

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**INTERNATIONAL
INVESTMENT RULE-MAKING:
STOCKTAKING, CHALLENGES
AND THE WAY FORWARD**

**UNCTAD Series
on International Investment Policies for
Development**



**UNITED NATIONS
New York and Geneva, 2008**

NOTE

As the focal point in the United Nations system for investment and technology, and building on 30 years of experience in these areas, UNCTAD, through its Division on Investment and Enterprise (DIAE), promotes understanding of key issues, particularly matters related to foreign direct investment and transfer of technology. DIAE also assists developing countries in attracting and benefiting from FDI and in building their productive capacities and international competitiveness. The emphasis is on an integrated policy approach to investment, technological capacity building and enterprise development.

The term “country” as used in this study also refers, as appropriate, to territories or areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. In addition, the designations of country groups are intended solely for statistical or analytical convenience and do not necessarily express a judgement about the stage of development reached by a particular country or area in the development process.

The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported.

Rows in tables have been omitted in those cases where no data are available for any of the elements in the row;

A dash (-) indicates that the item is equal to zero or its value is negligible;

A blank in a table indicates that the item is not applicable;

A slash (/) between dates representing years, e.g. 1994/1995, indicates a financial year;

Use of a hyphen (-) between dates representing years, e.g. 1994-1995, signifies the full period involved, including the beginning and end years.

Reference to “dollars” (\$) means United States dollars, unless otherwise indicated.

Annual rates of growth or change, unless otherwise stated, refer to annual compound rates.

Details and percentages in tables do not necessarily add to totals because of rounding.

The material contained in this study may be freely quoted with appropriate acknowledgement.

UNCTAD/ITE/IIT/2007/3

UNITED NATIONS PUBLICATION
Sales No. E.08.II.D.1
ISBN E.978-92-1-112731-7
ISSN 1814-2001

Copyright © United Nations, 2008
All rights reserved
Printed in Switzerland

PREFACE

The secretariat of the United Nations Conference on Trade and Development (UNCTAD) is implementing a programme on international investment arrangements. It seeks to help developing countries to participate as effectively as possible in international investment rule-making. The programme embraces policy research and development, including the preparation of a series of issues papers; human resources capacity-building and institution-building, including national seminars, regional symposia, and training courses; and support to intergovernmental consensus-building.

This paper is part of a new Series on International Investment Policies for Development. It builds on, and expands, UNCTAD's Series on Issues in International Investment Agreements. Like the previous one, this new series is addressed to Government officials, corporate executives, representatives of non-governmental organizations, officials of international agencies and researchers.

The Series seeks to provide a balanced analysis of issues that may arise in the context of international approaches to investment rule-making and their impact on development. Its purpose is to contribute to a better understanding of difficult technical issues and their interaction, and of innovative ideas that could contribute to an increase in the development dimension of international investment agreements.

The Series is produced by a team led by James Zhan. The members of the team include Bekele Amare, Anna Joubin-Bret, Hamed El-Kady, Joachim Karl, Marie-Estelle Rey and Jörg Weber. Members of the Review Committee are Mark Kantor, John Kline, Peter Muchlinski, Antonio Parra, Patrick Robinson, Karl Sauvant, Pierre Sauvé, M. Sornarajah and Kenneth Vandavelde.

This paper is based on a manuscript prepared by Kenneth Vandavelde. It benefited from comments during an ad-hoc expert on “*International Investment Rule-Setting: Trends, Emerging Issues and Implications*” in March 2007, and the UNCTAD Intergovernmental expert meeting on “*Development Implications of International Investment Rule Making*” in June 2007, both held in Geneva. Further comments were received from John Kline, Patrick Robinson and Christoph Schreuer. Hamed El-Kady, Joachim Karl and Jörg Weber finalized the study.

The paper provides a timely stocktaking of the current state of affairs in international investment policy making, as UNCTAD embarks on implementing its renewed mandate in the area of international investment agreements emanating from the Accra Accord (paragraph 151).

Supachai Panitchpakdi
Secretary-General of UNCTAD

Geneva, October 2008

CONTENTS

PREFACE	v
EXECUTIVE SUMMARY	1
INTRODUCTION	7
I. THE HISTORY OF THE CURRENT IIA UNIVERSE	9
A. The first stage: 1945-1989	9
B. The second stage: 1989 - present	14
II. THE IIA UNIVERSE AT THE BEGINNING OF THE 21ST CENTURY	21
A. Evolution of the IIA universe	21
1. Continuous expansion of the IIA universe	21
a. Bilateral investment treaties	23
b. Double taxation treaties	25
c. Preferential trade and investment agreements	26
2. Increasing scope, complexity, diversity and interactions of the IIA universe.....	28
a. Scope of IIAs.....	28
b. Complexity of IIAs.....	29
c. Diversity of IIAs.....	31
d. Interactions within the IIA universe	32
3. Investor-State disputes	33
4. Greater role of developing countries	35
5. Emerging signs of an IIA backlash?	38
B. Main characteristics of the current IIA universe.....	41

III. CHALLENGES IN MANAGING THE EXISTING IIA UNIVERSE.....	49
A. Challenges of capacity	49
B. Challenges of content.....	52
1. Promoting policy coherence.....	53
a. The different dimensions of policy coherence.....	53
b. The relevance of policy coherence	62
c. Possible remedies	66
2. Balancing private and public interests and the issue of regulatory flexibility.....	69
a. Changes to existing treaty language	71
b. Corporate social responsibility	75
c. Implications	77
3. Enhancing the development dimension of IIAs	77
a. Development dimension in current IIA practice ...	78
b. Options to enhance the development dimension in future IIAs.....	79
c. Different types of IIAs.....	81
d. Alternative dispute resolution.....	83
IV. OUTLOOK.....	87
CONCLUSION	91
REFERENCES	93
SELECTED UNCTAD PUBLICATIONS ON TRANSNATIONAL CORPORATIONS AND FOREIGN DIRECT INVESTMENT	99

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_10006

