



UNITED NATIONS
UNCTAD

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD

INVESTMENT POLICY MONITOR

Nº. 9

March 2013

A PERIODIC REPORT BY THE UNCTAD SECRETARIAT

Highlights

- The review period (November 2012 – February 2013) was marked by a surge in new investment restrictions and regulations bringing the share of such measures to a new height.
- Nonetheless, investment liberalisation and promotion remained the dominant feature of national investment policies.
- Numerous corporate tax changes, both rises and cuts, were another important component of investment policies during the review period.
- The move towards regional investment agreements gathered pace, while the conclusion of new bilateral investment treaties slowed to a trickle.
- Stakeholders, in particular civil society organizations and the business community, are voicing their views and concerns with increased vigour.



Note: This report can be freely cited provided appropriate acknowledgement is given to UNCTAD and UNCTAD's website is mentioned (www.unctad.org/diae). This publication has not been formally edited.

1. FDI-specific policy measures¹

Seven countries took measures relating to the *liberalization of FDI in certain industries*, the *approval of certain FDI projects*, or the *facilitation and promotion of inward and outward FDI*.

Algeria offered new incentives to foreign companies wishing to invest in unconventional energy resources such as shale gas and shale oil.²

Canada approved the acquisition of the Canadian company Progress Energy Resources Corp. (Progress) by PETRONAS Carigali Canada Ltd. (owned by Petronas, of Malaysia), after initially issuing a notification in October 2012 stating that the investment was not, as proposed, likely to be of net benefit to Canada.³ It also approved the acquisition of the Canadian company Nexen by the China National Offshore Oil Corporation (CNOOC Ltd.).⁴

China simplified review procedures related to capital flows and currency exchange quotas of foreign enterprises. From December 17, 2012, these companies only need to register the relevant data with the relevant authorities, for instance, with regard to opening foreign currency accounts or for re-investing foreign exchange reserves.⁵

India increased the foreign ownership ceiling for FDI in Asset Reconstruction Companies (ARCs) from 49 per cent to 74 per cent, subject to certain conditions. The ceiling of 74 per cent in ARCs is a combined limit for FDI and Foreign Institutional Investors.⁶

Japan adopted “Emergency Economic Measures for The Revitalization of the Japanese Economy”, which, *inter alia*, facilitate the expansion of Japanese businesses in overseas markets.⁷

Myanmar launched a new foreign investment law. Under the new law, joint ventures between foreigners and Myanmar citizens will be permitted with any stake ratio agreed between the partners. The Myanmar Investment Commission shall prescribe the minimum amount of investment in individual sectors. The new law also establishes new labour requirements for increasing the number of local staff in skilled positions, land-use rights of up to 50 years, extendable thereafter for two additional ten-year terms, and an extension of the period of exemption from corporate income tax to five years.⁸

Thirteen economies adopted 17 FDI-specific measures. Seven countries took measures to liberalize FDI in certain industries, approve certain FDI projects, or facilitate and promote inward and outward FDI. Conversely, five countries introduced new restrictions or regulations for FDI and two economies adopted restrictions in the context of their general competition and energy policies.

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

² “Algeria parliament approves amendments to energy law”, CNBC, 21 January 2013.

³ Press release, Ministry of Industry, 7 December 2012. See UNCTAD’s Investment Policy Monitor No. 8.

⁴ Press release, Ministry of Industry, 7 December 2012.

⁵ “Simplification of direct investment foreign exchange management to promote trade and investment facilitation”, The State Administration of Foreign Exchange, 21 November 2012.

⁶ Press release, Ministry of Finance, 21 December 2012. “Asset reconstruction” means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance and ‘Asset Reconstruction Company (ARC)’ means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. For further information, see <http://www.drat.tn.nic.in/Docu/Securitisation-Act.pdf>.

⁷ “Emergency Economic Measures for The Revitalization of the Japanese Economy”, The Cabinet Office, 11 January 2013.

⁸ The Foreign Investment Law (Law No, 21/ 2012), Presidential Office, 2 November 2012. See <http://www.president-office.gov.mm/en/hluttaw/law/2012/11/23/id-1103>.

Pakistan offers travel insurance (including terrorism cover) of up to US\$ 500,000 to attract foreign investors.⁹

Five countries introduced **new restrictions or regulations for FDI**, such as **prohibitions to own land or nationalizations**.

Benin prohibited land ownership by foreign entities, although they are still allowed to enter into long-term leases.¹⁰

The Plurinational State of Bolivia introduced a decree providing for the transfer to the state-owned company “Empresa Nacional de Electricidad (ENDE)” of all the shares of the electricity distribution companies of La Paz (“Electropaz”) and Light and Power Corporation of Oruro (“ELFEO SA”), as well as of the management and investment service companies Business Bolivia SA (“Cadeb”) and Corporation Service Company (“Edeser”) - all of which were held by “Iberbolivia Investment Corporation”, belonging to “Iberdrola” of Spain.¹¹ The country also nationalized the company “Bolivian Airport Services (SABSA)”, a subsidiary of the Spanish firms “Abertis” and “Aena”, which operated the Bolivian airports of El Alto, Cochabamba and Santa Cruz.¹²

Canada announced new, stricter criteria for the screening of inward FDI by state-owned enterprises (SOEs). Under the new criteria, considerations to be taken into account include: 1) the degree of control or influence a SOE would exert on the Canadian business; 2) the degree of control or influence a SOE would exert on the industry in which the Canadian business operates; and 3) the extent to which the foreign government would exercise control or influence over the SOE acquiring the Canadian business. The Canadian government also announced that it will find the acquisition of control of a Canadian oil-sands business by a foreign SOE to be of net benefit to Canada only in an exceptional circumstance. In addition the threshold for review of acquisitions by SOEs will remain at the current asset value threshold (C\$330 million for 2012, C\$344 million for 2013, indexed for inflation) while the threshold for private sector investments will increase to C\$1 billion in enterprise value over four years.¹³

Hungary amended the Constitution to assure that in the future only Hungarian citizens can purchase domestic farmland. Foreigners have been prohibited from buying farmland since Hungary’s EU accession in 2004 under temporary measures. These measures were originally set to expire in 2011, but were extended until the end of April 2014. The new amendment makes the ban permanent.¹⁴

Sri Lanka prohibited foreigners from owning land. However, long-term leases of land will still be allowed.¹⁵

Two economies took measures that – although applied in the context of their general competition and energy policies – **de facto only affected foreign investors**.

Albania’s energy regulator (ERE) revoked the licence of “CEZ Shperndarje” – which is majority-owned by the Czech Government - for electrical energy distribution and electrical energy retail public supply. The regulator holds “CEZ Shperndarje” liable with regards to the non-fulfilment of the terms and conditions of the licences.¹⁶

⁹ Insurance Coverage to Foreign Buyers, Ministry of Commerce, 2 January 2013.

¹⁰ New Land Code (Law No. 2013-1), 14 January 2013.

¹¹ Press release, President of the Plurinational Legislative Assembly, 29 December 2012.

¹² “MORALES DISPONE NACIONALIZACIÓN DEL PAQUETE ACCIONARIO DE SABSA”, Official Press Release, 18 February 2013.

¹³ Press release, Ministry of Industry, 7 December 2012, Investment Canada Act, Official Gazette, 12 January 2013.

¹⁴ Act T/9400/7 amending the Fundamental Law, 18 December 2012.

¹⁵ Cabinet Decision, 21 February 2013.

¹⁶ “On the revocation of the licensees of CEZ Shpërndarje for the activities of Electrical

Five countries adopted FDI-related policy measures. These included investment promotion and facilitation for domestic and foreign investment, as well as a privatization.

Sixteen countries took 17 measures relating to the general investment climate. Nine countries reduced their corporate tax rate or otherwise adopted new fiscal investment incentives. Six countries increased corporate tax rates or introduced new kinds of taxes. Two countries adopted new sector-specific or general legislation.

The European Commission prohibited the intended acquisition of “TNT Express” by “UPS” under the EU Merger Regulations. The Commission found that the take-over would have restricted competition in 15 Member States when it comes to the express delivery of small packages to another EU country.¹⁷

2. FDI-related policy measures¹⁸

Brazil extended the Investment Support Programme through 2013. Funds committed by the government were increased by US\$ 85 billion; the amount allocated to finance expenditure now totals US\$ 312 billion. The Funds will back subsidized loans for purchases of machinery, equipment and other capital goods. The programme was launched by the Brazilian Development Bank (BNDES) in July 2009 as part of government measures to mitigate the effects of the international financial crisis on the Brazilian economy. The goal of the programme is to stimulate the production, acquisition and export of capital goods and technological innovation. It includes the following subprograms: capital goods; innovation and efficient machines and equipment; pre-shipment of exports; and knowledge transformation projects.¹⁹

France set up a public investment bank (“Banque Publique d’Investissement”). The new institution will focus on the support of small- and medium-sized enterprises; it will also promote innovation and export.²⁰

Portugal sold 100 per cent of the shares of ANA-Aeroportos de Portugal - the state-owned company managing Portuguese airports - to the French group Vinci Concessions SAS.²¹

Sudan ratified the new Investment Act 2013 which, inter alia, offers tax and customs privileges, specifically to strategic industries. It also provides for the establishment of special courts to deal with investment-related issues and disputes and offers guarantees to investors in case of nationalization or confiscation.²²

Ukraine adopted a resolution to privatize six regional power companies: Khmelnytskoblenergo, Mykolaivoblenergo, Ternopiloblenergo, Zaporozhyaoblenergo, Kharkivoblenergo and Cherkasyoblenergo.²³

3. Measures relating to the general investment climate²⁴

Numerous countries adopted new laws and regulations affecting the general business climate. The vast majority of these measures relate to corporate taxation. Other measures had to do with labour and environment policies.

Energy Distribution and Electrical Energy Retail Public Supply”, Albanian Energy Regulator, 21 January 2013.

¹⁷ Press release, European Commission, 30 January 2013.

¹⁸ FDI-related policy measures address investment from domestic or foreign sources. i.e. privatize, regulate, protect and/or facilitate/promote investment. They previously figured under the heading “investment-specific policy measures”.

¹⁹ Medida Provisoria 594, Official Gazette, 7 December 2012.

²⁰ Loi No. 2012-1559, Official Gazette, 1 January 2013.

²¹ Resolution No. 111-F/2012, Official Gazette, 28 December 2012.

²² “Cabinet Approves Bill of National Investment for 2013”, Ministry of Cabinet Affairs, 3 February 2013.

²³ “Government adopted a decree on privatization of the fuel and energy complex enterprises”, Government portal, 19 February 2013.

²⁴ Measures relating to general business climate address general determinants of business climate attractiveness.

Nine countries *reduced the corporate tax rate* or otherwise *adopted new fiscal investment incentives*.

Burkina Faso introduced several fiscal incentives, including an abolition of the limitations on the deductibility of remunerations paid by a resident company to non-resident persons, and the possibility to carry back head office expenses that may not be deducted in a loss-making year to the most recent profitable tax year.²⁵ *Cape Verde* granted a corporate income tax credit of up to 50 per cent of the eligible investments made in activities such as tourism, air and sea transportation, renewable energy and information technology.²⁶ *Colombia* reduced the corporate tax rate to 25 per cent, starting in 2013. At the same time, however, it created a new tax on corporate profits with a tax rate of 9 per cent (“entrepreneurial contribution to fairness”). The new tax is intended to improve the effective taxation of high-profit companies.²⁷ *France* introduced a tax credit for promoting competitiveness and jobs - one of the key measures in the national plan for growth, competitiveness and employment. The tax credit aims to boost investment, research, innovation, training, employment, the exploration of new markets and to help firms recover their working capital.²⁸ *Gabon* reduced the corporate tax rate from 35 per cent to 30 per cent for companies other than those operating in the oil and mining sectors; and from 35 per cent to 25 per cent for tourism companies and companies holding intellectual property rights.²⁹ *Honduras* extended tax breaks for industries, such as agriculture and fisheries, and for small-sized enterprises for a period of two years, beginning on 1 January 2013.³⁰ *Sweden* reduced the corporate tax rate to 22 per cent.³¹ *Viet Nam* granted several extensions of corporate tax payments scheduled for 2013.³² *Zambia* conditioned the granting of tax incentives to a requirement that investors meet their obligations related to employment creation for Zambians.³³

By contrast, some countries *increased corporate tax rates or introduced new kinds of taxes*.

Chile adopted a tax reform that includes, inter alia, an increase in the corporate income tax rate from 17 per cent to 20 per cent and tighter controls on transfer prices.³⁴ *Ecuador* increased by 3 per cent the tax rate on bank profits in order to fund cash payments to the poor through an anti-poverty social programme.³⁵ *Honduras* increased tax rates from 10 per cent to 25 per cent on income of non-resident foreigners as well as royalties to be paid by foreign companies operating in the extraction of natural resources.³⁶ *Morocco* imposed a temporary exceptional contribution on top income earners and on companies realizing large profits. This contribution will apply for three consecutive years from 1 January 2013.³⁷ *Senegal* raised the corporate income tax rate from 25 per

²⁵ “Burkina Faso: Finance Law 2013 – details”, International Bureau of Fiscal Documentation, 1 January 2013.

²⁶ Tax Benefits Code (Law No. 26/VIII/2013), Government Gazette, 28 January 2013.

²⁷ INFORME DE CONCILIACIÓN AL PROYECTO DE LEY Nos. 134/2012 (SENADO) y 166/2012 (CÁMARA), Senate of Colombia, 20 December 2012.

²⁸ “Tax Credit For Encouraging Competitiveness And Jobs”, Ministry of Economy and Finance, 1 January 2013.

²⁹ Finance Law for 2013, International Bureau of Fiscal Documentation, 7 February 2013.

³⁰ Ley de Concertación Tributaria - Dictamen de Mayoría, National Assembly, 27 November 2012.

³¹ “Sweden - Corporate tax rate of 22 per cent; interest-deduction limit expanded”, KPMG, 26 November 2012.

³² Resolution 02/NQ-CP, Government Web Portal, 14 January 2013.

³³ Income Tax (amendment) Act 2012, The Parliament of Zambia, 19 December 2012.

³⁴ Ley 20630, Official Gazette, 24 September 2012. The law entered into force on 1 January 2013.

³⁵ Ley Orgánica de Redistribución de los Ingresos para el Gasto Social, Registro Oficial No. 847, 10 December 2012.

³⁶ “President announces tax reform” Government press release, 27 November 2012.

³⁷ Finance Law 2013, Official Gazette, 31 December 2012.

cent to 30 per cent.³⁸ The *Slovak Republic* raised the corporate income tax rate from 19 per cent to 23 per cent.³⁹

A few countries adopted new *sector-specific or general legislation* relevant for foreign investment.

Mexico reformed its labour law. The new legislation allows for work contracts to be more flexible, legalizing trial periods and initial training contracts and also includes rules on the outsourcing of personnel.⁴⁰

Peru launched the National Environmental Certification Service for Sustainable Investment (“SENACE”). The “SENACE” will be in charge of supervising environmental assessment studies required for large investment projects.⁴¹

4. International investment policymaking

During the reporting period, three bilateral investment treaties (BITs) were signed. Two agreements were concluded between a least developed and developed country (*Benin and Canada*⁴²; *Haiti and Spain*⁴³). One BIT involved an economy in transition with a developing country (*Armenia and Iraq*⁴⁴).

The *Benin-Canada* BIT, also called Foreign Investment Promotion and Protection Agreement (FIPA) includes the typical investment protection provisions. In addition, it acknowledges the importance of upholding and not lowering health, safety and environmental standards in order to encourage investment. It also includes general exceptions to the treaty obligations allowing for the protection of human, animal or plant life or health to preserve regulatory space for contracting parties.⁴⁵ The treaty also contains an article on corporate social responsibility (CSR), calling upon countries to encourage investors to voluntarily adhere to internationally recognized standards and best practices on issues such as labour, the environment, human rights, community relations and anti-corruption⁴⁶ – all of which reflecting the spirit of the IPFSD.⁴⁷

The texts of the BITs between *Spain and Haiti*, as well as *Armenia and Iraq* BIT are not yet available. Regarding the *Spain-Haiti* BIT, article 12 of the EU Regulation No 1219/2012 establishing transitional arrangements for BITs between Member States and third countries, provides that BITs signed between 1 December 2009 and 9 January 2013 require prior approval by the European Commission in order to enter into force. The European Commission’s decision is pending (see also below).⁴⁸

Regarding agreements with investment provisions other than BITs—so-called “other International Investment Agreements (IIAs)” – on 21 February 2013 *Colombia and the Republic of Korea* signed a free trade agreement (FTA) that contains a comprehensive investment promotion and protection

Countries concluded three BITs and one “other IIA”.

³⁸ Law No 31 of 2012, Official Gazette, 31 December 2012.

³⁹ Tax & Legal news, Deloitte Tax Alert, 1 December 2012.

⁴⁰ Federal Labour Law, Congress, 30 November 2012.

⁴¹ Law 29968, Official Gazette, 20 December 2012.

⁴² Signed on 09 January 2013.

⁴³ Signed on 17 November 2012.

⁴⁴ Signed on 07 November 2012.

⁴⁵ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/benin-text.aspx?lang=eng&view=d>.

⁴⁶ <http://pm.gc.ca/eng/media.asp?id=5221>.

⁴⁷ Investment Policy Framework for Sustainable Development (IPFSD), chapter IV of the 2012. World Investment Report (WIR), “Towards a New Generation of Investment Policies”, available at: <http://investmentpolicyhub.unctad.org/Views/Public/IndexIPFSD.aspx>.

⁴⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0040:0046:En:PDF>.

chapter. The agreement grants pre and post-establishment most-favoured nation (MFN) and national treatment of each other's investors and prohibits performance requirements. It also contains detailed provisions on Investor-State Dispute Settlement (ISDS), and, by discouraging host States to relax environmental standards in order to attract investments, offers another example where sustainable development features make their way into IIAs.⁴⁹

Other noteworthy developments include:

- IIAs that entered into force

The free trade agreement (FTA) between the EFTA States (*Iceland, Liechtenstein, Norway, Switzerland*) and *Hong Kong, China* entered into force on 1 October 2012 for *Iceland, Liechtenstein* and *Switzerland*, and on 1 November 2012 for *Norway*.⁵⁰ The agreement was signed on 21 June 2011 and covers trade in goods, services, investment, intellectual property rights, government procurement, competition and trade and environment. The FTA includes limited investment protection provisions, granting, *inter alia*, national treatment to foreign investors.

Two agreements entered into force for *Morocco* during the reporting period. The 2009 *Estonia-Morocco* BIT entered into force on 4 November 2012, followed by the Additional Protocol to the BIT between the *Czech Republic and Morocco* (entry into force on 18 December 2012).⁵¹ The Additional Protocol to the BIT seeks to bring the *Czech Republic's* BIT in compliance with EU law and includes an extended REIO⁵² exception to MFN and national treatment, an exception to the free transfer of payment provision, as well as an exception clause related to essential security interests.

- Concluded negotiations

In December 2012, FTA negotiations were substantially concluded between the *EFTA States* and *Costa Rica* and *Panama*.⁵³ Negotiations between *EFTA* and *Guatemala* and *Honduras* are underway. The future FTA between the *EFTA States and Central American States* will include investment provisions.

On 20 December 2012, the Association of South East Asian Nations (*ASEAN*) and *India* concluded negotiations on trade in services and investment.⁵⁴ The agreements are expected to complement the already signed FTA in goods and will facilitate further economic integration between *ASEAN* and *India* contributing to the overall East Asian economic integration.

On 22 January 2013, Arab league countries adopted a draft *Inter Arab Investment Agreement* during the third Arab economic summit held in Riyadh, Saudi Arabia.⁵⁵ The draft includes provisions encouraging capital flows between the Parties, and provides favourable treatment and legal protection for Arab investors in member State territories.⁵⁶

Sustainable development features continue making their way into IIAs.

The move towards regional IIAs intensified, as several such agreements entered into force, were successfully concluded or are currently negotiated.

⁴⁹ <http://colombiareports.com/colombia-news/economy/28257-colombia-signs-free-trade-agreement-with-south-korea.htm>.

⁵⁰ <http://www.efta.int/free-trade/free-trade-news/2012-10-01-efta-hongkong-fta-entry-into-force.aspx>.

⁵¹ http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/ochrana_investic.html.

⁵² Regional Economic Integration Organisation.

⁵³ <http://www.efta.int/free-trade/ongoing-negotiations-talks/central-america.aspx>.

⁵⁴ Vision Statement ASEAN-India Summit, New Delhi, India, 20 December 2012. <http://www.asean.org/news/asean-statement-communicues/item/vision-statement-asean-india-commemorative-summit>.

⁵⁵ <http://english.ahram.org.eg/NewsContent/3/12/63045/Business/Economy/Third-Arab-economic-summit-brings-Arab-free-trade-.aspx>.

⁵⁶ <http://www.arabnews.com/al-mubti-summit-resolutions-will-boost-joint-arab-investment>.

- Ongoing IIA negotiations

On 5 November 2012, *EFTA member States and Malaysia* launched negotiations on the conclusion of a FTA expected to contain investment protection and promotion provisions.⁵⁷

In Asia, *Japan* held a first round of negotiations for the *Canada-Japan Economic Partnership Agreement*⁵⁸ (EPA) in November 2012 and a first round for the *Colombia-Japan EPA* in December 2012.⁵⁹

At the 21st ASEAN Summit in November 2012, *ASEAN countries* officially launched negotiations with *Australia, China, India, South Korea, Japan and New Zealand* on a Regional Comprehensive Economic Partnership Agreement (RCEP). The RCEP seeks to create a welcoming and competitive investment environment in the region. Negotiations on investment under the RCEP will cover the four pillars of promotion, protection, facilitation and liberalization based on the Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership.⁶⁰ The negotiations are expected to be completed by the end of 2015.

Discussions on the Trans-Pacific Partnership Agreement (TPPA) continue, with the 15th negotiation round concluded in December 2012.⁶¹ 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*). *Japan and Thailand* have, on their sides, expressed interests to join. The agreement is expected to include a fully-fledged investment chapter with high standards of investment liberalisation and protection.

Treaty-making of the *European Union* focused on the Comprehensive Economic and Trade Agreement (CETA) with *Canada*, which is likely to include investment protection and promotion provisions.⁶²

Following the December 2012 completion of negotiations on a FTA between the *EU and Singapore*, the parties are set to continue discussions on a separate investment agreement.⁶³

Parallel to these developments, the *EU and the United States* initiated negotiations for a Transatlantic Trade and Investment Partnership Agreement (TTIPA) on 13 February 2013.⁶⁴ The decision to start negotiations follows the recommendations of the “High Level Working Group on Jobs and Growth”, established by the EU and the United States in November 2011. The TTIPA is expected to include reciprocal market opening in goods, services, and investment and to foster the compatibility of regulatory regimes. With respect to investment, the High Level Working Group has recommended that the future treaty include investment liberalization and protection provisions based on the highest levels of

Seven ongoing regional negotiations involve three regional blocks (ASEAN, EU, EFTA) and, together with their partners, a total of 54 economies.

⁵⁷ <http://www.efta.int/free-trade/free-trade-news/2012-11-05-efta-malaysia-launch-fta-neg.aspx>.

⁵⁸ http://www.mofa.go.jp/announce/announce/2012/11/1130_02.html.

⁵⁹ http://www.mofa.go.jp/announce/announce/2012/12/1217_01.html. On 29 November 2012 the European Council decided to give the Commission ‘green light’ to start negotiations with Japan in view of establishing an EU-Japan EPA. http://europa.eu/rapid/press-release_MEMO-12-930_en.htm.

⁶⁰ The Guiding Principles were adopted by the Economic Ministers in Siem Reap, Cambodia, in August 2012, and endorsed by the ASEAN Leaders at the 21st ASEAN Summit.

⁶¹ <http://www.ustr.gov/tpp>.

⁶² http://www.canadainternational.gc.ca/eu-ue/policies-politiques/trade_agreements-accords_commerciaux.aspx?lang=eng&view=d; <http://trade.ec.europa.eu/doclib/press/index.cfm?id=844>; http://www.sice.oas.org/TPD/CAN_EU/Negotiations/EU_CAN_towards_conclusion_neg_e.pdf.

⁶³ http://europa.eu/rapid/press-release_IP-12-1380_en.htm.

⁶⁴ <http://www.ustr.gov/about-us/press-office/press-releases/2013/february/statement-US-EU-Presidents>.

liberalization and protection standards that both sides have negotiated to date.⁶⁵

- Other developments

A number of other important events related to international investment policies took place during the reporting period.

On 12 December 2012, the European Parliament and the European Council adopted Regulation No 1219/2012, establishing transitional arrangements for BITs between EU Member States and third countries.⁶⁶ The regulation responds to the entry into force of the Lisbon Treaty which transferred the competence for FDI to the EU. Regulation 1219/2012 enables the “grandfathering” by the EU of Member States’ BITs concluded before the entry into force of the Lisbon Treaty, and lays down the conditions under which Member States can be authorized to amend or conclude new BITs in the future.

Regarding BITs between EU Member States and third countries signed before 1 December 2009, the Regulation stipulates that they must be notified by Member States to the European Commission and that they can remain in force.⁶⁷ It also establishes the European Commission may assess each treaty and decide whether it constitutes a serious obstacle to future negotiations with the third country concerned. In case of an obstacle, the European Commission and the member state shall enter into consultations with a view to identify appropriate measures to resolve the matter. If no serious obstacles are found, the notified BITs shall remain in force until a treaty between the EU and the same third country enters into force.

As regards future negotiations between an EU Member State and a third country in order to amend an existing or conclude a new BIT, they must be authorized by the European Commission, which also has the right to be informed of the progress and result of the negotiations, and may request to participate in the bilateral process.

At the multilateral level, in the context of the WTO Doha Round impasse, a new informal group of WTO Members is discussing possibilities to conclude an International Services Agreement (ISA) amongst each other. Twenty-one WTO Members, also known as the “Real Good Friends (RGF) of Services”,⁶⁸ are currently participating in the talks and intend to enter into formal negotiations on the legal text of the agreement by March 2013.⁶⁹ The initiative aims at reaching liberalisation commitments that go further than those under the WTO General Agreement on Trade in Services (GATS). While it will address all four modes of trade in services, particular attention is being given to mode 3 (commercial presence/investment), and several stakeholders explicitly refer to the investment dimension of the current discussions.⁷⁰ End of January 2013, the “Real Good Friends of

⁶⁵ http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf.

⁶⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0040:0046:En:PDF>.

⁶⁷ Art 3, (“Maintenance in force”) stipulates “without prejudice to other obligations of the Member States under Union law, bilateral investment agreements notified pursuant to art. 2 of this Regulation may be maintained in force, or enter into force, in accordance with the TFEU and this Regulation, until a bilateral investment agreement between the Union and the same third country enters into force.”

⁶⁸ Initially, 16 WTO members participated in the group (Australia, Canada, Chile, Colombia, European Union, Hong Kong, China, Japan, Mexico, Pakistan, New Zealand, Norway, Singapore, South Korea, Switzerland, Taiwan Province of China, and United States) and 5 others joined in September 2012 (Costa Rica, Israel, Panama, Peru and Turkey)

⁶⁹ http://www.ustr.gov/sites/default/files/01152013%20ARK%20letter%20to%20Speaker%20Boehner_0.pdf.

⁷⁰ <http://www.crowell.com/Practices/International-Trade/alerts-newsletters/What-an-International-Services-Agreement-Would-Mean-for-Globally-Engaged-Companies>; <http://www.keidanren.or.jp/en/policy/2012/067.pdf>.

Services” met in Geneva to address a series of technical issues, including ways to schedule commitments, a date for discussing possible legal texts for the deal and a work plan for 2013.⁷¹

As another example of multilateral engagement on investment issues, UNCTAD held, from 28 to 30 January 2013, the first session of its Multi-year Expert Meeting on Investment, Innovation and Entrepreneurship for Productive Capacity-Building and Sustainable Development. Discussions focused on the issue of “Regional Integration and FDI”.

During the three days, experts engaged in a dynamic debate on regional integration and FDI in the context of the investment-trade nexus, identifying ways and means to further promote investment for sustainable development and inclusive growth in the regional context. In particular, experts analyzed the impact of regional integration, including sub-regional, regional and interregional initiatives on investment flows and the integrating effects of regional investment clusters. They also shared best practice policy lessons, including with regard to regional investment agreements, regional investment promotion and related sustainable development implications. The meeting saw high levels of attendance throughout and a lively and constructive debate among experts.⁷²

In January 2013, *India* ordered a freeze of all Bilateral Investment Protection Agreements (BIPA) negotiations until a review of the model text of BIPA is carried out.⁷³

On 3 January 2013, the *Lao Peoples Democratic Republic (Laos)* ratified the WTO membership agreement and officially joined the organization on 2 February 2013, becoming the 158th member.⁷⁴

As governments engage in bilateral and regional IIA negotiations, supported by business and the private sector⁷⁵ some civil society organizations (CSOs) continue voicing their discontent, either by issuing policy statements or taking legal action against IIAs. For example, on 1 December 2012, activists from Canada, Mexico and the US launched a campaign against the TPP negotiations⁷⁶ on 5 February 2013, more than 80 CSOs from nine different countries, issued a statement opposing “excessive corporate rights” in the envisaged CETA,⁷⁷ and on 18 January 2013, Hupacasath First Nation challenged in Canadian courts the recently signed Canada-China Foreign Investment Promotion and Protection Agreement, alleging that the Canadian government has failed to fulfil its constitutional obligation to consult First Nations on this agreement claiming that it would adversely impact First Nations rights.⁷⁸

⁷¹ <http://ictsd.org/i/news/bridgesweekly/153441/>; <http://trade.ec.europa.eu/doclib/press/index.cfm?id=870>.

⁷² <http://unctad.org/en/Pages/MeetingDetails.aspx?meetingid=202>.

⁷³ <http://www.bilaterals.org/spip.php?article22598>.

⁷⁴ http://www.wto.org/english/news_e/news13_e/acc_lao_08jan13_e.htm, See also UNCTAD IPM N° 8 from 26 November 2012, reporting on the relevant General Council decision.

⁷⁵ http://www.wto.org/english/news_e/news13_e/acc_lao_08jan13_e.htm, See also UNCTAD IPM N° 8 from 26 November 2012, reporting on the relevant General Council decision.

⁷⁶ <http://canadians.org/media/trade/2012/01-Dec-12.html>.

⁷⁷ http://www.s2bnetwork.org/fileadmin/dateien/downloads/Transatlantic_Statement_on_Investor_Rights_in_CETA.pdf.

⁷⁸ <http://canadians.org/blog/?p=18925>.

Methodological note

This Monitor is the ninth 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 November 2012 to 28 February 2013.

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 November 2012 and 28 February 2013

Countries/ Economies	Entry/ Establishment	Operation			Promotion and facilitation	Outward FDI
		FDI specific	FDI related	General		
Albania	-					
Algeria					+	
Benin	-					
Bolivia, Plurinational State of	-, -					
Brazil					+	
Burkina Faso				+		
Canada	+, +, +, -					
Cape Verde				+		
Chile				-		
China					+	
Colombia				+		
Ecuador				-		
European Union	-					
France				+	+	
Gabon				+		
Honduras				+, -		
Hungary	-					
India	+					
Japan						+
Mexico				=		
Morocco				-		
Myanmar					+	
Pakistan					+	
Peru				=		
Portugal	+					
Senegal				-		
Slovak Republic				-		
Sri Lanka	-					
Sudan					+	
Sweden				+		
Ukraine	+					
Viet Nam				+		
Zambia				=		

“+” means introduction of a more favourable policy measure for investors

“-” means introduction of a less favourable policy measure for investors

“=” means introduction of neutral policy for investors, such as general legislation.

**Annex 2. Summary table of IIAs signed between
1 November 2012 and 28 February 2013**

NAME OF AGREEMENT		DATE OF SIGNATURE
1	Bilateral Investment Treaty between Armenia and Iraq	07.11.2012
2	Bilateral Investment Treaty between Haiti and Spain	17.11.2012
3	Foreign Investment Promotion and Protection Agreement between Benin and Canada	09.01.2013
4	Free Trade Agreement between Colombia and the Republic of Korea	21.02.2013

For the latest investment trends
and policy developments,
please visit the website of the UNCTAD
Investment and Enterprise Division
www.unctad.org/diae/
<http://investmentpolicyhub.org>

 **@unctadwif**

For further information,
please contact
Mr. James X. Zhan
Director
Investment and Enterprise Division
UNCTAD

Tel.: 022 917 57 60
Fax: 022 917 04 98



UNITED NATIONS
UNCTAD