

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**INTERNATIONAL INVESTMENT AGREEMENTS:
KEY ISSUES
Volume II**



**UNITED NATIONS
New York and Geneva, 2004**

Note

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to foreign direct investment and transnational corporations. In the past, the Programme on Transnational Corporations was carried out by the United Nations Centre on Transnational Corporations (1975-1992) and the Transnational Corporations and Management Division of the United Nations Department of Economic and Social Development (1992-1993). In 1993, the Programme was transferred to the United Nations Conference on Trade and Development. UNCTAD seeks to further the understanding of the nature of transnational corporations and their contribution to development and to create an enabling environment for international investment and enterprise development. UNCTAD's work is carried out through intergovernmental deliberations, research and analysis, technical assistance activities, seminars, workshops and conferences.

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/2004/10 (Vol. II)

UNITED NATIONS PUBLICATION

Sales No.E.05.II.D.6

ISBN 92-1-112663-0

92-1-112660-6 (Volume I)

92-1-112661-4 (Volume II)

92-1-112662-2 (Volume III)

Copyright © United Nations, 2004

All rights reserved

Printed in Switzerland

Table of contents

Volume I

Chapter 1.	Trends in International Investment Agreements: An Overview
Chapter 2.	International Investment Agreements: Flexibility for Development
Chapter 3.	Scope and Definition
Chapter 4.	Admission and Establishment
Chapter 5.	National Treatment
Chapter 6.	Most-Favoured-Nation Treatment
Chapter 7.	Fair and Equitable Treatment
Chapter 8.	Taking of Property
Chapter 9.	Transfer of Funds
Chapter 10.	Transparency
Chapter 11.	Dispute Settlement: State-State
Chapter 12.	Dispute Settlement: Investor-State

Volume II

Chapter 13.	State Contracts
Chapter 14.	Host Country Operational Measures
Chapter 15.	Incentives
Chapter 16.	Environment
Chapter 17.	Employment
Chapter 18.	Social Responsibility
Chapter 19.	Illicit Payments
Chapter 20.	Transfer pricing
Chapter 21.	Taxation

Volume III

Chapter 22.	Home Country Measures
Chapter 23.	Transfer of Technology
Chapter 24.	Competition
Chapter 25.	Investment-related Trade Measures
Chapter 26.	Lessons from the MAI
Chapter 27.	Foreign Direct Investment and Development

Index

Selected UNCTAD publications on FDI and TNCs

Questionnaire

Acknowledgements

This three-volume set was edited by Karl P. Sauvant, assisted by Jörg Weber. Desktop publishing was done by Teresita Sabico.

UNCTAD's work on IIAs is undertaken by a team led by James Zhan. The principal officer responsible for the production of the chapters was Anna Joubin-Bret who oversaw their development at various stages. The members of the team included, at various stages, Jörg Weber, Victoria Aranda, S. M. Bushehri, Ruvan De Alwis, John Gara, Assad Omer, Federico Ortino, Elisabeth Tuerk, and Cynthia Wallace.

This work was made possible mainly thanks to extra-budgetary resources made available by a number of countries – financial contributions as well as in-kind contributions such as hosting symposia and training events. In addition, various international organizations, non-governmental organizations and academic institutions cooperated with UNCTAD in the implementation of many of the activities. The Secretariat very much appreciates this support.

Table of contents Volume II

Page

Chapter 13. State Contracts

Executive summary	1
Introduction	1
I. Explanation of the Issue.....	3
II. Stocktaking and Analysis	5
A. The extension of IIA protection to State contracts	5
1. Definition of State contracts in IIAs	5
2. Exclusion of certain State contracts from IIA coverage	6
3. Dispute settlement provisions	6
4. Umbrella clauses	6
B. Preservation of host country discretion and the creation of investor duties in the negotiation, conclusion and operation of State contracts	8
C. Duties towards private investor parties in State contracts	9
D. Development of substantive regimes for State contracts in IIAs	12
III. Interaction with other Issues and Concepts	12
Conclusion: Economic and Development Implications and Policy Options.....	15

Box

II.1. Umbrella clauses	7
------------------------------	---

Table

III.1. Interaction across issues and concepts	12
---	----

Chapter 14. Host Country Operational Measures

Executive summary	19
Introduction	20
I. Explanation of the Issue.....	21

II.	Stocktaking and Analysis	24
A.	HCOMs explicitly prohibited at the multilateral level	24
1.	The TRIMs Agreement	24
2.	Similar HCOMs prohibited by interregional, regional or bilateral agreements	28
B.	Additional HCOMs explicitly prohibited, conditioned or discouraged by interregional, regional or bilateral (but not multilateral) agreements	31
1.	Prohibited measures	31
2.	Restricted discretion to impose operational measures	33
a.	As conditions for the receipt or continued receipt of an advantage	33
b.	As a part of Government economic development programmes	34
3.	The “best efforts” approach	35
C.	HCOMs that are not contested	36
III.	Interactions with other Issues and Concepts	38
	Conclusion: Economic and Development Implications and Policy Options	39
A.	Development strategies and HCOMs.....	40
B.	Policy options: the TRIMs Agreement	41
	Option 1 : Close or decrease coverage	41
	Option 2 : Extend phase out period	42
	Option 3 : Increase coverage	42
C.	Policy options: other IIAs	44
	Option 1 : Prohibition of certain HCOMs not covered by the TRIMs Agreement	44
	Option 2 : Restrict HCOMs, but allow exceptions	45
	Option 3 : Cross-references.....	45
	Option 4 : Hortatory or “best efforts” provisions on measures not covered by TRIMs.....	45
	Option 5 : No references to HCOMs.....	45
	Boxes	
1.	Illustrative list of HCOMs.....	21
2.	The GATS	25
3.	TRIMs transition period issues agreed by the General Council	26
4.	NAFTA provisions on HCOMs	28
5.	Proposals regarding the Agreement on TRIMs in terms of paragraph 9(a)(i) of the Geneva Ministerial Declaration: Communication from India	41
6.	The Agreement on TRIMs: Communication from Brazil	43
7.	The Agreement on TRIMs: Communication from Mexico	43
8.	Proposal regarding the Agreement on TRIMs: Communication from Colombia	44
9.	General council discussion on mandated negotiations and the built-in agenda, 23 November 1998 : Communication from the United States	44
	Tables	
1.	Three categories of HCOMs	20
2.	Notifications submitted under Article 5.1 of the TRIMs Agreement, February 2001	27
3.	Examples of IIAs with “yellow light” HCOMs	31
4.	Interaction across issues and concepts	38

Chapter 15. Incentives

Executive summary	49
Introduction	49
I. Explanation of the Issue.....	50
A. What are investment incentives?	50
B. What key policy issues are at stake?	51
II. Stocktaking and Analysis	52
A. The definition of “incentives”	53
B. Non-discrimination	55
1. National and MFN treatment	55
a. The extent of protection.....	55
b. Exclusion of the non-discrimination principle from incentives.....	56
c. The treatment of fiscal incentives.....	56
d. Other exceptions	57
2. Incentives in conjunction with performance requirements	57
C. Transparency	58
D. Addressing incentives competition	59
1. Limits on the lowering of regulatory standards	59
a. Environmental protection	59
b. Labour rights.....	60
c. Joint approaches	60
2. Establishment of international control or consultation mechanisms.....	61
a. Discouraging certain approaches to the granting of incentives	61
b. Regional harmonization.....	61
c. Control mechanisms	62
d. Provisions on consultation or future negotiations.....	63
E. Encouragement of development-oriented incentives	64
1. Host country incentives.....	64
2. Home country incentives	65
III. Interaction with other Issues and Concepts.....	67
Conclusion: Economic and Development Implications and Policy Options	69
A. Economic and development implications	69
B. Policy options: alternative approaches and formulations.....	71

Boxes

I.1. Types of incentives	50
II.1. Evolution of the rules on subsidies in the GATT	53
II.2. The EU experience in regulating State aid.....	62

Table

1. Interaction across issues and concepts	68
---	----

Chapter 16. Environment

Executive summary	79
Introduction	80
I. Explanation of the Issue	80
II. Stocktaking and Analysis	82
A. General protection of the environment	83
1. General references to the environment	83
a. Provisions relating to the responsibility of Governments	83
b. Provisions relating to the responsibility of TNCs	84
2. Preserving national regulatory space for environmental protection	86
3. Attracting FDI through a lowering of environmental standards	91
B. Transfer of environmentally sound technology	94
C. Transfer of environmentally sound management practices	98
III. Interaction with other Issues and Concepts	103
Conclusion: Economic and Development Implications and Policy Options	104

Boxes

1. Protection of the environment at the national level	82
2. The draft United Nations Code of Conduct on the issue of environment	85
3. The draft NGO Charter on Transnational Corporations.....	85
4. Multilateral environmental agreements	87
5. General exceptions and environmental measures in international trade disputes	88
6. Challenging environmental measures under NAFTA	90
7. The “pollution haven” hypothesis	92
8. Agenda 21: selected TNC-related provisions on the transfer of environmentally sound technologies	94
9. Agenda 21: selected references to TNC responsibilities with respect to environmentally sound management practices	98
10. The environmental chapter of the 2000 OECD Guidelines	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_10348

