

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

International Investment Instruments: A Compendium

Volume VI



United Nations
New York and Geneva, 2001

Note

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UNCTAD/DITE/... Vol. VI

UNITED NATIONS PUBLICATION

<i>Sales No. E.01.II.D</i>

ISBN 92-1

Complete set of six volumes

ISBN 92-1

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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 six volumes. The first three volumes were published in 1996. Four years later, *Volumes IV* and *V* were published; *Volume VI* brings the collection up to date. This volume also includes a number of instruments adopted in earlier years but not included in the previous volumes.

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 at all levels.

While by necessity selective, the present collection 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 (the majority of the instruments reproduced date from after 1990), 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 and regional agreements 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 elaboration of an international framework for FDI. In an effort to enhance the understanding of the efforts behind the elaboration of this framework, certain draft instruments that never entered into force, or texts of instruments on which the negotiations were not concluded, are also included; and several prototypes of bilateral investment treaties are reproduced. 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 implications 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. Thus, the relevant instruments are distributed among the *six volumes of the Compendium* as follows:

- *Volume I* is devoted to multilateral instruments, that is to say multilateral conventions as well as resolutions and other documents issued by multilateral organizations.
- *Volume II* covers interregional and regional instruments, including agreements, resolutions and other texts from regional organizations with an inclusive geographical context.

- *Volume III* is divided into three annexes covering three types of instruments that differ in their context or their origin from those included in the first two volumes:
 - Annex A reproduces investment-related provisions in free trade and regional integration agreements. The specific function and, therefore, the effect of such provisions are largely determined by the economic integration process which they are intended to promote and in the context of which they operate.
 - Annex B (the only section that departs from the chronological pattern) offers the texts of prototype bilateral treaties for the promotion and protection of foreign investments (BITs) of several developed and developing countries, as well as a list of these treaties concluded up to July 1995. The bilateral character of these treaties differentiates them from the bulk of the instruments included in this *Compendium*. Over 900 such treaties had been adopted by July 1995.
 - Annex C supplies the texts of documents prepared by non-governmental organizations; these give an indication of the broader environment in which the instruments collected here are prepared.
- *Volume IV*, divided into two parts, covers additional multilateral (Part One) and regional instruments (Part Two) not covered in *Volumes I* and *II*, including, but not limited to, those adopted between 1996 and the end of 1999.
- *Volume V* is divided into four parts, as follows:
 - Part One reproduces investment-related provisions in a number of additional free trade and economic integration agreements not covered in *Volume III*.
 - Part Two includes for the first time investment-related provisions in association agreements as well as bilateral and interregional cooperation agreements. These are divided into three annexes. Annex A is devoted to agreements signed between the countries members of the European Free Trade Association (EFTA) and third countries. Annex B covers investment-related provisions in agreements signed between the countries members of the European Community (EC) and third countries as well as other regional groups. Annex C includes types of bilateral agreements related to investment that differ from those covered in other parts.
 - Part Three contains the texts of a number of additional prototype BITs of several developed and developing countries, as well as a list of these treaties concluded between July 1995 and the end of 1998, when the total number of BITs concluded since 1959 reached over 1,730.
 - Part Four reproduces additional texts of recent documents prepared by non-governmental organizations.

- *Volume VI* is divided into the following six parts:
 - Part One contains an additional multilateral instrument.
 - Part Two covers additional interregional and regional instruments, including agreements, resolutions and other texts from regional organizations with an inclusive geographical context.
 - Part Three reproduces investment-related provisions in a number of additional free trade and economic integration agreements not covered in previous volumes.
 - Part Four includes investment-related provisions in association agreements as well as bilateral and interregional cooperation agreements not covered in previous volumes.
 - Part Five contains the texts of a number of additional prototype BITs of several developed and developing countries not covered in previous volumes.
 - Part Six includes for the first time prototype double taxation treaties (DTTs).

Within each of these subdivisions, instruments are reproduced in chronological order, except for the sections dedicated to BIT prototypes.

The multilateral and regional instruments covered differ widely 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 in this last category have 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.

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

^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.

each instrument. They provide some basic facts, such as date of adoption, date of entry into force, status as of 1995 and 1999 respectively, and, where appropriate, signatory countries. Also, in the case of agreements signed between the EFTA countries or the EC countries with third countries or regional groups — where only a few samples of the types of agreements with investment-related provisions are included — a list of similar agreements signed by these two groups of countries has been included to give an indication of the range of countries involved in these types of agreements. 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, September 2001

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ACKNOWLEDGEMENTS

Volume VI of the *Compendium* was prepared by Abraham Negash, under the guidance of Victoria Aranda and the overall direction of Anh-Nga Tran-Nguyen and Karl P. Sauvart. Comments on the table of contents were given by Arghyrios A. Fatouros, Mark Koulen, Peter Muchlinski, Maryse Robert, Patrick Robinson and Joerg Weber. Secretarial assistance was provided by Florence Hudry. The cooperation of the relevant organizations from which the relevant instruments originate is acknowledged with gratitude.

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