

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

NATIONAL TREATMENT

UNCTAD Series
on issues in international investment agreements



UNITED NATIONS
New York and Geneva, 1999

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. 1994/95, 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/11 (Vol. IV)
UNITED NATIONS PUBLICATION
Sales No. E.99.II.D.16
ISBN 92-1-112455-7

Copyright © United Nations, 1999
All rights reserved
Manufactured in Switzerland

IIA Issues Paper Series

The main purpose of the UNCTAD Series on issues in international investment agreements is to address key concepts and issues relevant to international investment agreements and to present them in a manner that is easily accessible to end-users. The series covers the following topics:

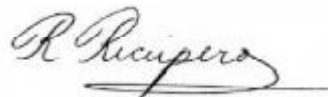
- Admission and establishment
- Competition
- Dispute settlement (investor-State)
- Dispute settlement (State-State)
- Employment
- Environment
- Fair and equitable treatment
- Foreign direct investment and development
- Funds transfer
- Home country measures
- Host country operational measures
- Illicit payments
- Incentives
- Investment-related trade measures
- Lessons from the Uruguay Round
- Modalities and implementation issues
- Most-favoured-nation treatment
- National treatment
- Present international arrangements for foreign direct investment: an overview
- Scope and definition
- Social responsibility
- State contracts
- Taking of property
- Taxation
- Transfer of technology
- Transfer pricing
- Transparency

Preface

The United Nations Conference on Trade and Development (UNCTAD) is implementing a work programme on a possible multilateral framework on investment, with a view towards assisting developing countries to participate as effectively as possible in international investment rule-making at the bilateral, regional, plurilateral and multilateral levels. The programme embraces capacity-building seminars, regional symposia, training courses, dialogues between negotiators and groups of civil society and the preparation of a series of issues papers.

This paper is part of this series. It is addressed to government officials, corporate executives, representatives of non-governmental organizations, officials of international agencies and researchers. The series seeks to provide balanced analyses of issues that may arise in discussions about international investment agreements. Each study may be read by itself, independently of the others. Since, however, the issues treated closely interact with one another, the studies pay particular attention to such interactions.

The series is produced by a team led by Karl P. Sauvant and Pedro Roffe. The principal officer responsible for its production is John Gara who oversees the development of the papers at various stages. The other members of the team include Obiajulu Ihonor and Jörg Weber. The work is carried out under the overall direction of Lynn K. Mytelka. The series' principal advisors are Arghyrios A. Fatouros, Sanjaya Lall and Peter T. Muchlinski. Drawing on a first draft by Patrick Robinson, the present paper is based on a manuscript prepared by Peter T. Muchlinski. Victoria Aranda was responsible for the substantive supervision of this paper. The final version reflects comments received from Joachim Karl, Mark Koulen, Hamid Mamdouh and Marinus Sikkel. The paper was desktop published by Teresita Sabico.



Rubens Ricupero
Secretary-General of UNCTAD

Geneva, May 1999

Acknowledgments

UNCTAD's work programme on a possible multilateral framework on investment is implemented by a team of UNCTAD staff members and consultants headed by Karl P. Sauvant and Pedro Roffe and including Victoria Aranda, Mattheo Bushehri, Ruvan de Alwis, Arghyrios A. Fatouros, John Gara, Obiajulu Ihonor, Anna Joubin-Bret, Sanjaya Lall, Peter T. Muchlinski, Miguel Rodriguez and Jörg Weber. Administrative support is provided by Christiane Defrancisco and Antonia Künzel.

UNCTAD has carried out a number of activities related to the work programme in cooperation with other intergovernmental organizations, including the Secretariat of the Andean Community, the Inter-Arab Investment Guarantee Corporation, the League of Arab States, the Organization of American States, l'Organisation Internationale de la Francophonie, and the World Trade Organization. UNCTAD has also cooperated with non-governmental organizations, including the Centro de Estudios Interdisciplinarios de Derecho Industrial y Económico - Universidad de Buenos Aires, the Consumer Unity and Trust Society - India, the Economic Research Forum - Cairo, the European Roundtable of Industrialists, the Friedrich Ebert Foundation, the International Confederation of Free Trade Unions, Oxfam, SOMO - Centre for Research on Multinational Corporations, the Third World Network, Universidad del Pacifico, University of the West Indies, and World Wildlife Fund International.

Funds for the work programme have so far been received from Australia, Brazil, Canada, France, the Netherlands, Norway, Switzerland, the United Kingdom and the European Commission. Countries such as Egypt, India, Jamaica, Morocco and Peru have also contributed to the work programme by hosting regional symposia. All of these contributions are gratefully acknowledged.

Table of contents

	Page
Preface	v
Acknowledgements	vi
Executive summary	1
INTRODUCTION	3
I. EXPLANATION OF THE ISSUE	7
A. The nature and origins of the national treatment standard	7
B. Principal issues	10
1. Scope and application	10
2. The substantive content of the national treatment standard	11
3. The relationship between national treatment and other general standards of treatment	11
4. “De jure” and “de facto” treatment	12
5. Exceptions to national treatment	12
II. STOCKTAKING AND ANALYSIS	15
A. An agreement does not mention national treatment	15
B. An agreement goes beyond a general national treatment clause and involves a more specific non-discrimination regime	17
C. An agreement contains a general national treatment clause.....	18

	Page
1. Scope of application	18
a. Extent of coverage of the investment process	18
(i) The post-entry model	19
(ii) The pre- and post-entry model	21
(iii) The GATS hybrid model.....	23
b. The meaning of national treatment in relation to subnational authorities	25
2. The substantive content of the national treatment standard	28
a. Factual situations in which national treatment applies	28
(i) The “same” or “identical” circumstances	28
(ii) The economic activities and/or industries to which national treatment applies	29
(iii) “Like situations”, “similar situations” or “like circumstances”	33
(iv) No factual comparisons	34
b. Definition of the standard	34
(i) “Same” or “as favourable as” treatment	35
(ii) “No less favourable” treatment	37
3. “ <i>De jure</i> ” and “ <i>de facto</i> ” national treatment	40
4. “Stand alone” national treatment provision or national treatment combined with other general standards of treatment	41

	Page
a. “Stand alone” national treatment provision.....	41
b. Separate national treatment provision followed by other general standards of treatment clauses	42
c. Combined national and MFN treatment provision.....	42
5. Exceptions	43
a. Classification of exceptions	43
b. Exceptions based on development considerations	47
c. Monitoring	50
III. INTERACTION WITH OTHER ISSUES AND CONCEPTS	55
CONCLUSION: ECONOMIC AND DEVELOPMENT IMPLICATIONS AND POLICY OPTIONS	61
A. Option 1: no national treatment provision	62
B. Option 2: national treatment provision	63
1. Post-establishment national treatment	64
Option 2a: limited post-establishment national treatment with strong host country authority	64

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_11020

