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Highlights

During the review period (June – October 2012), one could observe a significant dichotomy in national investment policy making. On the one hand, some countries took partial liberalisation steps in sensitive sectors, such as certain services. On the other hand, some governments strengthened their control over key domestic industries, and others took administrative decisions to restrict foreign investment for national security reasons or because it did not pass an “economic benefit” test.

Amongst the most noteworthy measures are:

- *The Canadian Government* rejected the proposed \$5.2 billion acquisition of a Canadian energy company by the Malaysian company Petronas.
- *India* took liberalization measures in different industries, including single- and multi-brand retail trading, power exchanges, broadcasting, civil aviation, foreign-owned non-banking financial companies, and FDI to and from Pakistan.
- *Indonesia* introduced new regulations limiting private bank ownership.
- *The Government of the United States* blocked an investment project by Chinese engineering company for national security reasons.

International investment policy making is characterised by three broad trends: i) a further move towards more regional International Investment Agreements (IIAs); ii) increasing attention to including sustainable development features into IIAs, including into bilateral investment treaties (BITs), and iii) an intensification of the public discourse on the pros and cons of IIAs.

Advance
unedited
version



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1. FDI-specific policy measures¹

Six countries took measures related to the **liberalization of FDI in certain industries**, with regard to **land acquisition** and the **facilitation and promotion of FDI**.

Cape Verde adopted an investment law that provides non-discriminatory treatment and other important protection standards for foreign investors, including access to international arbitration.²

China increased the ownership ceiling for foreign investors in domestic joint-venture securities firms to 49 percent from previously 33 percent.³

Finland passed the Act on the Monitoring of Foreigners' Corporate Acquisitions. Its objective is to monitor, and, should a key national interest so require, restrict the transfer of assets to foreigners and to foreign organisations and foundations. Compared to the previous act of 1992, the categories of enterprises subject to potential review have been reduced.⁴

India eased the conditions for foreign investment in single brand retailing. Foreign investors do not have to be the brand owner anymore and the local sourcing requirement has been softened.⁵ It also allowed FDI in multi-brand retail trading up to 51 percent under the government approval route; however, this is limited to those Indian states that endorse this policy and to cities with a population of more than one million. Also, at least 50 percent of the investment has to be made in back-end infrastructure.⁶

Furthermore, FDI is now allowed up to 49 percent in Power Trading Exchanges; it is permitted up to a limit of 26 percent under the government approval route, and the remainder under the automatic route for Foreign Institutional Investors (FII), subject to certain conditions.⁷ The country also liberalised FDI in broadcasting, including cable networks and mobile TV, up to a 74 percent ownership ceiling.⁸ In addition, it permitted foreign airlines to own up to 49 percent in scheduled and non-scheduled air transport services.⁹

The Reserve Bank of *India* further allowed non-banking financial corporations (NBFCs) to set up "step-down" subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital, provided these NBFCs have foreign investment between 75 percent and 100 percent and have a minimum capitalisation of USD 50 million.¹⁰

Nine countries adopted 16 FDI-specific measures. The majority of the measures relate to investment liberalization and promotion, partially in sensitive sectors, such as certain services. However, some countries also blocked individual FDI projects for national security reasons or because it did not pass an "economic benefit" test.

¹ FDI-specific measures specifically address foreign investment. i.e. liberalize, regulate, protect and/or facilitate/promote foreign investment.

² Investment Code, Official Gazette, 11 July 2012.

³ Decree No.86, China Securities Regulatory Commission, 11 October 2012.

⁴ Act on the Monitoring of Foreign Corporate Acquisitions in Finland (172/2012), Ministry of Employment and the Economy, 13 April 2012. This Act entered into force on 1 June 2012.

⁵ Press Note No. 4, Ministry of Commerce and Industry, 20 September 2012. While 100% FDI in single-brand retailing has been allowed since January 2012, specific conditions had to be met, among others that the foreign investor must be the owner of the brand and that, for FDI beyond 51%, local sourcing was required to be at least 30%.

⁶ Press Note No. 5, Ministry of Commerce and Industry, 20 September 2012. 'Back-end infrastructure' includes, inter alia, investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, ware-house, agriculture market produce infrastructure etc. This liberalisation had already been decided in November 2011, but its implementation had been suspended.

⁷ Press Note No. 8, Ministry of Commerce and Industry, 20 September 2012.

⁸ Press Note No. 7, Ministry of Commerce and Industry, 20 September 2012.

⁹ Press Note No. 6, Ministry of Commerce and Industry, 20 September 2012.

¹⁰ Circular No. 41, Reserve Bank of India, 10 October 2012.

Finally, *the Government of India* allowed citizens of Pakistan or entities incorporated in Pakistan to make investments in India under the government approval route¹¹ and permitted, vice versa, outward investment by Indian parties in Pakistan.¹²

The Emirate of Dubai in the United Arab Emirates issued a regulation (Regulation No. 2 of 2012) adding some land to areas where non-UAE nationals may own real estate in Dubai. According to this regulation, non UAE citizens are allowed to acquire a usufruct right (life interest) to property for a period not exceeding 85 years.¹³

The Bolivarian Republic of Venezuela partially liberalized foreign exchange controls in place since 2003 by allowing foreign companies partnered with the State in public investment projects to hold foreign currency accounts in local banks.¹⁴

A few countries took measures towards **restricting or regulating FDI**, including through administrative decisions to reject certain FDI projects.

The Canadian Government rejected the proposed \$5.2 billion acquisition of the Canadian energy company, Progress Energy Resources Corp. by Petronas Carigali Canada Ltd. The government was not satisfied that the investment would be of net benefit to the country.¹⁵

Ethiopia adopted an advertisement proclamation allowing only Ethiopian nationals and business organizations whose capital is not shared by foreigners, and foreign nationals of Ethiopian origin to undertake advertising activity.¹⁶

The US administration blocked an investment project by a Chinese engineering company for national security reasons, arguing that it would have been close to a Navy military site.¹⁷

2. FDI-related policy measures¹⁸

Some countries took measures **to promote or facilitate** – domestic and foreign – investment, including through the setting up of special economic zones and new tax incentives.

Belarus released a decree on a China-Belarus industrial park. It established a special economic zone in the Minsk region for a period of 50 years with a view to developing priority industries such as electronics, biomedicine, chemical industry and mechanical engineering.¹⁹

Brazil issued a decree to promote R&D of environmentally sound technologies in the car industry, providing investment incentives such as a tax rebate. The programme also encourages the use of energy efficient technologies.²⁰

Ten countries adopted 10 FDI-related policy measures. They mostly promote and facilitate domestic and foreign investment, but some also aim at strengthening control over key domestic industries.

¹¹ Press Note No. 3, Ministry of Commerce and Industry, 1 August 2012. Defence, space and atomic energy remain excluded from this liberalisation.

¹² Circular No. 25, Reserve Bank of India, 7 September 2012.

¹³ "New areas in Dubai where expats can own property", Khaleej Time, 22 June 2012.

¹⁴ Convenio Cambiario 20, Official Gazette, 19 July 2012.

¹⁵ "Minister of Industry Confirms Notice Sent to PETRONAS Carigali Canada Ltd. Regarding Proposed Acquisition of Progress Energy Resources Corp.", Ministry of Industry, 19 October 2012. Petronas can make any additional representations to the government within a certain timeframe.

¹⁶ Advertisement Proclamation No.759/2012, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 27 August, 2012.

¹⁷ Presidential Order, Office of US President, 28 September 2012.

¹⁸ FDI-related measures address investment from domestic or foreign sources. i.e. privatise, regulate, protect and/or facilitate/promote investment.

¹⁹ Decree No.253 "On China-Belarus industrial park", President of Belarus, 5 June 2012.

²⁰ Decree 7819, Official Gazette, 3 October 2012.

Costa Rica implemented a business facilitation programme simplifying compliance requirements for the registration of companies. All formalities have been concentrated in one place and the time for registering a company has been reduced from nearly 90 days to 20 days or less.²¹

Malawi removed taxes on gains from the sale of shares that have been held for more than one year, mainly to encourage long-term investments specifically in shares that are traded on the stock exchange. Also, in order to promote investment and support private sector growth, it increased initial investment tax allowances from 40 percent to 100 percent, and, in the case of international transport allowances, from 15 percent to 25 percent.²²

Mauritius implemented the Foundation Act 2012 which allows for the incorporation of foundations in Mauritius and offers flexibility in terms of structuring options.²³

Pakistan enacted a Special Economic Zones (SEZs) Act. It allows for the establishment of SEZs anywhere in the country over a minimum area of 50 acres and offers several tax incentives to domestic and foreign investors in the zone.²⁴

Some countries adopted new investment-related **restrictions or regulations**, for instance by limiting private ownership or strengthening the supervision of the financial sector.

Argentina established a committee to supervise investments by insurance and re-insurance companies. The measure is part of a Strategic National Insurance Plan, requiring that insurance companies use part of their invested funds for investment in the real economy.²⁵

Indonesia introduced new regulations limiting private bank ownership. They restrict, in principle, new acquisitions of private banks by financial institutions to 40 percent ownership, by non-financial institutions to 30 percent and by individual shareholders in conventional banks to 20 percent.²⁶

The Philippines released an executive order to put on hold the issue of new mining contracts until new legislation modifying existing revenue sharing schemes and mechanisms have taken effect. To ensure compliance with environmental standards, the order also requires a review of the performance of existing mining operations.²⁷

Qatar issued a law on tourism which covers the hospitality industry, including resorts and tourism facilities and activities and tourist guides. The law requires a licence from the Tourism Authority before establishing any new or using any existing hotel or tourist facility.²⁸

²¹ Press release, Ministry of Economy, Industry and Commerce, 23 October 2012. This programme was started in two provinces and expected to expand nationally in the first half of 2013.

²² Malawi Budget 2012-13, Ministry of Finance, 8 June 2012.

²³ Foundation Act No. 8 of 2012, Government Gazette of Mauritius, 16 June 2012.

²⁴ "President Asif Ali Zardari signs Special Economic Zones Bill 2012", Board of Investment, 10 September 2012.

²⁵ Resolución Conjunta 620/2012 y 365/2012, Official Gazette, 23 October 2012.

²⁶ Regulation No. 14/8 / PBI/2012, Bank Indonesia, 13 July 2012.

²⁷ Executive Order No.79-S-2012, Official Gazette, 16 July 2012.

²⁸ "New law issued on tourism", Qatar Government Portal, 9 August 2012.

3. International investment policymaking

During the reporting period, six (BITs) were signed. Three of the BITs were concluded between developing economies (*Gabon and Turkey; Morocco and Viet Nam; China and Taiwan Province of China*). Two BITs were concluded between developed and developing countries (*Iraq and Japan; Canada and China*). One IIA involved an economy in transition with a developing country (*Russian Federation and Zimbabwe*).

In addition to typical investment protection provisions, the *Iraq-Japan* BIT contains a clause recognizing the importance of maintaining health, safety, environmental and labour standards. In the case of the *Canada-China* BIT, a similar approach is reflected in a detailed exception clause, providing for the protection of human, animal or plant life or health. Both agreements reflect the trend of an increasing number of IIAs containing sustainable development-oriented features.²⁹

Regarding agreements with investment provisions other than BITs (so-called “other IIAs”), the reporting period saw the conclusion of three treaties. *Chile* concluded a free trade agreement (FTA) with *Hong-Kong, China*. The *Gulf Cooperation Council* Countries signed two Framework Agreements on Trade, Economic, Investment, and Technical Cooperation with the *United States* and *Peru* individually. The latter was signed during the Third Summit of South American-Arab Countries (ASPA).³⁰

While the *Chile-Hong Kong, China* agreement does not contain a chapter on investment protection, it has provisions granting national treatment for the establishment of companies (chapter 10), service and service suppliers (chapter 11), and for financial services suppliers (chapter 12), according to each Party’s schedule. The *Gulf Cooperation Council-Peru* agreement – the text of which is not yet available – is expected to include provisions encouraging capital flows between the Parties, fostering the setting up of joint investment projects and facilitating corporate investments.³¹

Other noteworthy developments include:

- IIAs that entered into force³²

On 1 September 2012, the *Mexico-Central America* FTA entered into force for three of its six signatories: *Mexico, El Salvador* and *Nicaragua*. Entry into force for the remaining three signatories – *Costa Rica, Guatemala* and *Honduras* – is still pending. Upon its entry into force, the agreement will replace three FTAs previously concluded between the contracting parties.³³

Twenty-one economies concluded nine new IIAs, including six BITs and three “other IIAs”.

Sustainable development features continue making their way into IIAs, including into BITs.

²⁹ See UNCTAD, World Investment Report (WIR) 2012, chapter III, table III.3.

³⁰ See <http://www.andina.com.pe/Ingles/noticia-peru-gcc-ink-pact-on-trade-economic-investment-cooperation-430474.aspx>.

³² Information on entry into force is not exhaustive.

³³ Those FTAs are: Mexico-Costa Rica (5 April 1994), Mexico-Nicaragua (18 December 1997) and the FTA between Mexico, El Salvador, Guatemala and Honduras (29 June 2000).

On 31 October 2012, the *Panama-United States Trade Promotion Agreement*, signed in 2006, entered into force. It includes an investment chapter that extends protection to investments and investors of the other contracting party to the pre-establishment phase, in line with the countries' schedules of commitments.

- Concluded negotiations

On 25 June 2012, *Colombia* and the *Republic of Korea* signed a joint declaration stating the successful conclusion of their FTA negotiations. The prospective FTA is expected to be a comprehensive agreement that will include a chapter on investment. Both countries decided to proceed with the initialization and signing of the agreement in the shortest time possible.³⁴

On 23 October 2012, the Government of *Canada* tabled³⁵ – to the House of Commons – the concluded text of an agreement that expands the scope of the 1996 *Canada-Chile* FTA. The amending agreement includes a financial services chapter containing provisions granting national and most favoured nation treatment, and providing for the right of establishment to financial institutions of the other contracting party, in accordance with each country's schedule. This is in accordance with the agreement signed on 16 April 2012, by which *Canada* and *Chile* decided to update and modernize their 1996 FTA to include chapters on financial services, government procurement, dispute settlement and custom procedures.³⁶

IIA policy-making is accompanied by an intensified public discourse on the pros and cons of IIAs.

While the *Canada-China* BIT is still pending ratification³⁷, it has prompted a public debate about its features and possible impact. For example, it has been noted that for the majority of the FDI flows covered by the agreement, Canada will be the host, rather than the home country, and hence might be on the defending side of investor-State disputes. Similarly, the point has been made that the transparency provisions for the dispute settlement mechanism would not correspond to Canada's practice of including strong transparency obligations for dispute settlement proceedings in BITs and FTAs³⁸. Concerns about the impact of BITs are not new³⁹, but point to the importance of considering the sustainable development dimension of IIAs.

- Ongoing IIA negotiations

Discussions on the Trans-Pacific Partnership Agreement (TPP) continued, with the 14th negotiation round concluded in September 2012. The next round is scheduled for 3-12 December 2012. Currently, 11 countries are participating in the negotiations (*Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam*). In October 2012, *Canada* and *Mexico* formally joined the negotiations. *Japan* and *Thailand* have, on their sides, expressed interests to join. Meanwhile, civil society groups continue voicing concerns about the negotiations.⁴⁰

³⁴ See http://wsp.presidencia.gov.co/Prensa/2012/Junio/Paginas/20120625_01.aspx.

³⁵ The amending agreement will be tabled in the House of Commons for 21 sitting days, allowing discussion and debate on the agreement.

³⁶ See http://www.international.gc.ca/media_commerce/comm/news-communiqués/2012/10/23a.aspx?lang=eng&view.

³⁷ See <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/china-text-chine.aspx?lang=en&view=d>.

³⁸ See <http://theyee.ca/Opinion/2012/10/16/China-Investment-Treaty/>.

³⁹ See WIR 2011, page 100.

⁴⁰ <http://www.iatp.org/blog/201209/civil-society-organizations-say%E2%80%A6%E2%80%9Dflush-the-tp%E2%80%A6p%E2%80%9D>.

On 19 October 2012, and following the Ministerial meeting in Nairobi, Kenya, the United States Trade Representative and the East African Community (EAC) issued a statement announcing the progress made under the *United States-EAC Trade and Investment Partnership*. Both Parties have agreed to move forward on the establishment of a commercial dialogue, officially to be launched in November 2012.⁴¹

- Other developments

Besides the ratification, negotiation and conclusion of IIAs, a number of other important events related to international investment policies took place during the reporting period.

On 5 July 2012, UNCTAD launched its Investment Policy Framework for Sustainable Development (IPFSD) as part of the World Investment Report (WIR) 2012. The IPFSD contains a set of “Core Principles” for investment policymaking and translates them into “Guidelines for National Investment Policies” and “Options for the design of IIAs.” The IPFSD is intended to be a point of reference for investment stakeholders by consolidating a comprehensive list of options and by providing guidelines and support for policy makers on how to shape investment policies at the national and international level. Through all of this, the IPFSD aims at making foreign investment work better for sustainable development and inclusive growth.

On 24 September 2012, and as part of the 59th session of the Trade and Development Board (TDB), member States welcomed UNCTAD’s IPFSD, noting the crucial role it plays in the implementation of the Doha Mandate adopted at the UNCTAD XIII Ministerial Conference in Doha, Qatar. At the TDB session, member States also shared their experiences concerning the challenges arising from today’s fast changing investment landscape, reviewed the IPFSD and encouraged UNCTAD to continue its work on investment policies for sustainable development.

On 26 October 2012, the WTO General Council agreed to the *Lao People’s Democratic Republic (Lao PDR)* joining the organization. It is expected that the country will become a WTO Member in early 2013. This will make the Lao PDR a Member of various international agreements with relevance to foreign investment. They include the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on Trade-Related Investment Measures (TRIMs). The Lao PDR follows four countries that joined the WTO earlier this year, namely Montenegro, Samoa, the Russian Federation and Vanuatu.

Ongoing negotiations reflect the trend towards more regional IIAs, including negotiations between a regional group and individual third countries.

⁴¹ See e.g. <http://www.whitehouse.gov/photos-and-video/video/2012/04/30/president-obama-holds-press-conference-prime-minister-noda-japan#> and <http://www.thaigov.go.th/en/speech-a-press-release/item/73275-joint-press-conference-by-prime-minister-yingluck-shinawatra-of-thailand-and-president-barack-obama-of-the-united-states.html>.

Methodological note

This Monitor is the eighth in the series of Investment Policy Monitors published by UNCTAD secretariat in order to provide policymakers and the international investment community with up-to-date information about the latest developments and trends in investment policies at the national and international level. It covers measures taken in the period from 1 June to 31 October 2012.

The policy measures mentioned in the Monitor are identified through a systematic review of government and business intelligence sources. Measures are verified, to the fullest extent possible, by referencing government sources. The compilation of measures is not exhaustive.

The Monitor distinguishes between three categories of policy measures: (1) foreign direct investment (FDI)-specific measures, i.e. measures applying only to foreign investors; (2) FDI-related measures, i.e. those which are addressed to both domestic and foreign investors, and (3) measures relating to the general investment climate.

Annex 1. Summary table of national investment policy measures adopted between 1 June and 31 October 2012

COUNTRIES	ENTRY/ESTABLISHMENT	OPERATION		PROMOTION AND FACILITATION	OUTWARD FDI
		FDI specific	FDI-related		
Argentina			-		
Belarus				+	
Brazil				+	
Canada	-				
Cape Verde				+	
China	+				
Costa Rica				+	
Ethopia	-				
Finland	+				
India	+,+,+,+,+,+	+			+
Indonesia	-				
Malawi			+		
Mauritius			+		
Pakistan				+	
Philippines	-				
Qatar			-		
The United States	-				
United Arab Emirates	+				
Venezuela, Bolivarian Republic of		+			

"+" means introduction of a more favourable policy measure for investors

"-" means introduction of a less favourable policy measure for investors

**Annex 2: Summary table of IIAs
signed between 1 June and 31
October 2012**

	NAME OF AGREEMENT	DATE OF SIGNATURE
1	Bilateral Investment Treaty between Morocco and Vietnam	15.06.12
2	Bilateral Investment Treaty between Gabon and Turkey	18.07.12
3	Bilateral Investment Treaty between Iraq and Japan	07.08.12
4	Bilateral Investment Treaty between China and Taiwan, Province of China	08.08.12
5	Chile-Hong Kong, China Free Trade Agreement	07.09.12
6	Canada-China Foreign Investment Promotion and Protection Agreement	09.09.12
7	Framework Agreement on Trade, Economic, Technical and Investment Cooperation between the Gulf Cooperation Council and United States	25.09.12
8	Framework Agreement on Trade, Economic, Technical and Investment Cooperation between the Gulf Cooperation Council and Peru	01.10.12
9	Bilateral Investment Treaty between the Russian Federation and Zimbabwe	07.10.12

Annex 3. Summary table of IIAs by type of agreement and country/economy, between 1 June and 31 October 2012

	COUNTRY/ ECONOMY	BITs	Other IIAs
1	Bahrain		2
2	Canada	1	
3	Chile		1
4	China	2	
5	Gabon	1	
6	Hong Kong, China		1
7	Iraq	1	
8	Japan	1	
9	Kuwait		2
10	Morocco	1	
11	Oman		2
12	Peru		1
13	Qatar		2
14	Russian Federation	1	
15	Saudi Arabia		2
16	Taiwan Province of China	1	
17	Turkey	1	
18	United Arab Emirates		2
19	United States		1
20	Vietnam	1	
21	Zimbabwe	1	

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