

United Nations Conference on Trade and Development
Division on Investment, Technology and Enterprise Development

International Investment Instruments: A Compendium

Volume XIII



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Note

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PREFACE

International Investment Instruments: A Compendium contains a collection of international instruments relating to foreign direct investment (FDI) and transnational corporations (TNCs). The collection is presented in fourteen volumes. The first three volumes were published in 1996. *Volumes IV* and *V* were published in 2000 followed by *Volume VI* in 2001. *Volumes VII, VIII, IX* and *X* were published in 2002. *Volumes XI* and *XII* were published in 2003 bringing the collection up to date. The present publication comprises *volumes XIII* and *XIV*.

The collection has been prepared to make the texts of international investment instruments conveniently available to interested policy-makers, scholars and business executives. The need for such a collection has increased in recent years as bilateral, regional, interregional and multilateral instruments dealing with various aspects of FDI have proliferated, and as new investment instruments are being negotiated or discussed at all levels.

While by necessity selective, the *Compendium* seeks to provide a faithful record of the evolution and present status of intergovernmental cooperation concerning FDI and TNCs. Although the emphasis of the collection is on relatively recent documents, it was deemed useful to include important older instruments as well, with a view to providing some indications of the historical development of international concerns about FDI in the decades since the end of the Second World War.

The core of this collection consists of legally binding international instruments, mainly multilateral conventions, regional agreements, and bilateral treaties that have entered into force. In addition, a number of "soft law" documents, such as guidelines, declarations and resolutions adopted by intergovernmental bodies, have been included since these instruments also play a role in the evolution of international agreements concerning FDI. In an effort to enhance the understanding of this evolution, certain draft instruments that never entered into force, or texts of instruments on which the negotiations were not concluded, are also included; prototypes of bilateral investment treaties are reproduced as well. Included also are a number of influential documents prepared by business, consumer and labour organizations, as well as by other non-governmental organizations. It is clear from the foregoing that no conclusions concerning the legal status or the legal effect of an instrument can be drawn from its inclusion in this collection.

In view of the great diversity of the instruments in this *Compendium* -- in terms of subject matter, approach, legal form and extent of participation of States -- the simplest possible method of presentation was deemed the most appropriate. With regard to previous volumes, the structure and content are indicated in the table of content which is included below (see pp. ix-xi). As far as volumes XIII and XIV are concerned relevant instruments are distributed as follows:

Volume XIII is divided into the following three parts:

- Part One contains additional regional instruments, including agreements and other texts from regional organizations with an inclusive geographical context.

- Part Two reproduces investment-related provisions in a number of additional free trade, economic partnership arrangements and framework agreements not covered in previous volumes.
- Part Three contains the texts of a number of additional prototype BITs not covered in previous volumes.

Volume XIV is divided into the following two parts:

- Part One reproduces investment-related provisions in three free trade agreements and a framework agreement not covered in previous volumes.
- Part Two contains the text of a number of an additional prototype BIT not covered in previous volumes.

Within each of these subdivisions and in previous volumes, instruments are reproduced in chronological order, except for the sections dedicated to prototype instruments.

The multilateral and regional instruments covered are widely differing in scope and coverage. Some are designed to provide an overall, general framework for FDI and cover many, although rarely all, aspects of investment operations. Most instruments deal with particular aspects and issues concerning FDI. A significant number address core FDI issues, such as the promotion and protection of investment, investment liberalization, dispute settlement and insurance and guarantees. Others cover specific issues, of direct but not exclusive relevance to FDI and TNCs, such as transfer of technology, intellectual property, avoidance of double taxation, competition and the protection of consumers and the environment. A relatively small number of instruments of this last category has been reproduced, since each of these specific issues often constitutes an entire system of legal regulation of its own, whose proper coverage would require an extended exposition of many kinds of instruments and arrangements.^a

The *Compendium* is meant to be a collection of instruments, not an anthology of relevant provisions. Indeed, to understand a particular instrument, it is normally necessary to take its entire text into consideration. An effort has been made, therefore, to reproduce complete instruments, even though, in a number of cases, reasons of space and relevance have dictated the inclusion of excerpts. Owing to their size, annexes containing the list of reservations and exceptions are excluded in many cases. The excerpts are meant to reflect all provisions directly relevant to investment in an international agreement. There are other provisions that have an indirect bearing on investment but are not covered in the *Compendium*. The mark "[...]" has been inserted to indicate missing text.

The UNCTAD secretariat has deliberately refrained from adding its own commentary to the texts reproduced in the *Compendium*. The only exception to this rule is the boxes added to each instrument. They provide some basic facts, such as its date of adoption and date of entry into force and, where appropriate, signatory countries. Also, a list of agreements containing investment-related provisions signed by the EFTA countries and by the EC countries with third

^a For a collection of instruments (or excerpts therefrom) dealing with transfer of technology, see UNCTAD, *Compendium of International Arrangements on Transfer of Technology: Selected Instruments* (Geneva: United Nations), United Nations publication, Sales No. E.01.II.D.28.

countries or regional groups are reproduced in the *Compendium*. Moreover, to facilitate the identification of each instrument in the table of contents, additional information has been added, in brackets, next to each title, on the year of its signature and the name of the relevant institution involved.

Geneva, February 2005

Carlos Fortin
Officer-in-Charge of UNCTAD

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VOLUME XIII

PREFACE iii

ACKNOWLEDGEMENTS..... vi

**PART ONE
REGIONAL AND INTERREGIONAL INSTRUMENTS**

296. ECOWAS Energy Protocol (2003) (excerpts) 3

297. Decision 578 of the Commission of the Cartagena Agreement:
A Regime for the Avoidance of Double Taxation and the
Prevention of Fiscal Evasion (Andean Group, 2004) 19

**PART TWO
BILATERAL INSTRUMENTS**

298. Mainland and Hong Kong Closer Economic Partnership
Arrangement (2003) (excerpts) 31
and
Supplement to the Mainland and Hong Kong Closer Economic
Partnership Arrangement (2004) (excerpts)..... 57

299. Mainland and Macao Closer Economic Partnership
Arrangement (2003) (excerpts) 67
and
Supplementary Protocol to the Mainland and Macao Closer
Economic Partnership Arrangement (2004) (excerpts)..... 91

300. Tratado de Libre Comercio entre el Gobierno de la República
Oriental del Uruguay y el Gobierno de los Estados Unidos
Mexicanos (2003) (excerpts)..... 101

301. Agreement Between the Government of the United States of
America and the Government of the Kingdom of Saudi Arabia
Concerning the Development of Trade and Investment
Relations (2003) 169

302. United States - Australia Free Trade Agreement (2004)
(excerpts)..... 173

303. Agreement Between the Government of the United States of
America and the Government of the State of Kuwait
Concerning the Development of Trade and Investment
Relations (2004) 261

304. Agreement Between the Government of the United States of
America and the Government of the Republic of Yemen

Concerning the Development of Trade and Investment Relations (2004).....	265
305. Agreement Between the Government of the United States of America and the Government of the United Arab Emirates Concerning the Development of Trade and Investment Relations (2004).....	269
306. Agreement Between the Government of the United States of America and the Government of the State of Qatar Concerning the Development of Trade and Investment Relations (2004)	273
PART THREE PROTOTYPE INSTRUMENTS	
307. Agreement Between the Government of the Republic of Ghana and the Government of the Republic of _____ for the Promotion and Protection of Investments (Model 2003)	279
308. Agreement Between the Government of Romania and the Government of _____ on the Promotion and Reciprocal Protection of Investments	287
List of publications on FDI and TNCs, 1973-2004	293
Questionnaire	319

预览已结束，完整报告链接和二维码如下：

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