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HIGHLIGHTS

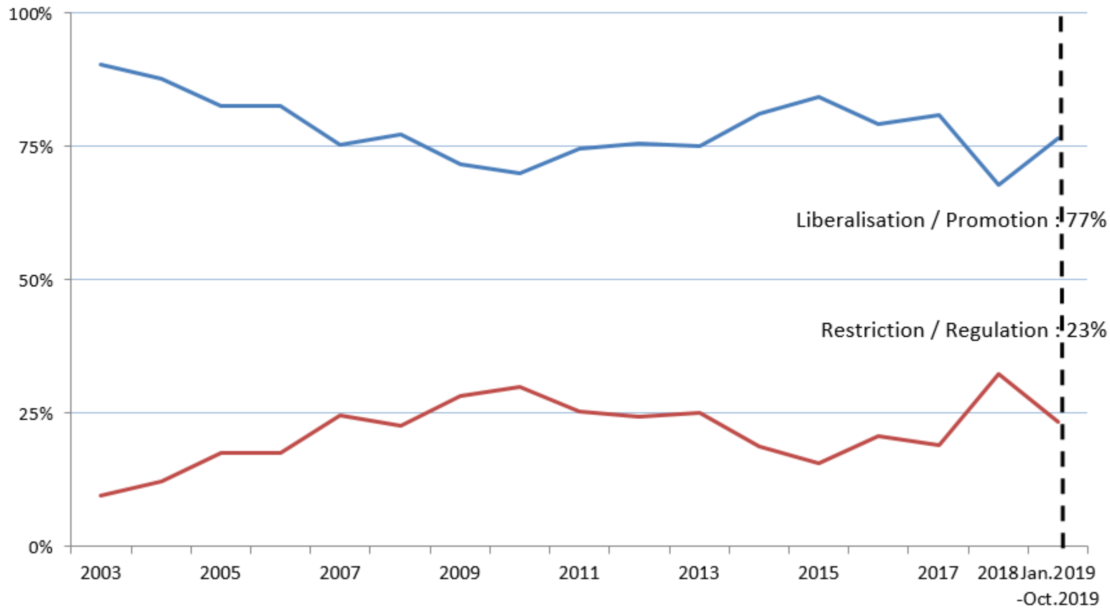
- Thirty countries took 48 investment policy measures in the review period (May 2019 - October 2019). Slightly more than 80 per cent of these measures were geared towards creating more favourable investment conditions. This ratio is higher than in the previous review period, but broadly in line with the longer-term policy trend.
- Numerous countries - Bahrain, China, Ethiopia, India, Malaysia, Oman, Philippines, Saudi Arabia, Thailand, United Arab Emirates, and Uzbekistan - adopted measures to further liberalise foreign investment in various industries. Among them are key industries, such as agriculture, oil and gas, mining, manufacturing, telecom, the financial sector and media.
- Efforts to facilitate and promote investment continued. Brazil, China and Oman simplified or streamlined administrative procedures. Argentina, Italy, Kyrgyzstan, Turkey and Uzbekistan expanded fiscal benefits. Myanmar and Qatar established new government bodies for promoting investment.
- Another prominent feature of investment policy in the review period were new measures related to the screening of foreign investment for national security reasons. France strengthened its mechanism for managing acquisition- and ownership-related risk to its essential security interests. Israel established an advisory committee to assess national security implications of foreign investment. Japan expanded the scope of its foreign investment screening mechanism.
- Countries signed at least seven international investment agreements (IIAs), bringing the total number of IIAs to 3,285. At least 20 terminations of bilateral investment treaties (BITs) became effective. New treaties continue to feature, to varying extents, a wide range of reform-oriented provisions in line with UNCTAD's Reform Package for the International Investment Regime. By the end of October 2019, 2,651 IIAs were in force.
- Other important developments relating to international investment policymaking took place in different fora and at national, regional, and multilateral levels. At the national level, some countries have embarked on the process of implementing their new and modern model BITs through renegotiation of their old existing BITs.
- At the regional/plurilateral level, notable developments include the agreement by EU member States on a plurilateral treaty to terminate intra-EU BITs. In addition, negotiations of mega-regional agreements continued such as the EU–China investment agreement or the Regional Comprehensive Economic Partnership, and there were developments concerning Phase II of the African Continental Free Trade Agreement process.
- At the multilateral level, discussions on ISDS reform continued in UNCITRAL and ICSID and UNCTAD held its annual High-level IIA Conference to take stock of Phase 2 of IIA Reform on modernizing old-generation treaties. Despite significant progress, the reform process needs to be scaled up and new methods and mechanisms may be needed to overcome existing barriers to reform.

A. National investment policies

During the review period (May 2019 - October 2019), 30 countries took 48 investment policy measures (table 1). Most of them aimed at creating more favourable investment conditions. Investment liberalisation, promotion and facilitation measures were adopted in numerous industries, including agriculture, fishery, energy, mining, manufacturing, retail trading, financial services, telecom, media and information technology. Most of these measures were taken by developing countries and transition economies.

The ratio of more restrictive or regulatory investment policy measures which were adopted or took effect during the review period decreased to 19 percent. For the larger period from January to October 2019, this ratio stood at 23 percent - which is broadly in line with the longer-term policy trend (figure 1). New investment restrictions or regulations for foreign investors continued to be mainly based on national security concerns about foreign ownership of critical infrastructures, core technologies, or other sensitive assets.[1] All such measures were adopted by advanced economies.

Figure 1: Changes in national investment policies, 2003 - October 2019*



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.

Table 1. Summary of national investment policy measures adopted between May 2019 and October 2019

	Entry and establishment (26)	Treatment (11)	Promotion and facilitation (13)	General business climate (5)
Argentina		1	1	
Bahrain	1			
Brazil			1	
Cayman Islands				1
China (*)	4	3	1	

[1] See also UNCTAD's recently published Investment Policy Monitor, Special Issue: National Security-Related Screening Mechanisms for Foreign Investment, https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2582

Egypt (*)	1		1	
Ethiopia	1			
France	1			
India	2			
Indonesia	1	1		
Iran, Islamic Republic of				1
Israel	1			
Italy	1		1	
Japan	1			
Kyrgyzstan			1	
Malaysia	1			
Mauritius				1
Myanmar		1	1	
Namibia		1		
Nepal	1			
Oman (*)	3		1	1
Philippines (*)	2	1		
Qatar			1	
Saudi Arabia	2			1
Thailand	1			
Turkey			1	
Ukraine		1		
United Arab Emirates	1			
Uzbekistan (*)	1		3	
Viet Nam		2		

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

1. Entry/Establishment of investment

Eighteen countries – Bahrain, China, Egypt, Ethiopia, France, India, Indonesia, Israel, Italy, Japan, Malaysia, Nepal, Oman, Philippines, Saudi Arabia, Thailand, United Arab Emirates, and Uzbekistan – adopted new policy measures relating to the entry and establishment of foreign investors. The majority of them relaxed restrictions on foreign ownership or opened up new business opportunities.

Among the most noteworthy investment liberalisation measures are:

- *Bahrain* allowed full foreign ownership in companies involved in oil and gas drilling activities.
- *China* amended its "negative list", relaxing or removing restrictions on foreign investments in several industries and further opening the financial sector to foreign capital.
- *Ethiopia* opened the telecom sector to both domestic and foreign investors.
- *India* abolished or adjusted the foreign ownership ceilings in several industries.
- *Malaysia* lowered the threshold for foreign property ownership.
- *Oman* promulgated a set of laws governing Public-Private Partnership, Privatisation and Foreign Capital Investment with the aim of creating a favourable regulatory environment for investment.
- *Philippines* allowed foreign higher education institutions to set up educational facilities and liberalized professional services.
- *Saudi Arabia* allowed foreign companies to list on the Saudi Stock Exchange and removed the ownership limits for foreign strategic investors.
- *Thailand* abolished three ministerial regulations on minimum capital for foreign companies.

- *The United Arab Emirates* adopted the "Positive List of Activities" identifying thirteen sectors that will be eligible for up to 100 per cent foreign ownership.
- *Uzbekistan* established a new legal framework to regulate public-private partnerships with fiscal benefits provided for selected private partners.

New regulatory or restrictive policies relate particularly to national security concerns:

- *France* revised the mechanism to manage acquisition- and ownership-related risk to its essential security interests by strengthening regulations related with mitigation agreements, amongst others. Israel established an advisory committee to assess national security implications of foreign investment.
- *Italy* temporarily strengthened its mechanisms to safeguard essential security interests.
- *Japan* expanded the scope of businesses subject to the country's foreign investment screening mechanism.
- *Nepal* raised the minimum capital requirement for foreign investment.

2. Treatment of established investment

Eight countries – Argentina, China, Indonesia, Myanmar, Namibia, Philippines, Ukraine and Viet Nam – took measures with respect to the treatment of investors after establishment in the host country.

- *China* further liberalized and streamlined foreign exchange control over cross-border investment and trade.
- *Indonesia* amended guidelines and procedures for licensing and facilities under its foreign investment regime.
- *Myanmar* allowed foreign companies and joint ventures to purchase shares on the Yangon Stock Exchange.
- *Namibia* tightened its procurement regulations by banning all public entities from importing a wide range of goods and services.
- *Philippines* relaxed mandatory local employment requirement for foreign investors.
- *Ukraine* abolished the limit on the repatriation of proceeds from foreign investments.
- *Viet Nam* clarified the definition of foreign invested enterprises and abolished the mandatory remittance timeline for unused pre-establishment costs.

3. Promotion/Facilitation of investment

Eleven countries – Argentina, Brazil, China, Egypt, Italy, Kyrgyzstan, Myanmar, Oman, Qatar, Turkey, and Uzbekistan – adopted measures for the promotion and facilitation of investment. Most of these measures encourage investment through providing investment incentives or facilitating investment procedures. For instance,

- *Argentina* introduced a temporary regime for the promotion of economic activities in numerous industries.
- *Brazil* simplified the entry procedures for foreign financial institutions and foreign investors and abolished the different treatment of foreign and domestic investors in the licensing process.
- *Italy* established the Ionian special economic zone and Kyrgyzstan set a zero percent VAT rate for all goods and services supplied to its special economic zones.
- *Myanmar and Qatar* established new government bodies for promoting quality investment.

- *Oman* streamlined procedures for initiating foreign investment and provided foreign investors with incentives and guarantees.
- *Turkey* revised its investment incentive regimes so as to encourage investment in the targeted sectors.
- *Uzbekistan* began to provide subsidies for investors constructing hotels above certain levels.

4. General business climate

Five countries – *Cayman Islands, the Islamic Republic of Iran, Mauritius, Oman, and Saudi Arabia* – took measures affecting the general business climate.[2] Cayman Islands amended its Companies Law regarding the register of members and the deadline for notification. The Islamic Republic of Iran adopted a long-term residency system for certain foreign investors. Mauritius strengthened tax incentives for certain industries. Oman expanded the scope of job roles reserved for nationals. Saudi Arabia implemented a permanent residency mechanism for foreign skilled professionals.

B. International investment policies

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

During the reporting period, at least seven international investment agreements (IIAs) were signed, bringing the total number of IIAs to 3,285.[3] Six of the seven treaties were bilateral ones, and one plurilateral/regional.

At least 20 terminations of bilateral investment treaties (BITs) took effect. The terminations include eleven BITs concluded by Poland,[4] seven BITs concluded by India,[5] one BIT between Argentina and Chile,[6] and one BIT between Bolivia and Switzerland.[7] By the end of October 2019, at least 2,651 IIAs were in force.

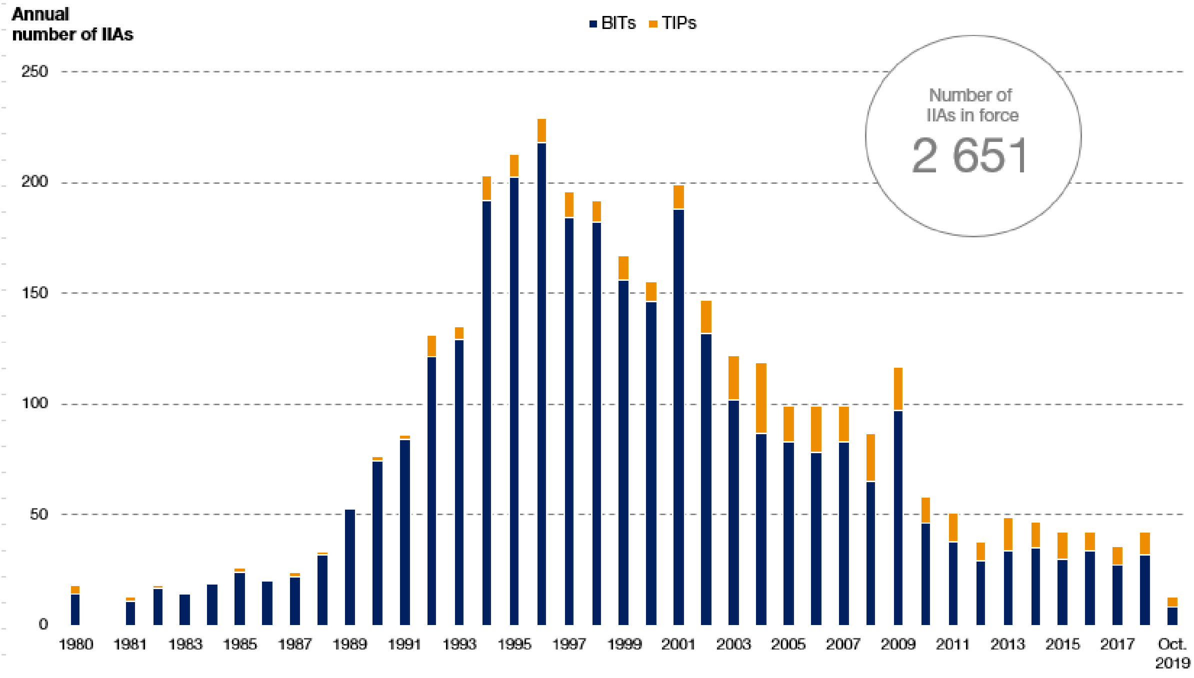
Table 2. List of IIAs signed between 1 May and 31 October 2019

	Name of the Agreement	Date of signature
1	Bilateral Investment Treaty between Brazil and Morocco[8]	13 June 2019
2	Bilateral Investment Treaty between Hong Kong, China SAR and the United Arab Emirates	16 June 2019
3	Investment Protection Agreement between the European Union (EU) and Viet Nam	30 June 2019
4	Bilateral Investment Treaty between the Gambia and the United Arab Emirates	15 July 2019
5	Bilateral Investment Treaty between Myanmar and Singapore	24 September 2019
6	Bilateral Investment Treaty between Brazil and Ecuador[9]	25 September 2019
7	Agreement on Trade in Services and Investment between Armenia and Singapore	1 October 2019

Source: UNCTAD, IIA Navigator.

[2] The following examples are a non-exhaustive overview.
[3] The total number of IIAs is revised on an ongoing basis as a result of retroactive adjustment to UNCTAD's IIA Navigator.
[4] The BITs are: BIT with Romania effectively terminated on 21 May 2019; BIT with France effectively terminated on 19 July 2019; BIT with Portugal effectively terminated on 3 August 2019; BIT with Czechia effectively terminated on 25 September 2019; BITs with Austria, Finland, Greece, Spain and Sweden effectively terminated on 16 October 2019; BITs with Croatia and Germany effectively terminated on 18 October 2019.
[5] The BITs are: BIT with Turkey effectively terminated on 8 July 2019; BIT with Mexico effectively terminated on 30 July 2019; BITs with Bosnia and Herzegovina, Finland, Iceland, North Macedonia and Saudi Arabia effectively terminated on 31 July 2019.
[6] Effectively terminated on 1 May 2019.
[7] Effectively terminated on 17 May 2019.
[8] This report counts the Cooperation and Facilitation Investment Agreement (CFIA) between Brazil and Morocco as a BIT.
[9] This report counts the CFIA between Brazil and Ecuador as a BIT.

Figure 2. Trends in IIAs signed, 1980–2019



Source: UNCTAD, IIA Navigator.

A detailed analysis of IIAs signed in 2019, including their content and prevalence of sustainable development features, will be available in the World Investment Report (WIR) 2020 (Chapter III), to be launched in June 2020. The following discussion is based on IIAs for which texts are currently available.

During the reporting period, Brazil signed two BITs, one with Morocco on 13 June 2019 and another with Ecuador on 25 September 2019. Both agreements make references to sustainable development and reaffirm the parties' right to regulate in the public interest in their preambles. They include definitions of investment, applying to direct investments and explicitly excluding certain assets from the scope of protection (e.g. portfolio investment, debt securities).[10] They contain National Treatment (NT) and Most Favoured Nation (MFN) clauses, qualified with a reference to like circumstances. While the BIT with Ecuador provides for pre- and post-establishment NT and MFN protection, the BIT with Morocco covers post-establishment protection only. Both agreements omit fair and equitable treatment (FET) and full protection and security (FPS). In this regard, the Brazil–Morocco BIT requires parties not to subject investors and investments to arbitrary or discriminatory measures, and the Brazil–Ecuador BIT requires parties to treat investors and investments of the other in accordance with due process of law. The agreements include a clause on expropriation or nationalizations, subject to four conditions for lawful expropriation. The BIT with Ecuador clarifies that only direct expropriation is covered.

Both BITs include provisions on corporate social responsibility (CSR), listing principles and standards for responsible business conduct. In addition, the Brazil–Ecuador BIT features provisions on measures to fight corruption and illegality as well as provisions concerning labour, environmental, human rights and health matters. Both agreements contain security exceptions (general exceptions are absent). No umbrella clause is featured any of the two agreements. They omit investor-State dispute settlement (ISDS), replacing it with dispute prevention and State-State dispute settlement mechanisms. In terms of institutional arrangements, the BITs provide for the establishment of joint committees and ombudspersons or national contact points to oversee investment cooperation and information exchange and to support investors by addressing requests and complaints.

[10] The CFIA also requires that the investment allows the investor to "exert control or significant degree of influence over the management of the production of goods or provision of services" in the territory of the host State.

The *Hong Kong, China SAR–United Arab Emirates BIT*, signed on 16 June 2019, contains an asset-based definition of investment and excludes certain assets from its coverage. The BIT provides for circumscribed FET and FPS, equated to the minimum standard of treatment under customary international law. It grants post-establishment NT and MFN treatment (in like circumstances). The agreement does not provide for CSR, nor does it contain provisions on security or general exceptions. No umbrella clause is included in the BIT. Both direct and indirect expropriations are covered by the agreement subject to four conditions for lawful expropriation. The agreement provides for ISDS (with a 5-year limitation period to submit claims) and State-State dispute settlement. It includes a clause on denial of benefits.

The *EU–Viet Nam Investment Protection Agreement*, signed on 30 June 2019, contains references to sustainable development in the preamble. It contains an asset-based definition of investment specifying the characteristics a covered investment should have (such as commitment of capital or other resources, expectation of gain or profit, and the assumption of risk or a certain duration). It contains a clause reaffirming the parties' right to regulate. It provides for post-establishment NT and MFN treatment (in like situations), subject to certain reservations and exceptions. Dispute resolution procedures provided for in other agreements are excluded from the scope of MFN. The agreement contains an exhaustive list of State obligations under FET and a circumscribed FPS clause. The provision on direct and indirect expropriation is accompanied by an "understanding on expropriation" setting out the criteria for determining whether a measure constitutes an indirect expropriation and carving out non-discriminatory public interest regulation. The agreement does not include a clause on CSR but provides for general and security exceptions. No umbrella clause is included in the agreement. The refined ISDS mechanism provides for an investment tribunal system with a standing tribunal of first instance and appellate tribunal, instead of *ad hoc* arbitrations and party-appointed arbitrators. It includes clauses on third-party funding and a code of conduct for adjudicators. The parties also agree to enter into negotiations for the establishment of a multilateral investment tribunal to replace the aforementioned dispute settlement mechanism. Upon its entry into force, the agreement will replace 21 BITs in force between Viet Nam and EU member States.

The *Armenia–Singapore Trade in Services and Investment Agreement*, signed on 1 October 2019, includes an investment chapter with a definition of investment covering every kind of asset that has the characteristics of an investment (commitment of capital, expectation of gain or profit, or assumption of risk). The agreement provides for FET and FPS clauses prescribing the international minimum standard of treatment of aliens, not requiring treatment in addition or beyond that. Additionally, it clarifies that FET requires parties not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process, while FPS requires parties to provide the level of police protection required under international law. Moreover, a breach of another provision of the agreement or of a separate international agreement does not establish a breach of FET or FPS. The agreement also provides for pre- and post- establishment NT and MFN treatment (in like circumstances). The MFN clause does not apply with respect to ISDS procedures contained in agreements other than this one. The agreement contains a clause on general exceptions but makes no provision for security exception or CSR. No umbrella clause is included. The agreement covers direct and indirect expropriation and states, in an annex, the criteria for a finding of indirect expropriation. It is clarified that non-discriminatory regulatory actions designed to protect legitimate public welfare objectives do not constitute an indirect expropriation. The ISDS mechanism contained in the agreement has a 3-year time limit for the submission of claims and excludes any measure adopted in respect of tobacco or tobacco-related products from the ISDS scope.

2. Other developments in international investment policymaking

Developments at the national level

Dutch new model BIT to serve as basis for renegotiations of old-generation BITs. Following the adoption of its new model BIT in October 2018, the government of the Netherlands announced that it intended to renegotiate its existing 78 BITs with non-EU countries in order to align them with the new model BIT.[11] Prior authorisation from the European Commission is necessary to start the (re-)negotiation of BITs. The government has recently obtained this authorisation to start renegotiations with eight non-EU countries, namely Argentina, Burkina Faso, Ecuador, Nigeria, Tanzania, Turkey, Uganda, and the United Arab Emirates.[12] Authorisations were also obtained to conclude new BITs with Iraq and Qatar.[13] These countries were selected for the first round of negotiations because their current BITs with the Netherlands have been terminated or will expire soon or they had shown interest in the new Dutch Model BIT.

Ratification of the United States–Mexico–Canada Agreement by Mexico. On 19 June 2019, the Mexican Senate approved the implementing legislation for the United States–Mexico–Canada Agreement (USMCA). The USMCA, which will replace the North American Free Trade Agreement (NAFTA) upon entry into force, was signed by the three countries in November 2018. Among the major changes brought about by the new agreement are the revised ISDS provisions which limit the application of ISDS exclusively to investor-State disputes between the United States and Mexico and narrow the claims that investors can bring under that provision.

Developments at the regional and plurilateral level

EU plurilateral treaty to end all intra-EU BITs. On 24 October 2019, EU member States reached agreement on a plurilateral treaty for the termination of intra-EU BITs. This agreement follows the Declarations of 15 and 16 January 2019 “on the legal consequences of the judgment of the European Court of Justice in Achmea and on investment protection in the European Union”, where EU member States had committed to terminate their intra-EU BITs in a coordinate manner by means of a plurilateral treaty, or bilaterally. A small minority of member States was not able to endorse the October 2019 text on a plurilateral treaty.[14]

African Continental Free Trade Agreement. On 30 May 2019, the Agreement Establishing the African Continental Free Trade Agreement (AfCFTA) entered into force for the 24 countries that had deposited their instruments of ratification.[15] As of 8 October 2019, 28 countries had ratified the AfCFTA.[16] The operational phase of the AfCFTA was launched during a high-level summit of the African Union in Niamey, Niger, on 7 July 2019.[17] Phase I of the agreement which focuses primarily on areas such as trade in goods and services, as well as dispute settlement is in the process of being completed, although negotiations on key elements such as rules of origin and tariff concessions are ongoing. Trading under the AfCFTA is expected to begin on 1 July 2020. Negotiations on the protocols on investment, competition and intellectual property rights, which constitute Phase II of the process, are expected to be completed in December 2020. In terms of content, the protocol on investment is likely to draw on the Pan-African Investment Code (PAIC) which was finalized in 2015.[18] The resulting draft legal texts are to be submitted to the January 2021 session of the African Union Assembly for adoption.[19] The Investment protocol of the AfCFTA presents an opportunity to modernize and consolidate the intra-African investment regime by