes. Another country provided temporary VAT and duty relief on equipment transfers. Two countries tightened the scope of application of their DTTs.

3 Investment-specific measures specifically address inward and outward foreign investment, i.e. liberalize, regulate, protect and/or facilitate/promote foreign investment. For more details on methodology, see the UNCTAD website.

4 For purposes of this report, references to G20 include the member countries of the G20 and the member countries of the European Union (which is the 20th member of the G20).

By contrast, outside the G20, some countries took measures **of expropriation and nationalization**. The sectors affected include telecommunication, banking, oil and coffee.

Two G20 countries enacted measures specifically aimed at **promoting and encouraging outward investment** by their domestic companies, e.g. simplifying approval and administrative procedures, or incentivizing outward foreign investment through preferential tax treatments.

2. Investment-related policy measures [5]

Several G20 countries adopted changes to the **general legal framework** that are also applicable to foreign investors operating within their territory. This included, for example, simplifications to the legal framework applicable to business operations, new patent laws, amendments to the building and construction laws to facilitate and promote investment, modifications of the competition law and the company law, and new investment incentives for regional development.

Some G20 countries also amended their **taxation regimes** applicable to corporate activities – hence also applicable to foreign affiliates. Measures range from increasing depreciation allowances for construction and capital goods expenditures, amending the income tax regime, reforming the professional tax system, and replacing a unified social tax with an insurance system. Tax measures were also used to help enterprises in times of crisis, e.g. by reducing the tax burden for small and medium-sized companies. One country extended its accountancy norms to its overseas territories. Another country re-introduced a financial operations tax on equity and fixed-income foreign investments to prevent excess speculation in the capital market and put in place a tax to be levied on companies when they issue American Depositary Receipts or when they convert such deposits into locally issued shares.

Also outside the G20, a few countries changed their tax legislation.[6] Generally, these changes aim at broadening the tax base, for instance by calculating the amount of taxes on the basis of global earnings of foreign firms, increasing the tax on dividends paid by firms, or modifying tax breaks.

With regard to **state aid and stimulus packages**, member countries of the G20 (and the EU) have pledged to keep them in place until a global recovery of the world economy is assured. Almost every G20 country continued to enact stimulus packages or provided state aid, including export credit schemes and measures predominantly benefiting the financial and automotive sectors. As a result, State control over industries in crisis, in particular the financial industry, continues to be high and there are no signs yet that exit strategies are being implemented. While these measures contribute to improving the economic conditions in host countries, which in turn can improve the investment climate and affect the economic determinants of foreign investments, there are fears that the future exit of public funds from rescued firms could lead to an increase in economic nationalism and investment protectionism. Stimulus packages were also adopted by two countries outside the G20.

Although there have been no severe **trade protectionist** responses to the economic crisis, the recent WTO report on “Trade and Trade-Related Developments in 2009”[7] notes instances of **trade policy slippage**. This includes increases in tariffs, use of non-tariff barriers such as sanitary and phytosantiary measures and technical barriers to trade, reinstatement of export subsidies, removal of limits to State purchases of agricultural products, increased State aid to certain services sectors and manufacturing industries, and, more recently, an increase in the initiation of trade remedy investigations (antidumping, safeguard and countervailing measures). These measures can lead to investment creation, diversion and relocation (e.g. barrier-hopping foreign investment), and may impact the global value chains of transnational corporations.

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Between July and November 2009, 34 countries undertook measures related to foreign investment (see annex tables). 31 countries (and the EU) enacted state aid measures and/or stimulus packages or took measures prolonging or building on earlier such initiatives taken in response to the global economic crisis. Emergency measures have the potential to restrict or distort worldwide capital movements. These include firm-specific, sector-specific and cross-sectoral measures.

5 Investment-related policy measures include laws or regulations, including in the area of taxation, that concern the general legal framework for the operation of companies, including foreign affiliates. For more details on methodology, see the UNCTAD website.

6 The reporting on measures taken by non-G20 member countries is not exhaustive.

7 WTO, “Overview of Developments in the International Trading Environment. Annual Report by the Director-General”, WT/TPR/OV/12, 18 November 2009.

Overall, the majority of the policy changes in national laws and regulations introduced between July and November 2009 in G20 and non-G20 countries were in the direction of the liberalization, promotion and facilitation of foreign investment. Few measures were less favourable to foreign investment. While clear signs of investment protectionism have so far remained mostly absent in recently introduced policy measures, there are, nevertheless, dangers of covert or hidden protectionism. Where margins of discretion are given, countries may discriminate against foreign investors in the implementation and administration of their existing and new investment policies – particularly those that concern the provision of State aid and economic stimulus packages. At the same time, the increasing policy slippage of trade protectionism may exert an impact on foreign investment flows, particularly on the global value chains of transnational corporations.

3. International investment rulemaking

In addition to investment policy-making at the national level, countries have also been engaged in international investment rule-making. During July and November 2009, 82 economies concluded 48 international investment agreements (IIAs), i.e. 6 bilateral investment treaties (BITs), 35 DTTs and 7 other international agreements with investment components (see annex tables).

Five of the 6 new BITs involved a G20 country. They all follow the traditional investment protection pattern, including recourse to investor-State dispute settlement. The 7 international agreements with investment components involved both G20 and other countries. Similar to BITs, most of these agreements establish binding obligations on the protection of foreign investment (e.g. non-discrimination, compensation in case of expropriation, investor-State dispute settlement) and a framework for investment promotion and cooperation. Certain agreements go further, by also including provisions for investment liberalization (e.g. pre-establishment rights). For certain agreements the investment aspect is limited to a continued negotiating mandate.

The area of taxation saw particularly intensive treaty-making. This can be explained by G20 efforts to eliminate tax havens and eradicate tax evasion.

Two important developments occurred in the European Union. With the Czech Republic's ratification of the Lisbon Treaty (3 November), the Treaty became effective on 1 December 2009. This shifts the competence for FDI from the EU member States to the European Union with potentially significant implications for future international investment rule-making (see forthcoming IIA issues note). Moreover, on 19 November 2009, the European Court of Justice ruled against Finland, finding that a set of its BITs are in conflict with the EU Treaty. More specifically, the BITs' clauses on free transfer of funds violate the EU Treaty's provisions allowing restrictions for balance-of-payments purposes.

Finally, one country denounced its membership in the International Centre for the Settlement of Investment Disputes (ICSID).

During the reporting period, several international conferences involving major countries and country groupings took place that had an important investment dimension. The G8+5 Summit in L'Aquila (8-10 July 2009) noted the need for enhancing predictability and stability in the international investment environment. The summit makes reference to UNCTAD's national and international investment policy work, including UNCTAD's contribution to the discussion on the development dimension of investment.[8] The G20 Summit in Pittsburgh (24-25 September 2009) reiterated the commitment by G20 countries to refrain from protectionism in the trade and investment area. G20 countries welcomed recent reporting on this issue and asked inter-governmental organizations, including UNCTAD, to continue monitoring and public reporting on developments related to trade and investment protectionism.[9]

8 See http://www.g8italia2009.it/static/G8_Allegato/G8_Declaration_08_07_09_final,0.pdf.

9 See http://www.pittsburghsummit.gov/mediacenter/129639.htm.

Annex 1: Summary table of G20 national and international policy measures

COUNTRY/ ECONOMY	MEASURES							
	INVESTMENT-SPECIFIC MEASURES				INVESTMENT-RELATED MEASURES			IIAs
	Entry	Facilitation/ promotion	Operation/ taxation	Outward investment promotion	General legal framework	Stimulus package/ State aid	General taxation measures	
Argentina						●		
Australia	●				●		●	●
Austria								●
Belgium						●		●
Brazil	●				●	●		
Bulgaria						●		●
Canada	●					●		●
China	●	●	●	●	●	●		●
Cyprus		●		●		●		●
Czech Republic						●		●
Denmark						●		●
Estonia						●		●
Finland						●		●
France						●		●
Germany						●		●
Greece		●				●		●
Hungary					●	●		●
India	●	●						●
Indonesia	●	●	●			●		●
Ireland					●	●		●
Italy						●		●
Japan	●							
Korea, Republic of		●						●
Latvia								●
Lithuania						●		●
Luxembourg								●
Malta								●
Netherlands						●		●
Poland						●		●
Portugal						●		●
Romania								●
Russian Federation					●	●		
Saudi Arabia		●						●
Slovakia						●		●
Slovenia						●		●
South Africa								●
Spain		●						●
Sweden						●		●
Turkey					●	●		●
United Kingdom			●			●		●
United States						●		
EU[a]						●		●

[a] IIAs of the EU are EPAs.

Annex 2: Summary table of non-G20 national and international policy measures

COUNTRY/ ECONOMY	MEASURES							
	INVESTMENT-SPECIFIC MEASURES				INVESTMENT-RELATED MEASURES			IIAs
	Entry	Facilitation/ promotion	Operation/ taxation	Outward Investment promotion	General legal framework	Stimulus package/ State aid	General taxation measures	
Algeria	●		●					
Armenia								●
Aruba								●
Bahamas	●							
Bahrain								●
Belarus								●
Belize			●					
Bosnia and Herzegovina								●
British Virgin Islands								●
Brunei Darussalam								●
Cambodia								●
Cayman Islands								●
Chile								●
Colombia								●
Comoros								●
Cook Islands								●
Ecuador			●				●	
Egypt		●						
Ethiopia								●
Gibraltar								●
Guernsey								●
Hong Kong, China								●
Isle of Man								●
Israel								●
Jamaica	●							
Jersey								●
Kuwait								●
Lao PDR	●	●						●
Liechtenstein								●

Annex 2: Summary table of non-G20 national and international policy measures (continued)

COUNTRY/ ECONOMY	MEASURES							
	INVESTMENT-SPECIFIC MEASURES				INVESTMENT-RELATED MEASURES			IIAs
	Entry	Facilitation/ promotion	Operation/ taxation	Outward Investment promotion	General legal framework	Stimulus package /State aid	General taxation measures	
Macedonia FYR		●						●
Madagascar								●
Malaysia	●	●						●
Mauritius								●
Myanmar								●
Netherlands Antilles								●
New Zealand								●
Nigeria	●					●		
Norway								●
Oman			●				●	●
Pakistan								●
Philippines	●							●
Qatar								●
San Marino								●
Sao Tome and Principe	●							
Serbia								●
Seychelles								●
Singapore						●		●
Sri Lanka								●
Switzerland								●
Tanzania, United Republic of			●					
Thailand								●
United Arab Emirates								●
Venezuela	●		●					
Viet Nam								●
Zambia								●
Zimbabwe								●

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