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HIGHLIGHTS

- Fifty-two countries and the European Union (EU) took 96 investment policy measures in the review period (May 2020 - December 2020). Nearly half of these measures introduced new regulations or restrictions for investment - the highest ratio in almost two decades.
- Almost all new investment regulations or restrictions address national security concerns as more and more countries become worried that domestic core assets and technologies may fall prey to hostile foreign takeovers in the wake of pandemic. Eighteen countries and economies – Austria, Canada, China, Finland, France, Germany, Hungary, Italy, Japan, Republic of Korea, Malta, New Zealand, Poland, Russian Federation, Slovenia, Spain, United Kingdom and the EU – reinforced the existing FDI screening regime or newly adopted such mechanisms. Kenya, Oman and the United States of America introduced other types of restrictive measures.
- A limited number of countries – Algeria, China, Ethiopia, India, Indonesia, Lao People's Democratic Republic, Philippines, United Arab Emirates – further liberalised foreign investment in various sectors. Among them are key industries such as agriculture, manufacturing, the pharmaceutical sector, transportation, financial services and digital media.
- Efforts to facilitate and promote investment continued. Angola, Cambodia, Cuba, Iraq and Pakistan created more investor-friendly government approval mechanisms. Colombia, Panama, Rwanda, Uruguay, and Viet Nam expanded fiscal incentive regimes to promote investment. Bolivia and Uzbekistan established new investment promotion agencies. Sri Lanka established a pharmaceutical manufacturing zone.
- Countries signed at least 15 international investment agreement (IIAs), bringing the total number of IIAs to 3,312 by the end of December 2020. At least five terminations of IIAs took effect during the reporting period. Newly concluded IIAs continue to include reform-oriented provisions in line with UNCTAD's policy recommendations found in its Reform Package for the International Investment Regime and its IIA Reform Accelerator.
- The reporting period saw other important developments relating to international investment policymaking. These include, notably, the entry into force of the EU agreement for the termination of intra-EU BITs, the entry into force of the United States–Mexico–Canada Agreement, the Agreement in principle on the EU-China comprehensive agreement on investment as well as the African Union declaration on the risks of investor-State arbitration relating to COVID-19 measures.
- Several notable developments also took place at the multilateral level including continued discussions on investor-State dispute settlement (ISDS) reform within the context of UNCITRAL's Working Group III; the release of the second revised draft of the binding treaty on business and human rights; and the commencement of formal negotiations for a multilateral investment facilitation framework in the WTO.

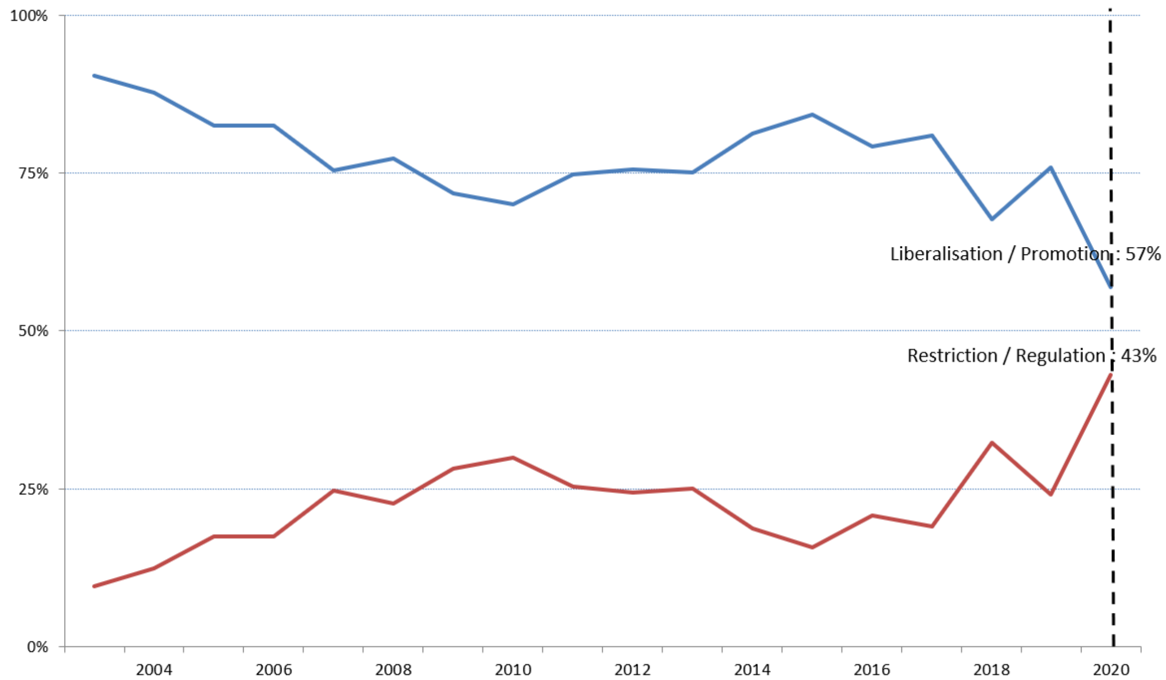
A. National investment policies

During the review period of this Monitor (May 2020 – December 2020), 52 countries and the EU took 96 investment policy measures (table 1). The majority of them (55 percent) were still geared towards creating more favourable investment conditions. Investment liberalisation, promotion and facilitation measures were adopted in numerous industries including agriculture, energy, the pharmaceutical sector, the defence sector, transport services, financial services, and digital media. Developing countries and transition economies have been especially active. For the year 2020 in its entirety, the ratio is 57 percent.

Nevertheless, during the review period, the ratio of more regulatory or restrictive investment policy measures soared to 45 percent. It stands at 43 percent for the whole year 2020 (January to December). This is the highest ratio since 2003 (figure 1).

New investment regulations or restrictions for foreign investors continued to be mainly rooted in national security grounds about foreign ownership of critical infrastructures, core technologies, or other sensitive domestic assets. With advanced economies taking the lead, several developing countries and transition economies, such as China, the Republic of Korea and the Russian Federation also began to strengthen their FDI review mechanisms. A main reason for this development is the aim to protect sensitive domestic businesses against hostile foreign takeovers in the midst of the COVID-19 pandemic (see also UNCTAD, Special IPM No.4: Investment Policy Responses to the COVID-19 Pandemic[1]). The huge surge in regulatory or restrictive investment policy measures is mainly due to an extraordinary crisis situation and therefore does not necessarily indicate a permanent change in the policy trend.

Figure 1: Changes in national investment policies, 2003 – December 2020*



Source: UNCTAD.

* The data in the figure do not include measures related to the general business climate, such as corporate taxation, environmental or labor legislation.

1 https://investmentpolicy.unctad.org/publications/1225/investment-policy-monitor-special-issue---investment-policy-responses-to-the-covid-19-pandemic

Table 1. Summary of national investment policy measures adopted between May 2020 and December 2020

	Entry and establishment (46)	Treatment (12)	Promotion and facilitation (29)	General business climate (19)
Algeria	1			
Angola		1	2	1
Argentina				1
Australia	1			
Austria	1			
Bolivia, Plurinational State of			1	
Cambodia			1	
Canada	1			
Cape Verde			1	
China (*)	4	3	5	4
Colombia			1	
Congo				1
Cuba			1	
Equatorial Guinea				1
Ethiopia	1			
European Union	1			
Finland	1			
France	2			
Germany	2			
Hungary	2			
India	2		1	
Indonesia (*)	2	2	1	1
Iraq			1	
Italy	2			
Japan	3			
Kenya	1			1
Korea, Republic of	1			
Lao People's Democratic Republic	1			
Malta	1			
Mauritius			1	
Mexico		1		
Mozambique				1
Namibia			1	
New Zealand	2			
Oman (*)	2		1	
Pakistan		1	1	
Panama			1	
Philippines	1			
Poland	1			1
Russian Federation	1			
Rwanda			1	
Saudi Arabia			1	
Singapore			1	
Slovenia	1			
Spain	1			
Sri Lanka			1	
United Arab Emirates	1			2

United Kingdom	2			
United Republic of Tanzania				1
United States of America	3	1		
Uruguay			1	
Uzbekistan		1	2	
Viet Nam (*)	1	2	2	3
Zambia				1

Source: UNCTAD.
* Measures are double counted because they related to more than one type.

1. Entry/Establishment of investment

Thirty-one economies – Algeria, Australia, Austria, Canada, China, Ethiopia, EU, Finland, France, Germany, Hungary, India, Indonesia, Italy, Japan, Kenya, Republic of Korea, Lao People's Democratic Republic, Malta, New Zealand, Oman, Philippines, Poland, Russian Federation, Slovenia, Spain, United Arab Emirates, United Kingdom, United States of America, Vietnam – adopted new policy measures relating to the entry and establishment of foreign investors.

Most measures either reinforced existing FDI screening mechanisms or newly introduced regulatory or restrictive investment policies in the midst of the pandemic. Among the most noteworthy measures are:

- *Austria* enacted the Investment Control Act to replace the previously applicable FDI regime under the Foreign Trade Act. This led to a considerable expansion of prior approval requirements for FDI.
- *China* newly adopted the Regulation on the Unreliable Entity List to establish a framework for restrictions or penalties on foreign entities considered to endanger the national sovereignty, security, or development interests of China.
- *Finland* amended the Act on the Screening of Foreign Corporate Acquisitions of 2012 to make the Finish investment review mechanism compatible with EU Regulation.
- *France* temporarily lowered the control threshold that requires prior governmental review of a foreign acquisition from previously 25 percent of the shares to 10 percent.
- *Germany* expanded the scope of the foreign acquisition review to a "probable impairment" of public order or security, replacing the previous "actual risk" test with the aim of implementing the EU foreign investment screening regime.
- *Hungary* introduced a temporary foreign investment screening mechanism applicable to investors from both inside and outside the EU, which will be effective until 30 June 2021.
- *Italy* expanded the special power regime in strategic sectors that require prior approval for any foreign investment. The regime shall apply to acquisitions exceeding 10% of the share capital.
- *Japan* lowered the threshold for prior notification to 1 percent from the previous 10 percent for foreign investment in listed Japanese companies relevant for national security.
- *Kenya* introduced local participation requirements in various industries including insurance, telecommunications, and ICT services.
- The *Republic of Korea* tightened the FDI review mechanism for foreign investment where there is high possibility of leakage of core national technologies.
- *New Zealand* introduced a temporary emergency notification requirement in its FDI screening mechanism to be able to review all new controlling foreign investments.
- *Oman* published a list of activities that are prohibited for foreign investors with the aim to promote local products and domestic entrepreneurship.

- *Poland* required foreign investors from non-EEA countries to receive prior clearance from the President of the Polish Competition Authority for domestic acquisitions under certain conditions.
- The *Russian Federation* subjected even temporary foreign acquisitions of voting stakes in strategic companies to FDI screening procedures.
- *Slo*venia introduced a foreign investment screening mechanism to cover foreign investments in specified sectors or activities.
- The *United Kingdom* expanded the legal grounds for the Government to intervene in certain mergers.

Conversely, some countries relaxed restrictions on foreign ownership or opened new business opportunities. Examples are:

- *Algeria* removed the 49 percent foreign ownership ceiling. Foreign investors may now have 100 percent ownership, except in certain industries.
- *China* amended its "Negative Lists", lifting restrictions in such industries as financial services, manufacturing, agriculture, radioactive mineral smelting, and the pharmaceutical industry.
- *Ethiopia* allowed foreign investment in certain transport services activities.
- *India* liberalised the news digital media industry and the defence sector: Foreign ownership is now allowed up to 26 percent through the Government approval route in the former industry and up to 74 percent under the automatic route in the latter.
- The *Lao People's Democratic Republic* for the first time permitted foreign investors to own apartments in condominiums and carry out condominium construction.
- *The Philippines* allowed 100 percent foreign ownership in large-scale geothermal projects.
- The *United Arab Emirates* permitted 100 percent foreign ownership of commercial companies by abolishing the requirement for commercial companies to have a major Emirati shareholder or agent.
- *Viet Nam* for the first time introduced a "Negative List" on market access, affording foreign investors national treatment except in the sectors included in the "Negative List".

The *United States of America* adopted a new measure on outward FDI. Americans are now prohibited from investing in Chinese firms that the administration says are owned or controlled by the Chinese military.

2. Treatment of established investment

Eight countries – Angola, China, Indonesia, Mexico, Pakistan, United States of America, Uzbekistan, Viet Nam – took measures with respect to the treatment of investors after establishment in the host country. In particular,

- *Angola* extended the scope of existing local content regulations to include all companies providing goods and services to the oil sector.
- *China* introduced new mechanisms to strengthen the procedure for handling complaints from foreign-invested enterprises by broadening the scope of possible grievances.
- *Indonesia* introduced new requirements for the e-commerce sector and simplified certain requirements for foreign investment.
- *Pakistan* permitted companies to conveniently remit disinvestment proceeds to their foreign shareholders by removing the requirement of prior approval from the State Bank.

- The *United States of America* required companies publicly listed on stock exchanges to declare that they are not owned or controlled by any foreign government.
- *Viet Nam* allowed that certain disputes between foreign investors and the State can be taken to international arbitration.

3. Promotion/Facilitation of investment

Twenty-two countries – Angola, Bolivia, Cambodia, Cape Verde, China, Colombia, Cuba, India, Indonesia, Iraq, Mauritius, Namibia, Oman, Pakistan, Panama, Rwanda, Saudi Arabia, Singapore, Sri Lanka, Uruguay, Uzbekistan, Viet Nam – adopted measures concerning the promotion and facilitation of investment. Most of them encourage investment through providing investment incentives or facilitating investment procedures. For instance,

- *Angola* created a single contact mechanism for investors to obtain necessary authorisations in a simplified manner. It also adopted a law to set forth the possibility of creating free trade zones with a number of incentives and benefits.
- *Bolivia* and *Uzbekistan* established new government agencies to attract more investment.
- *Cambodia, Cuba, Iraq*[2], and *Pakistan* launched online platforms for investors to establish companies more efficiently.
- *China* newly issued the catalogue of encouraged Industries for foreign investment, increasing the number of promoted activities by 10 percent.
- *Colombia, Panama, Rwanda, Uruguay,* and *Viet Nam* introduced some new tax incentive regimes to promote investment, and *Oman* clarified the conditions for granting incentives to foreign investment.
- *Indonesia* enacted the Omnibus Law with the aim to increase the ease of doing business by, inter alia, simplifying licensing processes, providing incentives, amending Labour Law regulations, relaxing immigration rules and harmonizing various sector-specific laws and regulations.
- *Saudi Arabia* revised the mining law to facilitate investor access to financing and to support exploration and geological survey activities.
- *Sri Lanka* established a pharmaceutical manufacturing zone at the southern coast of Hambantota to attract global pharmaceutical companies.

4. General business climate

Thirteen countries – Angola, Argentina, China, Congo, Equatorial Guinea, Indonesia, Kenya, Mozambique, Poland, United Arab Emirates, United Republic of Tanzania, Viet Nam, and Zambia – took measures affecting the general business climate.[3] For instance, China strengthened the position of copyright holders in its Copyright Law. Viet Nam simplified the business registration process and tightened the requirements for legal representatives of intellectual property applicants. Zambia amended mining rules to treat gold as strategic asset. Angola, Argentina, Congo, Kenya, the United Republic of Tanzania, and Viet Nam amended taxation rules.

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[2] UNCTAD assisted in setting up this platform - https://business.mot.gov.iq/

[3] The following examples are a non-exhaustive overview.

B. International investment policies

1. International investment agreements signed, terminated and entered into force

During the reporting period, at least 15 international investment agreement (IIAs) were signed (table 2), bringing the total number of IIAs to 3,312 by the end of December 2020 (figure 2). Fourteen of these IIAs were treaties with investment provisions (TIPs)[4] and one was a bilateral investment treaty (BIT). Of the 14 TIPs, 13 were concluded by the United Kingdom to maintain existing trade and investment relationships with third countries following its withdrawal from the European Union (EU). Additionally, at least five IIAs entered into force.[5]

At least five terminations of IIAs took effect during the reporting period.[6] Terminated IIAs include the Australia–Indonesia BIT (effectively terminated on 6 August 2020); the Hungary–Poland BIT (effectively terminated on 16 June 2020); the India–Syria BIT (effectively terminated on 20 June 2020); the Malta–Sweden BIT (effectively terminated on 22 May 2020); and the North American Free Trade Agreement (NAFTA) (effectively terminated on 1 July 2020). By the end of December 2020, at least 2,659 IIAs were in force.

Table 2. List of IIAs signed between 1 May 2020 and 31 December 2020

	Name of the Agreement	Date of signature
1	Bilateral Investment Treaty between Hungary and Kyrgyzstan	29 September 2020
2	Political, Free Trade and Strategic Partnership Agreement between Ukraine and the United Kingdom	8 October 2020
3	Stepping Stone Economic Partnership Agreement between Côte d'Ivoire and the United Kingdom	15 October 2020
4	Trade and Investment Framework Agreement between Fiji and the United States of America	15 October 2020
5	Comprehensive Economic Partnership Agreement between Japan and the United Kingdom	23 October 2020
6	Regional Comprehensive Economic Partnership	15 November 2020
7	Partnership, Trade and Cooperation Agreement between North Macedonia and the United Kingdom	3 December 2020
8	Association Agreement between Egypt and the United Kingdom	5 December 2020
9	Economic Partnership Agreement between Kenya and the United Kingdom	8 December 2020
10	Trade Continuity Agreement between Canada and the United Kingdom	9 December 2020
11	Free Trade Agreement between Singapore and the United Kingdom	10 December 2020
12	Strategic Partnership, Trade and Cooperation Agreement between Moldova and the United Kingdom	24 December 2020
13	Free Trade Agreement between Turkey and the United Kingdom	29 December 2020
14	Free Trade Agreement between the United Kingdom and Viet Nam	29 December 2020
15	Trade and Cooperation Agreement between the European Union and the United Kingdom	30 December 2020

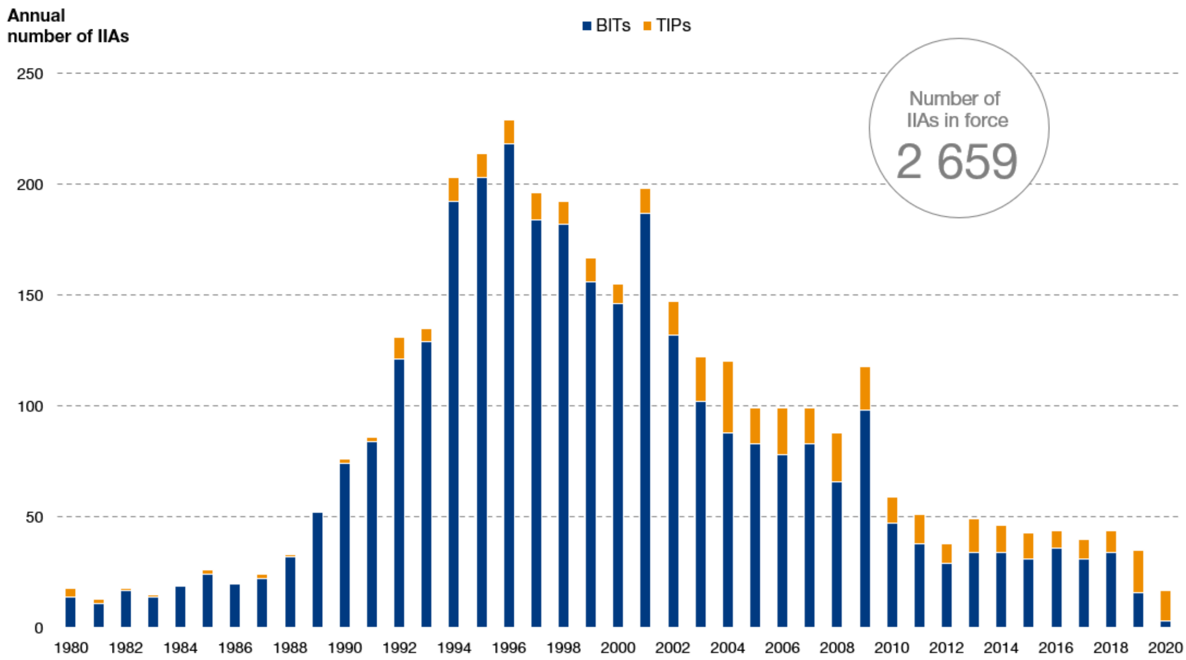
[4] Treaties with investment provisions encompass economic agreements other than BITs that include investment-related provisions (e.g. investment chapters in economic partnership agreements (EPAs), free trade agreements (FTAs), regional investment agreements and framework agreements on economic cooperation). Four main types of TIPS can be distinguished: (i) TIPs that include obligations commonly found in BITs; including substantive standards of investment protection and investor-State dispute settlement (ISDS); (ii) TIPs that include limited investment provisions (e.g. national treatment (NT) and most favoured nation (MFN) treatment with regard to the right of establishment of companies, or provisions on free movement of capital relating to direct investments); (iii) TIPs with investment provisions emphasizing investment promotion and facilitation while also containing a number of investment protection provisions, although no ISDS clause; and (iv) TIPs that establish an institutional framework between the parties to promote and cooperate on investment.

[5] Australia–Indonesia Comprehensive Economic Partnership Agreement entered into force on 5 July 2020; Colombia–France BIT on 14 October 2020; Colombia–Israel FTA on 11 August 2020; Ecuador–European Free Trade Association FTA on 1 November 2020; and Agreement between the United States of America, Mexico and Canada (USMCA) on 1 July 2020.

[6] During the reporting period, the EU agreement for the termination of intra-EU BITs has entered into force or was provisionally applied by 8 member States. BITs between these member States are terminated, i.e. removed from the EU legal order, in line with the provisions of the termination agreement. See https://ec.europa.eu/info/publication/200505-bilateral-investment-treaties-agreement_en.

Source: UNCTAD, IIA Navigator.

Figure 2. Trends in IIAs signed, 1980–2020



Source: UNCTAD, IIA Navigator.
Note: A detailed analysis of all IIAs signed in 2020, including their content and prevalence of sustainable development features, will be available in the World Investment Report (WIR) 2021 (Chapter III), to be launched in June 2021.

The *EU–United Kingdom Trade and Cooperation Agreement*, signed on 30 December 2020, contains a chapter on investment liberalization which includes national treatment (NT) and most-favoured-nation (MFN) treatment with respect to the establishment and operation of investors and covered enterprises as well as provisions on senior management and board of directors, prohibition of performance requirements, and non-conforming measures. The agreement also features provisions on capital movements and transfers subject to specific exceptions as well as a denial of benefits clause. It does not include investment protection provisions such as fair and equitable treatment (FET) or expropriation. It also does not provide for investor-State dispute settlement (ISDS) and specifies that ISDS procedures in other IIAs are not covered by the MFN provision.

The *United Kingdom–Viet Nam FTA*, signed on 29 December 2020, incorporates mutatis mutandis the