



INVESTMENT POLICY MONITOR



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H I G H L I G H T S

- Thirty-eight countries took 60 investment policy measures in the review period (May - October 2017). The share of liberalisation, promotion and facilitation measures reached 78 per cent - broadly in line with the average in recent years. Developing countries especially in Asia and Africa took the lead in adopting these policies.
- Among the most important policy measures are the adoption of new investment law in Egypt, the introduction of a new Investment Industry Guidance Catalogue in China, as well as foreign direct investment (FDI) liberalisation in Mexico (air transport service) and Saudi Arabia (engineering). Some countries established new Special Economic Zones or improved existing incentives schemes therein (Republic of the Congo, Egypt, India, Kenya, Morocco, Mexico, Viet Nam and Zimbabwe).
- Another noteworthy development are several investment facilitation measures, such as the streamlining of administrative procedures (Australia, China, Egypt, Jordan, Mauritius) or more transparency as regards licensing requirements for business (Nigeria).
- Six countries (China, Germany, Japan, Italy, Russian Federation and the United States) adopted investment policy measures related to national security. In addition, South Africa and the United Republic of Tanzania introduced some investment restrictions related to natural resources.
- The universe of international investment agreements (IIAs) continues to grow, albeit at a lower speed. During the reporting period, countries concluded three bilateral investment treaties (BITs) and two treaties with investment provisions (TIPs), bringing the total number of IIAs to 3,323. Yet, looking at 2017 overall, the first 11 months saw the conclusion of just 12 new IIAs, the lowest number of IIAs concluded over such a time-frame since 1983.
- The reporting period saw diverging approaches to international investment policymaking. On the one hand, negotiations for megaregional agreements gained momentum (particularly in Africa and Asia). On the other hand, a number of BITs were terminated and the termination of others took effect.
- New IIAs are consolidating phase 1 of IIA reform, typically following UNCTAD's Roadmap for IIA Reform; among others, they refine their scope and application, clarify key protection standards and include exceptions and improve investment dispute settlement.
- Progress is made in several of the five areas for IIA reform provided in the UNCTAD Roadmap. In addition to preserving the right to regulate, the reporting period saw improvements in investment dispute settlement (e.g. the entry into force of the "Mauritius Convention on Transparency" and discussions about a possible Multilateral Investment Court).
- It is now time to move to phase 2 of IIA Reform (dealing with the existing stock of old treaties). Following the launch of UNCTAD's 10 Options for Modernizing Old-generation IIAs, the investment and development community convened at UNCTAD's Annual IIA Conference to share experiences and chart the way forward.
- The Conference recognized that the IIA regime was too big to be fixed by a single group of countries or a single institution and noted the importance of addressing the interaction and coherence between the national and international dimensions of investment policymaking - issues that could be taken up in phase 3 of IIA reform.

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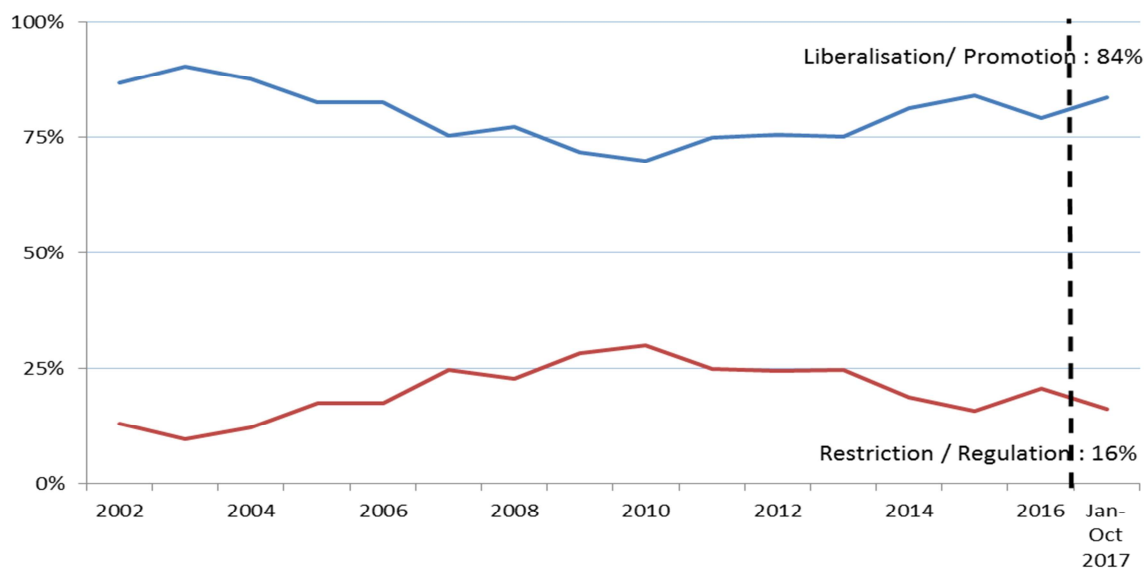
A. National investment policies

During the review period (May - October 2017), 38 countries took 60 investment policy measures (table 1). As in previous review periods, the majority of new investment policy measures aimed at creating more favourable investment conditions with developing countries in Asia and Africa taking the lead (figure 1). Investment liberalisation, promotion and facilitation measures were adopted in numerous industries, including transportation, telecommunications and engineering. New investment restrictions or regulations for foreign investors were mainly based on considerations of national security or foreign ownership of land and natural resources.

The share of investment liberalisation, promotion and facilitation measures during the reporting period attained 78 per cent, broadly in line with the average in recent years. From January to October 2017, this share stands at 84 per cent.

One notable feature during the report period is the increase in investment policy measures related to national security, especially from some G20 members. In addition, further changes were being considered or prepared in several advanced economies.

Figure 1: Changes in national investment policies, 2002 - October 2017*



Source: ©UNCTAD.

* The data in the figure do not include measures related to the general business climate, such as corporate taxation, environmental or labour legislation.

Table 1. Summary of national investment policy measures adopted between May and October 2017

| | Entry /Establishment (33) | Treatment (6) | Promotion and facilitation (26) | General business climate (4) |
|------------------------|---------------------------|---------------|---------------------------------|------------------------------|
| Armenia | 1 | | | |
| Australia (*) | 2 | | 1 | |
| Belgium | 1 | | | |
| Canada | 2 | | | |
| China (*) | 3 | 1 | 3 | |
| Colombia | 1 | | | |
| Congo, Republic of the | | | 1 | |
| Dominican Republic | | | 1 | |

| | | | | |
|---------------------------------|---|---|---|---|
| Egypt | 1 | | 4 | |
| Germany | 1 | | | |
| Ghana | | | | 1 |
| India | 2 | | 1 | |
| Italy | 1 | | | |
| Japan (*) | 1 | 1 | | |
| Jordan (*) | 1 | | 1 | |
| Kenya (*) | | 1 | 1 | 1 |
| Latvia | 1 | | | |
| Liberia | | | 1 | |
| Lithuania | 1 | | | |
| Mauritius | | | 2 | |
| Mexico | 1 | | 1 | |
| Morocco | | | 1 | |
| Myanmar | 1 | | | |
| Namibia (*) | 1 | 1 | | |
| Nigeria | | | 3 | |
| Russian Federation | 2 | | | |
| Saudi Arabia | 2 | | | |
| Singapore | | | 1 | |
| South Africa | 1 | | | |
| Thailand | | | 1 | |
| Uganda | | | 1 | |
| Ukraine (*) | 2 | | | 2 |
| United Arab Emirates | 1 | | | |
| United Republic of Tanzania (*) | 2 | 1 | | |
| United States of America | 1 | | | |
| Uzbekistan | | 1 | | |
| Viet Nam | | | 1 | |
| Zimbabwe | | | 1 | |

Source: ©UNCTAD.

* Measures are double-counted because they related to more than one type.

1. Entry/Establishment of investment

Twenty-four countries - *Armenia, Australia, Belgium, Canada, China, Colombia, Egypt, Germany, India, Italy, Japan, Jordan, Latvia, Lithuania, Mexico, Myanmar, Namibia, the Russian Federation, Saudi Arabia, South Africa, Ukraine, United Arab Emirates, the United Republic of Tanzania and the United States of America* - adopted new policy measures relating to the entry and establishment of foreign investors. In their majority, they relaxed restrictions on foreign ownership or opened up new business opportunities.

Among the most noteworthy investment liberalisation measures are:

- *China* revised its "foreign investment negative list" for 11 free trade zones, lifting investment restrictions in a number of sectors. It also issued an updated version of the Investment Industry Guidance Catalogue.
- *Egypt* introduced a new law for the setting up of a natural gas regulatory authority charged with licensing and devising a plan to open the gas market to competition.
- *India* abolished the Foreign Investment Promotion Board and issued standard operating procedures for handling FDI proposals such as the designation of competent authorities and timeframes for applications.
- *Mexico* increased foreign ownership caps for the supply of fuels and lubricants for ships, aircraft and railway equipment, as well as for certain air transport services from 25 per cent to 49 per cent.

- *Myanmar* permitted foreign companies to engage in trading of fertilizers, seeds, pesticides, hospital equipment, and construction materials. Previously, only local companies and local-foreign joint ventures were allowed to engage in such trade.
- *Saudi Arabia* fully liberalized foreign investment in engineering services and associated consultancy, provided that the company is at least ten years old and operates in at least four countries.

New regulatory or restrictive investment-related policy measures included:

- *Australia* introduced an annual charge on foreign owners of under-utilised residential property and increased fees that foreign investors pay when seeking approval to purchase residential real estate. It also introduced a quantitative restriction on the acquisition of certain real estate assets by foreigners.
- *South Africa* introduced a new Mining Charter, which raises the minimum threshold for black ownership of mining companies.
- *The United Republic of Tanzania* adopted new mining laws, requiring, inter alia, that the government obtains at least a 16 per cent stake in mining and energy projects.

Especially, investment policies related to national security increased markedly. In particular,

- *Germany* and *Japan* respectively introduced policy measures mainly sought to clarify the existing rules and address shortcomings that were identified in their application.
- *Italy* extended the government's so-called 'golden powers' to block takeovers by non-EU companies to high-technology sectors that may pose a serious threat to essential national interests or present a risk to public order and national security.
- The *Russian Federation* introduced certain inward investment prohibitions for offshore companies. It also now requires prior government approval for foreign investment in certain transactions involving assets of strategic importance for national defence and state security.

2. Treatment of established investment

Six countries - *China, Japan, Kenya, Namibia, the United Republic of Tanzania and Uzbekistan* - took measures with respect to the treatment of investors after establishment in the host country. For example,

- *Kenya* introduced new regulations, which reinforce the local procurement requirements for existing mineral rights holders.
- *Namibia* passed the public private partnership (PPP) Act, providing a legal framework for PPP projects and regulating PPP projects through the stages of initiation, preparation, procurement, conclusion of agreement and implementation.
- *Uzbekistan* relaxed capital controls on businesses and individuals. Inter alia, enterprises registered in Uzbekistan are now permitted to buy and sell foreign currency for any purpose.

3. Promotion/Facilitation of investment

Eighteen countries - *Australia, China, the Republic of the Congo, the Dominican Republic, Egypt, India, Jordan, Kenya, Liberia, Mauritius, Mexico, Morocco, Nigeria, Singapore, Thailand, Uganda, Viet Nam and Zimbabwe* - adopted measures for the promotion and facilitation of investment. On the whole, countries encouraged investment through granting tax incentives or facilitating investment procedures. For instance,

- *Australia* introduced a series of changes to its foreign investment framework by simplifying related regulations and the fee framework.
- *China* simplified the procedures for foreign-invested enterprises. In addition, the State Council issued a notice on promoting foreign investment in certain industries.
- *The Dominican Republic* established 'ProDominicana', which is tasked with the promotion and facilitation of foreign direct investment and exports.

- *Egypt* introduced the new Investment Law, aiming to promote domestic and foreign investment by offering further incentives, reducing bureaucracy and simplifying administrative processes.
- *Jordan* simplified regulations to stimulate investment and improve the business environment.
- *Mauritius* introduced the new Business Facilitation Act 2017, which aims to eliminate regulatory and administrative bottlenecks to investment. It also adopted a new Act on the Establishment of an Economic Development Board, which aims, inter alia, to promote Mauritius as an attractive investment and business centre.
- *Nigeria* granted 'Pioneer Status' to the "creative industry". It also published a list of 27 new industries eligible to enjoy the pioneer status incentive.

Some countries introduced investment policy measures related to Special Economic Zones (SEZs). For example,

- *The Republic of the Congo* introduced two laws aimed at implementing the policy of diversification of the Congolese economy and creating SEZs.
- *Egypt* issued a decree establishing the Golden Triangle Economic Zone.
- *Mexico* established three new SEZs in Puerto Chiapas, Coatzacoalcos and Lázaro Cárdenas-La Unión.
- *Viet Nam* provided some incentives for the Hoa Lac Hi-Tech Park, including preferential tax treatment, land use incentives and favourable conditions for immigration of foreign employees.
- *Zimbabwe* exempted investors operating in SEZs from paying duty on imported capital equipment, materials and products on the condition that they are used in SEZs.

4. General business climate

Three countries - *Ghana, Kenya and Ukraine* - took measures affecting the general business climate.¹ *Ghana* raised the minimum paid-up capital of commercial banks with a deadline of end of 2018. *Kenya* adopted a new Financial Act, introducing, inter alia, a number of changes to corporate taxation. *Ukraine* issued a decree establishing the High Court for Intellectual Property to be headquartered in Kyiv.

¹ The following examples are a non-exhaustive overview.

B. International investment policies

1. International Investment Agreements (IIAs) signed

During the reporting period, three bilateral investment treaties (BITs) and two treaties with investment provisions (TIPs)² were signed bringing the total number of IIAs to 3,323 by end-October 2017. Yet, looking at 2017 overall, the first 11 months saw the conclusion of just 12 new IIAs, the lowest number of IIAs concluded over such a time-frame since 1983.

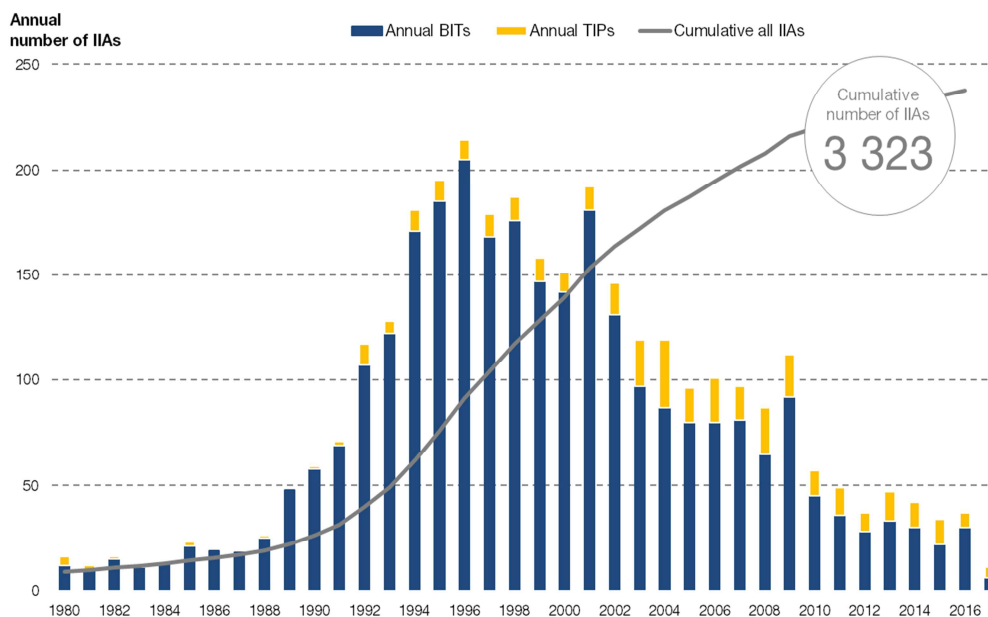
During the reporting period, the termination of five BITs took effect.³ Moreover, on 16 May 2017, Ecuador issued notices of termination for BITs with 16 countries.⁴ This decision follows earlier recommendations made by the Ecuadorian Citizens Commission on Investment Protection (CAITISA) in its review of the country's IIAs.

Table 2. List of IIAs signed between 1 May 2017 and 31 October 2017⁵

| | Name of the Agreement | Date of signature |
|---|--|-------------------|
| 1 | Pacific Agreement on Closer Economic Relations (PACER) Plus | 14 June 2017 |
| 2 | BIT between Burundi and Turkey | 14 June 2017 |
| 3 | CEPA Investment Agreement between China and Hong Kong, China SAR | 28 June 2017 |
| 4 | BIT between Turkey and Ukraine | 9 October 2017 |
| 5 | BIT between Turkey and Uzbekistan | 25 October 2017 |

Source: ©UNCTAD, IIA Navigator.

Figure 2: Trends in IIAs signed, 1980-2017



Source: ©UNCTAD, IIA Navigator.

Note: Preliminary data for 2017. 3,323 is the cumulative number of all signed IIAs, independently of their entry into force. Terminated IIAs, for which termination has entered into effect, are not included.

² Treaties with investment provisions encompass economic agreements other than BITs that include investment-related provisions (e.g. investment chapters in economic partnership agreements and free trade agreements, regional investment agreements and framework agreements on economic cooperation). Three main types of TIPs can be distinguished: (i) TIPs that include obligations commonly found in BITs, including substantive standards of investment protection and ISDS; (ii) TIPs that include limited investment provisions; and (iii) TIPs that establish an institutional framework between the Parties to promote and cooperate on investment.

³ These include - with respective dates when the termination became effective - the BITs concluded by Denmark with India (13 May 2017), Estonia (16 August 2017), and Romania (19 August 2017), as well as the BITs between Germany and India (3 June 2017) and between Germany and Indonesia (1 June 2017). By means of the survival clause, covered investments remain protected for an additional period (some for 5 years, but most commonly for 10, 15 or 20 years).

⁴ Argentina, Bolivia, Canada, Chile, China, France, Germany, Italy, the Netherlands, Peru, Spain, Sweden, Switzerland, the United Kingdom, the United States and Venezuela.

⁵ The following discussion is based on IIAs for which text was available.

The *Pacific Agreement on Closer Economic Relations (PACER) Plus Agreement* between Australia, New Zealand and 12 Pacific island States⁶, includes a chapter on investment. This chapter contains a provision on granting investments treatment in accordance with international law, including fair and equitable treatment (FET) and full protection and security (FPS); a provision on direct and indirect expropriation (unclarified); as well as a provision on the free transfer of funds (subject to detailed exceptions). The articles on national treatment (NT) and most-favoured-nation (MFN) treatment apply to pre- and post-establishment. NT applies to economic activities listed in the parties' investment schedules (positive-list approach). Exceptions to MFN treatment are set out in a negative list. The chapter also contains commitments to refrain from relaxing domestic legislation related to the environment, health, labor and safety as a means to encourage investment. In a separate provision, the Parties encourage investors to comply with universally recognized corporate social responsibility (CSR) standards (without referring to a specific instrument).

The *Burundi-Turkey BIT* contains an asset-based definition of investment referring to the specific characteristics an investment must have, such as the commitment of capital, expectation of gain or profit, or the assumption of risk as well as the contribution to economic development of the host State. The BIT includes a provision granting investments treatment in accordance with international law, including FET. It contains a post-establishment NT and MFN provision (specifying that MFN does not apply to investor-State dispute settlement (ISDS) provisions). The BIT contains provisions on direct and indirect expropriation (unclarified); and a provision on transfer of funds (with exception to cases of balance-of-payments (BoP) difficulties). The provision on ISDS covers only treaty claims and investors are prevented from seeking relief for the same violation in multiple forums through a "fork-in-the road" provision. The BIT denies ISDS access to investors with no substantive business activity in the host State.

The *China-Hong Kong (China SAR) Investment Agreement* builds on the Closer Economic Partnership Arrangement (CEPA) signed between the Parties on 18 October 2003. The agreement includes a broad asset-based definition of investment, which describes the characteristics of an investment (commitment of capital or other resources, the expectation of gain or profit, and the assumption of risks). The provisions on NT, MFN treatment and performance requirement apply to pre- and post-establishment (specifying that MFN does not apply to ISDS provisions). It also contains provisions on FET (including an obligation not to deny justice in criminal, civil or administrative proceedings) and FPS. The provision on FET clarifies that a breach of another provision of the agreement does not establish a breach of FET and a measure that may be inconsistent with an investor's expectations does not by itself constitute a breach of FET. The agreement covers direct and indirect expropriation (with clarifications on how to determine whether a measure of a Party constitutes an indirect expropriation) and a free transfer of funds provisions (subject to detailed exceptions). The agreement includes investment promotion and facilitation measures, such as the harmonization of standards and procedures in examining and approving investment applications. The agreement contains an ISDS provision (without an option for international arbitration), which includes amicable consultation between the disputing parties, complaint handling procedures, coordination, mediation, and legal proceedings as provided for under domestic laws.

The *Turkey-Ukraine BIT* includes an asset-based definition of investment requiring investment to have certain characteristics such as the commitment of capital, expectation of gain or profit, or the assumption of risk as well as the contribution to economic development of the host State. The treaty contains a provision granting investments treatment in accordance with international law, including FET. The NT and MFN provision apply to post-establishment (specifying that MFN does not apply to ISDS provisions). The treaty covers direct and indirect expropriation and contains a provision on transfer of funds (with exception to cases of balance-of-payments (BoP) difficulties), as well as a provision on ISDS (the ISDS clause covers treaty claims only; the BIT also denies ISDS access to investors with no substantive business activity in the host State).

The *Turkey-Uzbekistan BIT* contains an asset-based definition of investment referring to the specific characteristics an investment must have such as the commitment of capital, expectation of gain or profit, or the assumption of risk.⁷ The treaty contains an unqualified FET clause, a provision on post-establishment NT and MFN treatment (specifying that MFN does not apply to ISDS provisions), a provision on direct and indirect expropriation (unclarified), and a provision on free transfer of funds (subject to detailed exceptions). This BIT contains an ISDS provision covering only disputes arising directly out of investment activities that have effectively

⁶ Cook Islands, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

⁷ Unlike the Turkey-Ukraine BIT, this BIT signed by Turkey does not mention the contribution to economic development of the host State.

started and have obtained necessary permission in conformity with the relevant legislation of the host Contracting Party.

2. IIAs that entered into force

At least five IIAs entered into force during the reporting period: the BITs concluded between Kenya and the Republic of Korea⁸ and between Kenya and Japan,⁹ as well as the FTA concluded between Singapore and Turkey.¹⁰ The CEPA Investment Agreement between China and Hong Kong (China SAR), entered into force on the day of its signature.¹¹ The FTA concluded between the EFTA States and Georgia entered into force among Georgia, Iceland and Norway.¹² For Switzerland and Lichtenstein, the entry into force of the agreement is still pending.¹³

The *Comprehensive Economic and Trade Agreement (CETA)* between the EU and Canada (signed on 30 October 2016) started to apply provisionally on 21 September 2017.¹⁴ The provisional application does not include investment protection and the investment court system. For investment protection and the investment court system, the entry into force is pending the ratification of CETA by all EU Member States.¹⁵

3. Ongoing IIA negotiations

During the reporting period, negotiations on megaregional initiatives continued. These include the negotiations for the African Continental Free Trade Area (CFTA), the Regional Comprehensive Economic Partnership (RCEP) and the Trans-Pacific Partnership (TPP) Agreement (see also below). Several bilateral negotiations on free trade agreements (FTAs) with investment chapters were also initiated or continued during the reporting period. In addition, the renegotiations of NAFTA, including the chapter on investment, have started.

Regional Comprehensive Economic Partnership (RCEP)

On 2-12 May 2017, the 18th round of negotiations for the RCEP, involving the ten members¹⁶ of the Association of the Southeast Asian Nations (ASEAN) plus six other countries from the region,¹⁷ were held in Manila, Philippines. Discussions focused, amongst other topics, on trade in goods, trade in services and investment. Two other rounds of negotiations took place in Hyderabad, India (18-28 July) and in Songdo, Republic of Korea (17-28 October), where discussions focused on government procurement and trade remedies. A high-level RCEP Ministerial Meeting and the RCEP Summit was held on 12-14 November 2017, in Pasay City, Philippines.¹⁸

Free Trade Agreement between Australia and Hong Kong, China SAR

On 16 May 2017, Australia and Hong Kong (China SAR), launched negotiations for a FTA. The treaty is expected to include a chapter on investment that is more comprehensive than the parties' existing BIT, which was signed in 1993.¹⁹

Trans-Pacific Partnership (TPP) Agreement

On 21 May 2017, ministers from 11 TPP countries²⁰ released a formal statement affirming their intention to move forward with the TPP despite the absence of the United States (that officially withdrew from the treaty in January 2017).

Outside the reporting period but of relevance for this IPM, on 11 November 2017, in the margins of the Asia-Pacific Economic Cooperation (APEC) meeting in Da Nang, Viet Nam, the 11 parties to TPP agreed to conclude the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP). The parties released a further

⁸ Entry into force 3 May 2017.

⁹ Entry into force 14 September 2017.

¹⁰ Entry into force 1 October 2017.

¹¹ Entry into force 28 June 2017.

¹² Entry into force 1 September 2017 (for Georgia, Iceland and Norway).

¹³ All the IIAs are available at the UNCTAD IIA Navigator, <http://investmentpolicyhub.unctad.org/IIA>.

¹⁴ http://europa.eu/rapid/press-release_IP-17-3121_en.htm.

¹⁵ The European Parliament gave its consent to the conclusion of CETA on 15 February 2017 and Canada ratified CETA on 16 May 2017.

¹⁶ Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

¹⁷ Australia, China, India, Japan, Republic of Korea and New Zealand.

¹⁸ <http://dfat.gov.au/trade/agreements/rcep/news/Pages/twentieth-round-of-negotiations-17-28-october-2017-songdo-incheon-korea.aspx>.

¹⁹ <http://dfat.gov.au/trade/agreements/a-hkfta/fact-sheets/Pages/australia-hong-kong-free-trade-agreement-objectives.aspx>.

²⁰ Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam.

statement and published a list of those treaty provisions of the TPP that will be maintained in the CPTPP (Annex I) and those that will be suspended (Annex II).²¹ With respect to the CPTPP provisions on investment (contained in chapter 9) the parties agreed to suspend the application of the provisions related to "investment agreement", on "investment authorization", and on the "selection of arbitrators". Annex II also incorporates a list of specific items for which progress was made but no consensus was reached prior to the signature of the CPTPP.

Economic Partnership Agreement between the EU and Japan

On 6 July 2017, the EU and Japan announced that agreement has been found on most parts of their Economic Partnership Agreement. A draft negotiating text of the agreement's investment chapter was released by the EU, indicating that many aspects remain subject to further negotiations.²² Not included in that draft are provisions on dispute resolution, which is also carved out of the draft's MFN clause.

North American Free Trade Agreement (NAFTA)

On 16 August 2017, the NAFTA parties (Canada, Mexico, and the United States) started the discussions on the renegotiation of NAFTA. A second round of talks took place in Mexico City (1-5 September), a third round was held in Ottawa (23-27 September), a fourth round took place again in Washington DC (11-15 October) and fifth round was held in Mexico City (17-21 November). The next round of negotiations will take place from 23-28 January 2018, in Montreal, Canada. Ahead of the start of renegotiations the NAFTA parties made statements regarding the investment chapter. For its part, the United States have stated concerns that foreign investors should not enjoy better treatment than national investors.²³ Canada and Mexico stated their intention to reform the ISDS system.²⁴

African Continental Free Trade Area (CFTA)

On 21 August-1 September 2017, the African Union Commission held the third meeting of the CFTA Technical Working Groups (TWGs) in Durban, South Africa. The discussions built upon the outcomes of the second CFTA/TWGs meeting, which was held from 24 April-5 May 2017 in Nairobi, Kenya. The meeting was attended by delegates from African Union Member States as well as representatives of regional and international organizations.²⁵ Official negotiations on the CFTA investment chapter are expected to start in 2018.

Free Trade Agreement between the EU and Mexico

The EU and Mexico are continuing the re-negotiations of their FTA, which will also include an investment chapter. A fifth round of negotiation was held in Brussels on 18-30 September 2017. The European Commission published textual proposals of the investment chapter in April 2017, including the establishment on an investment court system (following the court system contained in the Canada-EU CETA).²⁶

Bilateral Investment Agreement between China and the EU

On 9-12 October 2017, the EU and China held their 15th negotiation round on a bilateral investment agreement in Beijing. The discussions focused on transparency, domestic regulation, provisions relating to NT, expropriation, sustainable development, financial services and State-owned enterprises (SOEs). The 16th round will take place in December 2017 in Brussels.²⁷

4. Other IIA-related developments

Developments regarding the reform of investment dispute settlement

Discussions on the Establishment of a Multilateral Investment Court

On 10 July 2017, during the 50th session of the United Nations Commission on International Trade Law (UNCITRAL), parties agreed that further work should be carried out on the issue of a multilateral reform of investment dispute

²¹ For further details see <http://dfat.gov.au/trade/agreements/tpp/news/Pages/trans-pacific-partnership-ministerial-statement.aspx>.

²² http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155710.pdf.

²³ <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf>.

²⁴ https://www.canada.ca/en/global-affairs/news/2017/08/address_by_foreignaffairsministeronthemodernizationofthenorthern.html.

²⁵ <https://au.int/en/pressreleases/20170822/3rd-continental-free-trade-area-technical-working-groups-cfta-twgs-undertake>.

²⁶ http://trade.ec.europa.eu/doclib/docs/2017/may/tradoc_155521.pdf.

²⁷ http://trade.ec.europa.eu/doclib/docs/2017/october/tradoc_156353.pdf.

settlement, including the possible establishment of a multilateral investment court. The mandate given to the Working Group III is (i) to identify and consider concerns regarding ISDS; (ii) to reflect upon whether reform is desirable considering any identified concerns; and (iii) if the Working Group were to conclude that reform is desirable, to develop any relevant solutions to be recommended to the Commission. The Working Group's first meeting was held from 27 November to 1 December 2017 in Vienna, Austria. Delegates discussed a host of problems in relation to ISDS, based on a background paper prepared by the UNCITRAL Secretariat, such as costs and duration of the proceedings, frivolous claims and claims without merits, counterclaims, predictability and consistency of awards. The next meeting of the Working Group will take place from 23-27 April 2018 in New York.

UN Convention on Transparency in Treaty-based Investor-State Arbitration

On 18 October 2017, the UN Convention on Transparency in Treaty-based Investor-State Arbitration, also known as the Mauritius Convention on Transparency, entered into force. The Convention has been ratified by Mauritius, Canada and Switzerland. According to the Convention, the transparency rules will become part of treaty-based investor-State disputes involving these three States. The Convention has been signed by Australia, Belgium, Benin, Cameroon, Republic of the Congo, Finland, France, Gabon, Gambia, Germany, Iraq, Italy, Luxembourg, Madagascar, Netherlands, Sweden, Syria, United Kingdom and the United States.²⁸

Developments regarding European investment policymaking

The Court of Justice of the European Union rendered its Opinion on the EU-Singapore FTA

On 16 May 2017, the Court of Justice of the European Union (CJEU) found that the FTA concluded between the EU and Singapore can only be signed by the EU and its Member States jointly.²⁹ The Court held that the EU had exclusive competence to conclude the EU-Singapore FTA in all matters included therein, with the exception of the field of non-direct foreign investment ("portfolio" investments made without any intention to influence the management and control of an undertaking) and the regime governing dispute settlement between investors and States, for which the competences are shared between the EU and its Member States.

EU Inception Impact Assessment

On 25 July 2017, the European Commission (Directorate-General for Financial Stability, Financial Services and Capital Markets Union) published a roadmap ("Inception Impact Assessment" (ICA)) concerning the treatment of cross-border investments between EU Member States. The roadmap aims to consolidate and explain the existing substantive EU standards for the lawful treatment of cross-border intra-EU investments and inform stakeholders about the Commission's work. The Commission launched a public consultation that seeks to collect evidence on the need for such framework, its desirable characteristics and the need for greater clarity on the rights of EU investors. The deadline for submissions was extended to 30 November 2017.

Comprehensive Economic and Trade Agreement (CETA)

On 31 July 2017, the French Constitutional Council upheld the validity of CETA, including its provisions on the resolution of investment disputes between investors and States.³⁰ On 6 September 2017, the Belgium government requested an opinion from the Court of Justice of the European Union (CJEU) on whether the investment protection rules set out in Chapter Eight of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) was compatible with the EU Treaties.³¹

Other developments

Memorandum of Understanding on Investment and Economic Cooperation between China and Sri Lanka

On 16 May 2017, China and Sri Lanka signed a Memorandum of Understanding (MoU) on Investment and Economic Cooperation between the two countries. The agreement contains provisions on investment facilitation,³²

²⁸ <http://www.unis.unvienna.org/unis/en/pressrels/2017/unisl254.html>.

²⁹ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf>.

³⁰ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-749-dc/decision-n-2017-749-dc-du-31-juillet-2017.149543.html>.

³¹ https://diplomatie.belgium.be/sites/default/files/downloads/ceta_summary.pdf.

³² See UNCTAD's Investment Facilitation: A Review of Policy Practices, http://investmentpolicyhub.unctad.org/Upload/Investment-Facilitation_Review%20Note%203%20feb.pdf.

including measures such as the establishment of joint economic cooperation zones, technology exchange and transfer, personal exchange and training, as well as the establishment of agencies responsible for the implementation of the agreement. Sri Lanka in particular agrees to seek to promote accessibility and transparency of investment regulations and procedures relevant to investors and to improve the efficiency of investment administrative procedures.

Guiding Principles for ACP Countries' Investment Policymaking

On 22 May 2017, the Joint African, Caribbean and Pacific Group of States (ACP) - UNCTAD Guiding Principles for Investment Policymaking were approved by the ACP Committee of Ambassadors meeting in Brussels. These Principles were jointly developed by UNCTAD and the ACP Secretariat in the framework of the partnership between the two institutions and after consultation with ACP Members States and Regional Organizations. They draw on UNCTAD's Core Principles that form an integral part of UNCTAD's Investment Policy Framework for Sustainable Development and reflect ACP countries' specificities and priorities for investment policymaking.³³

UNCTAD 2017 High-level IIA Conference: Phase 2 of IIA Reform

On 9-11 October 2017, UNCTAD's Annual High-level IIA Conference took place in Geneva, Switzerland and devoted to "Phase 2 of IIA Reform: modernizing the existing stock of old-generation treaties". Some 350 country delegates, parliamentarians, officials of international organizations and civil society representatives discussed the IIA reform and how to carry it to the next phase. By using UNCTAD's Roadmap for IIA Reform³⁴ as a basis, and UNCTAD's 10 Options for Phase 2³⁵ as instruments, experts took stock of reform areas and available policy options. The meeting charted the way forward for the next phase of IIA reform by sharing experiences, analyzing pros and cons of the 10 options and identifying best practices.

Among others, the 2017 edition of UNCTAD's High-level IIA Conference recognized that the IIA regime was too big to be fixed by a single group of countries or a single institution. Multilateral collaboration would be key given the need for a collective endeavour. Participants noted the importance of addressing the interaction and coherence between the national and international dimensions of investment policy making. This issue will be tackled in phase 3 of IIA reform.

The Conference also reaffirmed UNCTAD's role in providing the platform where experts on international investment policymaking convene. The meeting showcased UNCTAD's ability to provide an inclusive setting for the wide range of investment and development stakeholders. Delegations acknowledged and appreciated UNCTAD's triple role as analytical resources provider, international platform provider and technical assistance provider. They called upon UNCTAD to further its work on sustainable development oriented international investment policymaking, in pursuit of the mandate governments had provided in UNCTAD 14, in the Addis Ababa Action Agenda³⁶ and GA Resolution A/RES/71/215³⁷

International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights

On 23-27 October 2017, the third meeting of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights took place in Geneva. The session continued the discussions on the content, scope and nature of a future international instrument to regulate the activities of transnational corporations and other business enterprises. The working group invites States and different stakeholders to submit their comments and proposals on the draft element paper by end of February 2018.³⁸

Informal Dialogues on Investment Facilitation in the World Trade Organization (WTO)

Between May to October 2017, the WTO Friends of Investment Facilitation for Development (FIFD)³⁹ held five meetings at the WTO, where discussions focused on improving regulatory transparency and predictability,

³³ <http://investmentpolicyhub.unctad.org/Upload/Documents/Guiding%20Principles%20for%20ACP%20countries.pdf>.

³⁴ http://unctad.org/en/PublicationChapters/wir2015ch4_en.pdf.

³⁵ http://unctad.org/en/PublicationsLibrary/diaepcb2017d3_en.pdf.

³⁶ http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf.

³⁷ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/215.

³⁸ <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session3/Pages/Session3.aspx>.

³⁹ Consisting of 11 WTO members: Argentina, Brazil, Chile, China, Colombia, Hong Kong (China SAR), Kazakhstan, Republic of Korea, Mexico, Nigeria and Pakistan.



streamlining and speeding up administrative procedures, as well as enhancing international cooperation and addressing the needs of developing countries.

ANNEX. Investment policy measures taken between May and October 2017

| | Description of Measure | Date | Source |
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| Armenia | | | |
| Entry | The Parliament adopted the bill on the "State Property Privatization Program 2017-2020". The bill sets a list of 47 state-owned companies, 23 of which were already included in the 2006-2007 privatization program, to be privatized. State-owned companies to be privatized include HayPost (postal services), the airport of Stepanavan and numerous medical facilities. | 8 June 2017 | Armenpress news agency, "Parliament adopts State privatization Programme 2017-2020", 8 June 2017 |
| Australia | | | |
| Entry | Effective 9 May 2017, Australia introduced an "annual charge on foreign owners of under-utilised residential property". Foreign owners of residential property will be required to pay an annual charge - the amount of which is equivalent to the relevant foreign investment application fee imposed on the property at the time it was acquired by the foreign investor - if the residential property is not occupied or genuinely available on the rental market for at least six months per year. Also as of 9 May 2017, Australia prohibits property developers to sell more than 50 per cent of new residential housing developments to foreigners. | 9 May 2017 | Department of Finance, "Budget 2017-2018, Budget Measures - Budget Paper No. 2 2017-2018", 9 May 2017 |
| Entry/Facilitation | A series of changes to Australia's foreign investment framework entered into effect. The changes enhance and streamline the operation of the foreign investment framework by simplifying aspects of the regulations and the fee framework. Details on the changes are set out in publically available Guidance Notes. Also effective on 1 July 2017, Australia increased most fees that foreign investors pay when seeking approval to purchase residential real estate by 10 per cent to fund the Critical Infrastructure Centre. | 1 July 2017 | Foreign Investment Review Board website, "1 July amendments to streamline and enhance Australia's foreign investment framework", undated. |
| Belgium | | | |
| Entry | The Belgian Ministry of Finance announced that the Belgian state will transfer part of its participation in the capital of the French Group BNP Paribas. The country will keep a strategic participation by reducing its stake from 10.3 per cent to 7.8 per cent. The shares are worth about EUR 2.06 billion. | 3 May 2017 | Reuters, "Belgium to sell part of BNP Paribas stake - finance ministry", 3 May 2017 |
| Canada | | | |
| Entry | The net benefit review threshold for direct acquisitions of control by private investors from WTO countries has been raised to an enterprise value of the Canadian businesses of CAD 1 billion or more, up from CAD 800 million previously. The same threshold applies when a private non-WTO investor acquires an enterprise that had immediately previously been controlled by a WTO investor. | 22 June 2017 | Innovation, Science and Economic development Canada, "Investment Canada Act - Thresholds", 21 September 2017 |

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| Entry | With the provisional entry into force of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) on 21 September 2017, a review threshold of CAD 1.5 billion in enterprise value applies to investments by private investors from EU Member States and other trade agreement partner countries with relevant most-favoured nation provisions (i.e., Chile, Colombia, Honduras, Mexico, Panama, Peru, Republic of Korea and the United States). | 21 September 2017 | Innovation, Science and Economic development Canada, "Investment Canada Act - Thresholds", 21 September 2017 |
| China | | | |
| Entry/Promotion | A revised foreign investment negative list applicable for the 11 free trade zones came into effect. It replaces a negative list that came into effect in 2015. The new list lifts restrictions in sectors such as mining, manufacturing, transportation, information, commercial service, finance, scientific research, and culture. | 10 July 2017 | State Council, "Notice of the General Office of the State Council on Printing and Distributing the Special Administrative Measures for Foreign Investment Admission (Negative List) (2017) for the Free Trade Experimental Zone", 16 June 2017 |
| Entry | An updated version of the Investment Industry Guidance Catalogue came into effect. The new catalogue, issued jointly by NDRC and MOFCOM, replaces the 2015 version of the Catalogue. The 2017 Catalogue introduces a negative list structure; investment in areas that are not on the negative list do not require approval but only filing of an acquisition. According to the new Catalogue, it reduces the number of restrictions or special administrative measures on foreign investment from 93 to 63, and lifts, in particular, the restrictions on some services, manufacturing, and mining industries. | 28 July 2017 | NDRC/MOFCOM, "Investment Industry Guidance Catalogue 2017", 28 June 2017 |
| Facilitation | The Ministry of Commerce issued revisions to the rules applicable to foreign funded enterprises. The changes simplify the procedures for foreign invested enterprises. | 30 July 2017 | Ministry of Commerce, "Decision of the Ministry of Commerce of the People's Republic of China No. 2 of 2017 on Amending the Interim Measures for the Establishment and Change of Record Management by Foreign-funded Enterprises", 30 July 2017 |
| Entry | The State Council issued a notice by the NDRC, MOFCOM, MOFA, and PBoC on further guidance and regulation of overseas investment. The notice contains guiding principles for outbound foreign investment and lists fields in which outbound investment is encouraged, limited or prohibited. According to the document, China encourages domestic enterprises to make foreign investment in upgrading national research and manufacturing industries and the energy sector. Moreover, it will support those firms in joining the construction of projects in the "Belt and Road Initiative". Overseas investments against the peaceful development, win-win cooperation, and China's macro control policies will be restricted and overseas investment that may jeopardize China's national interests and security will be prohibited. | 4 August 2017 | State Council, "State Council issues guideline on overseas investment (State Council note [2017] No.74)", 18 August 2017 |

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| Promotion /Treatment | The State Council issued a notice on measures to promote foreign investment in certain industry sectors in China. The notice calls for certain reform steps including: the full implementation of pre-establishment national treatment with a negative-list approach; enhanced market access in certain sectors, especially linked to transport, to foreign capital; the development of a conducive tax policy; and improvements of the investment environment. | 16 August 2017 | State Council, "Notice of the State Council on Several Measures to Promote Foreign Investment Growth", 16 August 2017 |
| Colombia | | | |
| Entry | Following the changes introduced by Decree 119 of 26 of January 2017 on the foreign capital regime in Colombia and Colombian investments abroad, the Central Bank of Colombia published in Bulletin No. 23 of 26 July 2017 amendments to chapter 7 of the External Regulatory Circular DCIN-83. The provisions of the amendment deal with the registration of international investments, substitutions in registrations (changes in the holders, the destination or in the receiving company) and cancellations, among others. | 26 July 2017 | Banco de la Republica, "Circular Reglamentaria Externa DCIN-83", 26 July 2017 |
| Congo, Republic of the | | | |
| Promotion and facilitation | The President promulgated two laws, which aim at implementing the policy of diversification of the Congolese economy and at creating special economic zones (SEZs) in the country. The two laws are (1) Law N° 24-2017 on the creation of special economic zones, their operating system and organization, and (2) Law N° 25-2017 establishing the Agency for the Planning, Promotion and Development of Special Economic Zones. Preferential terms offered in SEZs include a combination of tax incentives, favorable tariffs, and a One-Stop Shop. The Republic of the Congo has selected four special economic zones, namely Ouessou, Oyo-Ollombo, Brazzaville and Pointe-Noire. | 9 June 2017 | Ministry of Special Economic Zones, "Law N° 25-2017 establishing the Agency for the Planning, Promotion and Development of Special Economic Zones" and "Law N° 24-2017 on the creation of special economic zones, their operating system and organization", 9 June 2017 |
| Dominican Republic | | | |
| Promotion and facilitation | The Dominican Republic established ProDominicana by Decree number 275-17. The institution is tasked with the promotion and facilitation of exports and foreign direct investment in the country. The Export and Investment Center of the Dominican Republic (CEI-RD) has the task of guiding ProDominicana. | 25 August 2017 | Presidencia de la Republica Dominicana, "Danilo Medina crea ProDominicana para impulsar la exportación y las inversiones", 25 August 2017 |
| Egypt | | | |
| Facilitation | The President approved the Industrial Permits Act that aims at easing measures for obtaining licenses for industrial establishments. | 8 May 2017 | Egypt Today news article, "Sisi approves Industrial Permits Act", 9 May 2017 |
| Promotion and facilitation | The new Investment Law entered into force, which governs investment within Egypt. It aims to promote investment by offering further incentives, reducing bureaucracy, and simplifying and enhancing administrative processes. Its provisions apply to domestic and foreign investment, regardless of its size. | 1 June 2017 | General Authority for Investment and Free Zones, "Investment Law No. 72 of 2017", 31 May 2017 |

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| Promotion | The President issued a decree establishing the Golden Triangle Economic Zone. The decree considers the Golden Triangle as an economic zone of special nature. With a 2,228,754.25-feddan, the economic zone will cover El Qoseir, Safaga and Qena. | 24 July 2017 | State Information Service, "Presidential decree establishing Golden Triangle Economic Zone", 25 July 2017 Published in the official gazette (No. 341/2017) |
| Entry | The President signed the new Gas Market Activities' Regulatory Law, which provides for the setting up of a natural gas regulatory authority charged with licensing and devising a plan to open the gas market to competition. The new law allows for the eventual import of natural gas by private companies. Also, it allows the private sector to directly ship, transport, store, market and trade natural gas using the pipeline and network infrastructure. Its executive regulations are to be issued within six months of the legislation's enactment, according to the Official Gazette. | 7 August 2017 | Ministry of Petroleum, "Minister of Petroleum, Features of the Recently Issued Gas Market Activities' Regulatory Law", 10 August 2017 |
| Facilitation | The executive regulations bring into force Law 15 (2017) on industrial licensing, which was approved by the parliament in May 2017. The law enhances the role of the Industrial Development Organisation, which will henceforth be the sole agency that businesses will have to deal with in order to secure a licence. It reduces significantly the time needed to obtain an industrial licence. Under the previous system, businesses needed to secure approvals from 11 agencies, and the process of obtaining a licence took up to 600 days. Now, however, the time needed to secure a licence for 80 per cent of industrial projects - those deemed to pose low risk - would be one week. For activities defined as posing a degree of risk on health, environmental, safety or security grounds, the process would be completed in 30 days. | 5 September 2017 | Economist Intelligence Unit, "Industry licensing law takes effect", 5 September 2017 |
| Germany | | | |
| Entry | On 18 July 2017, an amendment to the Foreign Trade and Payments Ordinance entered into effect. The changes substantiate the scope of the cross-sectoral review mechanism, referring to foreign direct investment that may threaten public order or security. The amendments describe the increasing importance and vulnerability of key infrastructure and specify that threats to public order or security may arise from foreign ownership in companies that host critical infrastructure, produce industry-specific software for it, work with surveillance mechanisms, cloud-computing-services or telematic infrastructure. The scope of the sector-specific review mechanism now covers some additional defence-related industries, such as sensor and electronic warfare technologies. Finally, the rules of administration of the review procedures have been adjusted with a view to the growing number and complexity of acquisitions. | 18 July 2017 | Federal Ministry for Economic Affairs and Energy, Minister Zypries: "Fair competition and better protection in corporate acquisitions", 12 July 2017 |

| Ghana | | | |
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| General business climate | The Central Bank of Ghana has given all commercial banks a deadline of the end of 2018 to hold a minimum of Gh¢ 400 million (USD 91 million) as paid-up capital. | 11 September 2017 | Bank of Ghana, "Notice to the Banks and the General Public, Notice No. Bg/Gov/Sec/2017/19: New Minimum Paid Up Capital", 11 September 2017 |
| India | | | |
| Entry | The Indian Government announced the abolition of the Foreign Investment Promotion Board (FIPB), a government entity through which inward investment proposals were routed to obtain required government approvals from involved ministries. With the abolition of the single-window FIPB, the approval responsibilities are directed to individual ministries and government bodies for the individual concerned sectors, and a procedure for the interagency coordination has been determined. | 5 June 2017 | Ministry of Finance (Office Memorandum), "Abolition of the Foreign Investment Promotion Board (FIPB)", 5 June 2017 |
| Entry | Following up the Union Cabinet's decision in May 2017 to phase out the Foreign Investment Promotion Board (FIPB) and let all FDI applications be handled by the relevant ministries/departments as per sector, the Department of Industrial Policy and Promotion (DIPP) released the 'standard operating procedure (SOP) for processing FDI proposals'. The SOP sets out a detailed procedure and timeline for applications as well as the list of 'competent authorities' (i.e. relevant administrative ministries/departments) for processing government approvals for FDI in India. | 29 June 2017 | Department of Industrial Policy and Promotion, "Standard Operating Procedure for FDI Proposals, No. 1/8/2016-FC-1", 29 June 2017 |
| Promotion | The Ministry of Finance issued a notification exempting all goods imported by a unit or a developer in a Special Economic Zone for authorised operations from the integrated goods and services tax. | 5 July 2017 | Central Board of Excise and Customs, "Notification No. 64/2017- Customs", 5 July 2017 |
| Italy | | | |
| Entry | The Italian Council of Ministers approved Decree no. 148, extending the government's so-called "golden powers" to block takeovers by non-EU companies to high-technology sectors (e.g. storage and treatment of data, artificial intelligence, and aerospace technology) that may pose a serious threat to essential national interests or present a risk to public order and national security. The Decree also obliges investors that build up minority stakes of at least 10 per cent in Italian listed companies to disclose what their intentions are on final ownership. | 16 October 2017 | Reuters, "Italy passes decree to ward off foreign takeovers", 13 October 2017 |
| Japan | | | |
| Entry/Treatment | On 1 October 2017, changes to Japan's rules on the review of inward foreign investment came into effect. The changes are based on a reconsideration of threats to national security, changes to the business environment and the spread of critical technologies, including dual-use technologies. The new rules: | 1 October 2017 | Ministry of Economy, Trade and Industry, "Promulgation of the Cabinet and Ministerial Orders and the Public Notices for the Enforcement of the Revised Foreign Exchange and Foreign Trade Act", |

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| | extend the review mechanism to acquisitions of non-listed companies, which were hitherto not covered by the rules, and introduce the post-investment administrative measures in case of breaches of the rules. | | 14 July 2017 |
| Jordan | | | |
| Entry/Facilitation | The Jordan Investment Commission (JIC) simplified regulations to stimulate investment and improve the business environment. The reformed regulations, inter alia, cut down the number of committees needed for investment approval, consolidate a range of licensing procedures, and reduce the time needed to register an investment. | 5 August 2017 | Jordan Investment Commission, "Single Security Approval Replaces Multiple Existing Procedures for New Investors", 5 August 2017 |
| Kenya | | | |
| Treatment | Kenya introduced new Regulations which require holders of existing mineral rights to submit to the Cabinet Secretary for Mining (CS) procurement plans which must (i) set target levels of local procurement based on a procurement list to be developed and communicated by the Director of Mines and (ii) indicate specific support to be provided by mineral rights holders to local providers or suppliers as well as other measures being implemented to develop the supply of local goods and services including broadening access to opportunities and technical support. The Regulations also require engineering services to be rendered by Kenyan engineering companies registered with the relevant regulatory bodies or by foreign engineering consultants working in collaboration with firms or companies licenced to provide such engineering services in Kenya. | 9 May 2017 | Kenya Gazette Supplement, "The Mining (Use of Local Goods and Services) Regulations, 2017", 19 May 2017 |
| Promotion/ General business climate | The new Finance Act introduced the following measures, among others: (i) It requires that transactions between related entities, where one is based in a preferential tax regime in the Special Economic Zones and the other not, be carried out on an arm's length basis. (ii) It aims to encourage investment in Special Economic Zones through the granting of investment incentives. (iii) It provides for an amendment of the Betting, Lotteries and Gaming Act to raise the taxes for betting, lottery, gaming and competition companies from the current rates of 7.5%, 5%, 12% and 15% to a uniform tax rate of 35%. The Act received Presidential assent on 21 June 2017. | 21 June 2017 | Kenya Gazette Supplement, "Finance Act No.15 of 2017", 23 June 2017 |
| Latvia | | | |
| Entry | An amendment of the rules on the acquisition of agricultural land came into effect. The change increases the exigence of Latvian language command of foreigners that wish to acquire agricultural land in Latvia to "B2" level (Art. 28 Law on the privatization of land in rural areas). | 1 July 2017 | Likumi.lv, "Law on privatization of land in rural areas", 3 July 2017 |

| Liberia | | | |
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| Promotion | The Ministry of Finance and Development Planning published Administrative Regulation containing, inter alia, a list of sectors qualifying for special tax incentives under the Revenue Code. Companies in the following qualifying sectors are entitled to exemptions from goods and services tax and import duties, with effect from the date of publication: tourism, manufacturing, energy, health services, real estate, transport, technology, agriculture, poultry, horticulture, exportation of sea products, rubber and oil palm cultivation and processing and waste management. | 7 July 2017 | Ministry of Finance and Development Planning, "Administrative Regulation (No.1.16-1/MFDP/FAD/RTPD/06/07/2017) : Qualifying Sectors for Section 16 Tax Incentives", 7 July 2017 |
| Lithuania | | | |
| Entry | A new Patent Attorneys Law No. XIII-546 entered into effect. The new law removes the nationality requirement for patent agent services. | 12 July 2017 | Lithuania notification to OECD OECD: Freedom of Investment Process, 1 October 2017 |
| Mauritius | | | |
| Facilitation | The new Business Facilitation Act 2017 came into force, which aims to eliminate regulatory and administrative bottlenecks to investment. The law addresses seven key areas, namely Starting a Business, Registering Property, Paying Taxes, Resolving Insolvency, Construction Permits, Exit Procedures and Cross Border Trade. Also, it promotes the use of information technology in various areas, such as the issuance of e-certificates of incorporation, which allows businesses to start their operations expeditiously. Other improvements relate to the process for registering property and initiatives undertaken to enhance transparency. | 20 May 2017 | Board of Investment, "Review of the Business Facilitation Act 2017", 20 May 2017 |
| Facilitation | Mauritius adopted the Economic Development Act 2017, which provides for the establishment of an Economic Development Board. The institution aims, inter alia, to (i) provide strong institutional support for strategic economic planning and ensure greater coherence and effectiveness in economic policy formulation; (ii) promote Mauritius as an attractive investment and business centre, a competitive export platform as well as an international financial centre; (iii) act as the main institution responsible for country branding for investment promotion; and (iv) facilitate both inward and outward investment and ensure a conducive business environment. The Act provides for the establishment of a Business Facilitation One-Stop Shop, which (i) facilitates the setting up and operation of an enterprise which has a project value exceeding 20 million rupees and (ii) serves as a single authority to provide all the support and information that the enterprise requires to start and operate its business. | 27 July 2017 | Ministry of Finance and Economic Development, "Economic Development Board Act 2017", 27 July 2017 |

| Mexico | | | |
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| Entry | Mexico increased foreign ownership limits in scheduled and non-scheduled domestic air transport service; non-scheduled international air transport service in air taxi modality; and specialized air transport service to 49 per cent, up from 25 per cent previously. | 27 June 2017 | Official Gazette, "Decree - amendment to the Foreign Investment Law", 26 June 2017 |
| Promotion | Mexico established by decree three new Special Economic Zones, in Puerto Chiapas, Coatzacoalcos and Lázaro Cárdenas-La Unión. The objective of the Zones is to promote sustainable economic growth, reduce poverty, provide basic services and promote health and productivity in these regions through the promotion of investment, productivity, competitiveness, employment and a better income distribution. | 29 September 2017 | gob.mx, "Firma el Presidente Enrique Peña Nieto los Decretos de Declaratoria de tres Zonas Económicas Especiales", 29 September 2017 |
| Morocco | | | |
| Promotion | The newly enacted Finance Law provides, inter alia, for corporate income tax exemptions for newly established industrial companies for a period of five consecutive years as from the starting date of business operations. Also, it provides for an extension of the reduced corporate income taxation rates for sales made to companies located in Free Zones. | 12 June 2017 | EY Global tax alert, "Morocco enacts Finance Law 2017", 13 June 2017 |
| Myanmar | | | |
| Entry | The Ministry of Commerce issued Notification 36/2017 to permit foreign companies to engage in trading of fertilizers, seeds, pesticides, hospital equipment, and construction materials. Previously, only local companies and local-foreign joint ventures were allowed to engage in such trade. The notification also mentions that the list of goods that these companies are allowed to trade may be subject to changes based on domestic demand, market conditions, and the market positions of domestic companies. | 12 June 2017 | Tilleke & Gibbins, "Myanmar: Permission for Foreign Investors to Trade Fertilizers, Seeds, Pesticides, Hospital Equipment, and Construction Materials", 22 June 2017 |
| Namibia | | | |
| Entry/Treatment | The Public Private Partnership (PPP) Act 2017, which came into operation on 14 July 2017, provides a legal framework for PPP projects; establishes the PPP Committee; regulates PPP projects through the stages of initiation, preparation, procurement, conclusion and implementation. | 14 July 2017 | Government Gazette, "Promulgation of Public Private Partnership Act, 2017 (Act No. 4 of 2017), of the Parliament", 14 July 2017 |
| Nigeria | | | |
| Facilitation | The Executive Order, which was signed by the Acting President on 18 May 2017, instructs all ministries, departments, and agencies (MDAs) of the federal government to publish a complete list of all requirements or conditions for obtaining products and services within the MDA's scope of responsibility | 18 May 2017 | Budget Office of the Federation, "Executive Order - Efficiency and Transparency in Business Environment", 18 May 2017 |

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| | <p>(including permits, licenses, waivers, tax related processes, filings and approvals) on their websites within 21 days of the issuance of the Order. Also, it places responsibility on Heads of MDAs to ensure that the list is verified and kept up-to-date at all times. In the published list, MDAs must state the stipulated time in getting an approval. Any application for permits, registration or licenses not approved or rejected within the stipulated time is deemed approved.</p> | | |
| Promotion | <p>The Federal Government has granted 'Pioneer Status' to the Nigerian creative industry. The 'Pioneer Status' is granted to companies making investments in qualifying industries and products and comes along with tax holidays from the payment of corporate income tax and withholding tax on dividend from pioneer profits for an initial period of three years, extendable for one or two additional years. The 'Status' covers music production, publishing and distribution (including online digital distribution); photography; production and post-production of digital content for motion pictures, videos, television programmes, commercials, distribution and exhibition (digital movies, animation, videos, TV programmes and commercials); publishing of books (copyrighted books) and development and publishing of ready-made software (operating systems, software applications and computer games).</p> | 3 August 2017 | Pulse News Agency, "Lai Mohammed FG grants 'Pioneer Status' to creative industry", 3 August 2017 |
| Promotion | <p>The Federal Ministry of Industry, Trade and Investment (FMITI) published a list of 27 new industries eligible to enjoy the pioneer status incentive in Nigeria. Notable inclusions to the list are e-commerce services, software development and publishing, mortgage backed securities and real estate investment schemes.</p> | 7 August 2017 | Nigerian Investment Promotion Commission, "List of New Industries added to the Pioneer List", 7 August 2017 |
| Russian Federation | | | |
| Entry | <p>The President of the Russian Federation signed Federal Law No. 155-FZ of 1 July 2017 On Amendments to Article 5 of the Federal Law on Privatisation of State and Municipal Property and to the Federal Law On Procedures for Foreign Investment in Business Entities of Strategic Importance for National Defence and State Security. This Federal Law prohibits legal entities that are registered in a state or territory that are on the Finance Ministry list of states and territories offering preferential tax treatment and/or not requesting the disclosure and provision of information regarding financial transactions (offshore zones), as well as legal entities that are controlled by an offshore company or groups that include an offshore company, from taking part in the privatisation of state and municipal property. This Federal Law also extends the provisions of the Federal Law No. 57-FZ of 29 April 2008 On Procedures for Foreign Investment in Business Entities of Strategic Importance for National Defence and State Security to include these legal entities' investment in business</p> | 1 July 2017 | Presidential Executive Office, "Amendments to law on the privatisation of state property and on procedures for foreign investment in business entities of strategic importance for national defence and state security", 1 July 2017 |

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| | <p>entities of strategic importance for national defence and state security, as well as these legal entities' transactions with regard to these business entities.</p> | | |
| Entry | <p>On 30 July 2017, Federal Law No. 165-FZ of 18 July 2017 On Amendments to Article 6 of the Federal Law on Foreign Investment in the Russian Federation and to the Federal Law On the Procedure for Foreign Investment in Business Entities of Strategic Importance for National Defence and State Security came into effect. Under the Federal Law, by decision of the Chairman of the Government Commission on Monitoring Foreign Investment in the Russian Federation, transactions that are made by foreign investors with regard to Russian business entities must be subject to prior approval in accordance with the Federal Law No. 57-FZ of 29 April 2008 on the Procedure for Foreign Investment in Business Entities of Strategic Importance for National Defence and State Security. The law also establishes the legal consequences for deals that violate this requirement. The list of types of activities that are strategically important for national defence and state security has been clarified and extended. Legal norms that establish the procedure for determining the commitments of foreign investors related to ensuring national defence and state security have been adjusted.</p> | 30 July 2017 | <p>Presidential Executive Office, "Amendments to laws on foreign investment and procedure for investing in business entities of strategic importance for national defence", 19 July 2017</p> |
| Saudi Arabia | | | |
| Entry | <p>The Cabinet decided to allow foreign companies full ownership of engineering services companies and associated consultancy, provided that the company is at least ten years old and operates in at least four countries; the board of directors of the General Authority for Investment can dispense a company from meeting one of the two conditions.</p> | 7 August 2017 | <p>The official Saudi Press Agency, "Vice Custodian of the Two Holy Mosques Presides Over Cabinet session 5 Jeddah", 7 August 2017</p> |
| Entry | <p>The Capital Market Authority (CMA) Board issued its resolution allowing non-resident foreign investors to invest directly in the Parallel Market, starting from 1 January 2018. Foreign investors in the Parallel Market will no longer have to meet requirements to qualify as foreign institutional investors, but will have to continue to obey limits on foreign ownership of stocks. The Parallel Market is an equity market with lighter listing requirements that serves as an alternative platform for companies - especially for small and medium-sized enterprises - to go public.</p> | 26 October 2017 | <p>Capital Market Authority, "An announcement of the issuance of the CMA Board Resolution Allowing Non-Resident Foreign Investors to Invest in the Parallel Market", 26 October 2017</p> |
| Singapore | | | |
| Facilitation | <p>Singapore introduced an enhanced 'EntrePass' scheme to attract global startup talents to build innovative businesses. The new scheme has broadened the evaluation criteria for global start-up founders to attract more promising foreign start-up talents. The paid-up capital requirement of 50,000 Singapore dollars has also been removed. 'EntrePass' is a work visa for foreign entrepreneurs who are keen to start a business in Singapore in areas such as deep technology, introduced in 2003.</p> | 3 August 2017 | <p>Ministry of Manpower, "Startup SG Talent: Enhanced EntrePass to attract global startup talent to build innovative businesses in Singapore", 2 August 2017</p> |

| South Africa | | | |
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| Entry | <p>The new Mining Charter raises the minimum threshold for black ownership of mining companies to 30 per cent from 26 per cent. According to the Minister of Mineral Resources, companies have 12 months to meet the new 30 per cent target. The Charter also provides that a new prospecting right must have a minimum of 50 per cent plus 1 Black Person shareholding, which must include voting rights. Also, it provides that a new mining right must have 30 per cent black persons' shareholding, with the 30 per cent shareholding to be apportioned between employees, communities and entrepreneurs in a specific manner. Further, it requires mining firms to procure 70 per cent of goods and 80 per cent of services from black-owned companies. Moreover, it requires that analysis of 100 per cent of mineral samples be done by South African based companies. Finally, it states that half of the members of mining company boards must be black, and 25 per cent of which must be female black representation. The Charter is now applicable to the Diamonds Act and the Precious Metals Act. In determining whether to grant a license in terms of either of these Acts, the provisions of the Charter must be taken into account.</p> | 15 June 2017 | Department of Mineral Resources, "Minister Mosebenzi Zwane: Release of 2017 Mining Charter", 15 June 2017 |
| Thailand | | | |
| Facilitation | <p>The Ministry of Commerce has issued a regulation exempting certain business activities from the requirement of obtaining a foreign business license. The exempted businesses can be divided into two groups. Group 1 includes businesses governed by the laws on financial institutions while Group 2 covers businesses under other specific laws such as representative offices, regional offices and business operators who are contracted to provide services to government agencies or state-owned enterprises. However, exempted businesses will still be subject to licensing requirements and foreign shareholding limits under specific regulations, particularly for those operating businesses under Group 1. Foreign companies operating in Group 2 need to obtain a registration number and notify the authority of the place where they are operating the businesses in Thailand, in order to comply with the requirements for preparation and filing of accounts under the Accounting Act.</p> | 9 June 2017 | Deloitte legal alert, "Business activities that will be exempt from the requirement to obtain a license under the Foreign Business Act B.E. 2542", 9 June 2017 |
| Uganda | | | |
| Promotion | <p>The 2017-2018 National Budget, which went into effect on 1 July 2017, provides for the amendment of the Income Tax Act with a view to make the following changes, among others: As an incentive for businesses to invest upcountry, deductions for accelerated depreciation have been introduced. This will allow recovery of costs of acquiring plant and machinery and construction of industrial buildings much faster before the payment of corporate income tax.</p> | 1 July 2017 | Ministry of Finance, Planning & Economic Development, "Budget Execution Circular (BEC) for the Financial Year 2017/18", 30 June 2017 |

| Ukraine | | | |
|--------------------------------|--|-------------------|---|
| Entry/General business climate | The Parliament adopted Law No. 4541 on amendments to some legislative acts on foreign investment. The bill cancels the registration requirement for foreign investment, replacing it with a formal notification for statistical purposes. It also regulates the basic aspects of hiring foreigners and persons without citizenship. Finally, the bill amends the procedures for issuing temporary residence permits, giving foreign investors who have substantial involvement in a Ukrainian enterprise, but are not employed in it, the right to reside in Ukraine. | 23 May 2017 | Interfax, "Rada passes bill in support of foreign investment in Ukraine", 24 May 2017 |
| Entry | The Ministry of Economic Development and Trade published a list of state enterprises, organizations and institutions that will either remain in state ownership or will be transferred to concessions, privatized or liquidated. According to the documents, out of 3,444 state-owned enterprises some 893 are subject to privatization in 2017-2020. The largest companies in terms of assets that are subject to privatization are the State Food and Grain Corporation of Ukraine, Oschadbank, PrivatBank, Ukreximbank, Centrenergo, the Agrarian Fund, Ukrgasbank and Turboatom. | 4 July 2017 | Interfax, "Economy Ministry promulgates list of state enterprises to be privatized", 21 July 2017 |
| General business climate | The President issued a decree, establishing the High Court for Intellectual Property to be headquartered in Kyiv. The court will have 21 judges who will deal with disputes about copyrights, trademarks, inventions, patents, author's rights and administration of titles to intellectual property. | 29 September 2017 | LB.ua news article, "Ukraine sets up High Court for Intellectual Property", 30 September 2017 |
| United Arab Emirates | | | |
| Entry | The Dubai International Financial Centre (DIFC) signed a memorandum of understanding (MoU) with Dubai Economy - the Government body for economic policy making and management - to allow companies operating within DIFC - a financial free zone in Dubai - to obtain licenses to operate in mainland Dubai. Therefore, non-regulated companies in the DIFC will be able to operate as mainland businesses under a license issued by Dubai Economy. The agreement also aims to increase levels of governance, compliance and transparency for businesses working within the DIFC infrastructure. | 1 May 2017 | Dubai International Financial Center, "DIFC companies can now obtain Dubai Economy Dual licenses to operate across Dubai", 1 May 2017 |
| United Republic of Tanzania | | | |
| Entry | The National Assembly passed the Finance Act 2017, which makes amendment, among others, to the Electronic and Postal Communications Act 2010. The new law allows foreign investors to acquire shares in the 25 per cent listed paid-up capital of a telecommunication company. Previously, the Finance Act 2016 required telecommunication companies to offload 25 per cent of their shares to Tanzanians only via Initial Public Offerings (IPOs). | 22 June 2017 | Gazette of the United Republic of Tanzania No.26 Vol 98, "The Finance Act, 2017", 30 June 2017 |

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| Entry/Treatment | On 5 July 2017, the President of the United Republic of Tanzania has signed a number of bills into laws, including the Natural Wealth and Resources (Permanent Sovereignty) Act 2017, and the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act 2017. The laws grant the government stakes of at least 16 per cent in mining companies operating in the country, with the option to acquire up to 50 per cent in some cases. Also, they increase the royalty tax on gold copper, silver and platinum exports to six per cent from four per cent. Further, they grant the government the right to review and renegotiate contracts for natural resources like gas or minerals, and remove the right to international arbitration. | 5 July 2017 | Reuters, "Tanzania's president signs new mining bills into law", 10 July 2017 |
| United States of America | | | |
| Entry | The President has blocked the USD 1.3 billion acquisition by a Chinese-backed private equity firm of Lattice Semiconductor Corp., a U.S.-based chipmaker company. The President followed a recommendation of the Committee on Foreign Investment in the US (CFIUS), which had found that the acquisition by a group of investors, including the state-controlled China venture capital fund, would pose a threat to the national security of the U.S. | 13 September 2017 | U.S. Department of the Treasury, "Statement On The President's Decision Regarding Lattice Semiconductor Corporation", 13 September 2017 |
| Uzbekistan | | | |
| Treatment | The President issued a decree relaxing capital controls on foreign currency for businesses and individuals. Enterprises registered in Uzbekistan are now permitted to buy and sell currency for any purpose, including imports and the repatriation of profits (previously subject to controls). Formerly, enterprises were obliged to buy hard currency at a rate approximately twice as high as the rate at which they could sell it, and exporters were required to sell a quarter of their hard-currency revenue to the State. The decree also bans payments in hard foreign currency for goods and services inside Uzbekistan. | 2 September 2017 | Economist Intelligence Unit, "Free currency float heralds possible end to black market", 5 September 2017 |
| Viet Nam | | | |
| Promotion | Decree 74/2017/ND-CP entered into force, which provides some preferential mechanisms and policies for the Hoa Lac Hi-Tech Park (HTP). This Decree introduces various incentives including preferential tax treatment, land use incentives, housing development for employees and favourable conditions for immigration of foreign employees. | 5 August 2017 | Online Newspaper of the Government, "Preferential mechanisms & policies for Hoa Lac hi-tech park", 9 August 2017 |
| Zimbabwe | | | |
| Promotion | The Government has gazetted Statutory Instrument No 59 of 2017, allowing investors operating in Special Economic Zones (SEZs) to be exempt from paying duty on imported capital equipment, materials and products. The regulations provide for rebates on raw materials, intermediate products and machinery imported with the sole purpose of using them in SEZs. | 12 May 2017 | Government Gazette, "SI 2017-59 - Customs and Excise (Special Economic Zones) (Rebate) Regulations, 2017", 12 May 2017 |



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