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## KEY MESSAGES

From January to October 2013, the overall share of more restrictive or regulatory investment policies continued to increase, although countries sought to attract more FDI through selected investment liberalization and promotion. More countries seek to retain foreign investors or promote repatriation by domestic investors.

Seventeen economies concluded eight new IIAs, that is four BITs and four “other IIAs”. The move towards regional IIAs continues as several such agreements entered into force were successfully concluded or are currently negotiated. There are four ongoing regional IIA negotiations involving two regional blocks (EU and ASEAN) and together with their partners a total of 49 economies.

The conclusion of negotiations on the EU-Canada CETA creates further momentum for other inter-regional initiatives and other key negotiations.

## A. National investment policies

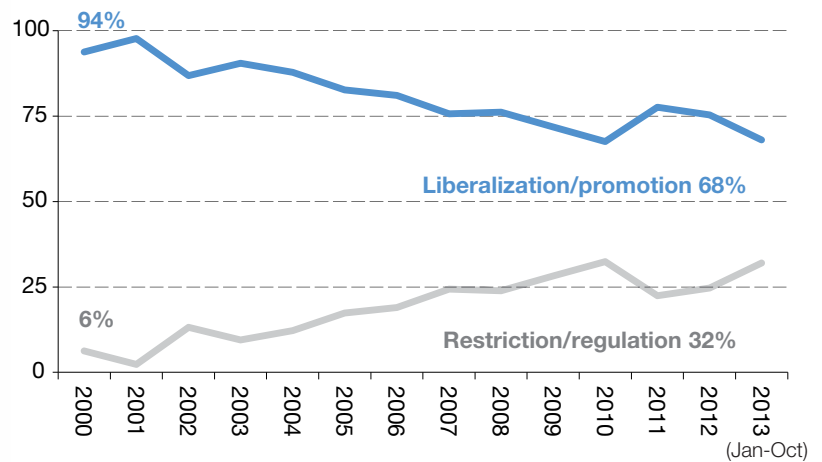
Under the slower recovery than expected of the world economy, many countries pursued their efforts to attract foreign investors through improving entry conditions, the treatment of established investors and investment promotion and facilitation. However, looking at the investment policy developments throughout the year (January–October 2013), one can observe an overall increase in the share of more regulatory or restrictive investment-related policies (figure 1). This confirms a trend that has been continuing for many years now.

During the review period (June–October 2013), about three-quarters of all investment policy measures taken were more favourable to foreign investment. Measures that introduced new restrictions for foreign investors or otherwise deteriorated the investment climate were relatively rare. In total, 25 countries took 35 measures in relation to foreign investment (table 1 and annex 1).



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**Figure 1. Changes in national investment policies, 2000-October 2013**



Source: UNCTAD

Eleven countries took 16 measures relating to the entry and establishment of foreign investors. Five countries adopted 6 measures with respect to the operational treatment of investment. Twelve countries took 13 measures for the promotion or facilitation of FDI.

**Table 1. Summary table of national investment policy measures adopted between June and October 2013**

	Entry (16)	Operational treatment (6)	Promotion/Facilitation (13)
Bolivia, Plurinational State of		1	
Burundi			1
Canada	2		
China	1		
Cuba			1
Denmark			1
Ecuador		1	
France		1	
Germany			1
Ghana	1		
Greece	1	1	
India	5	2	
Indonesia			1
Israel			1
Korea, Republic of	1		1
Kuwait	1		
Mexico	1		
Mozambique			1
Panama	1		
Philippines	1		
Portugal			1
South Sudan			1
Sweden	1		
United Kingdom			2
Viet Nam			1

Source: UNCTAD.

Note: The numbers above indicate the number of policy measures taken.

## 1. Entry/Establishment of investment

Eleven countries - *Canada, China, Ghana, Greece, India, Republic of Korea, Kuwait, Mexico, Panama, Philippines* and *Sweden* - adopted new policy measures relating to the entry and establishment of foreign investors. In their majority, they relaxed restrictions on foreign ownership or opened up new business opportunities. Insofar as new investment restrictions were adopted, they related to various industries, such as mining and maritime auxiliary services.

Among the most noteworthy measures are:

- *Canada* amended the Investment Canada Act to clarify when a domestic entity is controlled by foreign State-owned enterprises as part of the process to determine whether an investment is of “net benefit” to the country.

- *China* launched the China (Shanghai) Pilot Free Trade Zone, introducing various new policy measures in the areas of trade, investment and finance. With regard to inward FDI, the zone adopts a new approach providing for pre-establishment national treatment with a negative list. Specific segments in six service sectors – finance, transport, commerce and trade, professional services, cultural services, and public services – have been newly opened to foreign investors.
- *India* took several liberalization steps in various industries, including telecom, defense and multi-brand retailing.

## 2. Operational treatment of investment

Five countries – the *Plurinational State of Bolivia*, *Ecuador*, *France*, *Greece* and *India* – took measures with respect to the treatment of investors after establishment in the host country. Some of these measures had the objective of strengthening state control in some industries.

Among the most noteworthy measures are:

- The *Plurinational State of Bolivia* reinforced state control over the setting of interest rates by commercial banks.
- *India* extended the period to achieve 30 per cent local sourcing by foreign retailers to five years after establishment.

## 3. Promotion/Facilitation of investment

Twelve countries – *Burundi*, *Cuba*, *Denmark*, *Germany*, *Indonesia*, *Israel*, *Republic of Korea*, *Mozambique*, *Portugal*, *South Sudan*, *the United Kingdom* and *Viet Nam* – took measures in relation to the promotion or facilitation of investment. In most cases, countries lowered their corporation income tax rate, launched special economic zones or simplified registration procedures.

Among the most noteworthy measures are:

- *Burundi* simplified administrative procedures in the mining industry.
- *Cuba* and *South Sudan* launched new special economic zones.

## 4. Investment retention and repatriation

An interesting recent phenomenon relating to investment promotion has to do with government efforts to retain investment in the host country. In light of economic crisis and persistently high domestic unemployment, a number of countries no longer only seek to promote inward FDI, but are also keen that existing investments (and related jobs) do not move away. In addition, some governments have started to induce domestic investors to repatriate their investment abroad.

Recent examples of these new policies are:

- The parliament in *France* passed a bill imposing penalties on companies that shut down operations deemed economically viable. The law requires firms with more than 1,000 employees to prove they have exhausted options for selling a plant before closing it. The bill still has to be examined in the Senate.<sup>1</sup>
- *Greece* passed a law which makes it more difficult for Greek companies to transfer their head offices abroad. An amendment to the Greek capital markets law now requires that shareholders controlling 90 per cent of a company must agree to a transfer which

Several countries seek not only to promote inward FDI but also to retain investment in the host country and promote repatriation by domestic investors.

<sup>1</sup> See Annex 1.

results in its delisting from the Athens Stock Exchange and listing outside of Greece. Until recently, a 67 per cent majority was required for listed companies.<sup>2</sup>

- The *Republic of Korea* passed the Act on Supporting the Return of Overseas Korean Enterprises. Accordingly, the Korean government founded the Reshoring Support Center and is planning to provide reshoring businesses with incentives that are similar to those provided to foreign-invested companies.<sup>3</sup>
- Already in 2011, the *United States* Government established the “Select USA” programme, which, inter alia, has the objective of encouraging United States investors abroad to relocate their business operations back home.<sup>4</sup>

## B. International investment policies

During the reporting period, four bilateral investment treaties (BITs) were signed. One BIT was signed between developing countries (*Colombia* and *Singapore*<sup>5</sup>); two were concluded between a least-developed and a developing country (*Djibouti* and *Turkey*<sup>6</sup>; *Guinea* and *Turkey*<sup>7</sup>); and one was concluded between a developed and a least-developed country (*Japan* and *Mozambique*<sup>8</sup>).

The BIT between *Colombia* and *Singapore*<sup>9</sup> includes typical investment liberalization and protection standards (post-establishment national and most-favored nation treatment of investors and investments, protection against uncompensated expropriation and free transfer of funds), combined with provisions aimed at preserving regulatory and policy space. The latter include: a carve-out of sovereign debt instruments from the treaty’s scope, a definition of indirect expropriation that excludes non-discriminatory regulatory actions taken in the public interest and general public policy and security exceptions.

Regarding agreements with investment provisions other than BITs (so-called “other IIAs”), the reporting period saw the conclusion of four new treaties.

On 24 June 2013, the *European Free Trade Association (EFTA) States (Iceland, Liechtenstein, Norway, Switzerland)* and *Costa-Rica and Panama* signed a Free Trade Agreement (FTA).<sup>10</sup> The FTA has comprehensive coverage, including trade in goods and services, investment, competition, protection of intellectual property rights, government procurement and a chapter on sustainable development. The investment chapter does not contain all of the typical investment protection and liberalization provisions. It takes a “commercial presence” based approach, excluding services which are covered under the FTA’s services chapter. Post-establishment national treatment is subject to country-specific reservations contained in a negative list. Key personnel and free transfer of funds provisions are

Countries concluded four BITs and four «other IIAs».

<sup>2</sup> See Annex 1.

<sup>3</sup> See Annex 1.

<sup>4</sup> US Department of Commerce, Press Release, 15 June 2011.

<sup>5</sup> Signed on 16 July 2013.

<sup>6</sup> Signed on 25 September 2013.

<sup>7</sup> Signed on 18 June 2013.

<sup>8</sup> Signed on 1 June 2013.

<sup>9</sup> The text of the three other BITs (*Djibouti-Turkey*, *Guinea-Turkey* and *Japan-Mozambique*) is not yet available.

<sup>10</sup> <http://www.efta.int/free-trade/free-trade-news/2013-06-24-central-america>. The official title of the treaty is “Free Trade Agreement between the EFTA States and the Central American States”.



also included in the investment chapter which shall also be subject to periodic review within the framework of the Joint Committee regarding the possibility to further extend Parties' commitments.

On 26 June 2013, *Bosnia Herzegovina* and the *EFTA States* signed a FTA.<sup>11</sup> The treaty does not contain typical protection and liberalization provisions but investors and investments are guaranteed admission in accordance with host State laws, protection from arbitrary or discriminatory measures and host-State respect of any existing arrangement with an investor. The agreement establishes an institutional framework designed to promote investments and commits contracting States to negotiate a more comprehensive investment chapter within five years of the entry into force of the FTA.

Both *EFTA* agreements contain a chapter on trade and sustainable development in which they recognize that it is inappropriate to encourage investments by relaxing environmental and labor standards. In addition, extensive reference is made to international instruments pertaining to environmental and labor protection. The right of a State to regulate, enforce and set its own levels of environment and labor standards is also explicitly addressed.

On 6 July 2013, *China* and *Switzerland* signed a FTA covering trade in goods and services and the protection of intellectual property rights.<sup>12</sup> The agreement contains provisions on cross-border investment promotion, referring to measures such as the exchange of information on investment opportunities and investment regulations as well as assistance to investors in understanding the investment environment in both Parties. For committed sectors, the chapter governing trade in services also grants market access and national treatment to service suppliers established in the territory of the other Party.<sup>13</sup>

On 4 October 2013, *Chile* and *Thailand* signed a FTA.<sup>14</sup> While the agreement does not contain an investment chapter, it sets out a mandate for the negotiation of an investment agreement within two years from the FTA's entry into force.

Other noteworthy developments include:

- IIAs that entered into force<sup>15</sup>

On 11 June 2013, the BIT between *Kuwait* and *Ukraine* entered into force.

On 1 August 2013, the FTAs between the *European Union (EU)* and *Colombia*, as well as the FTA between the *EU* and *Honduras, Nicaragua* and *Panama* came into effect.<sup>16</sup> Both agreements are comprehensive FTAs covering, among others, trade in goods and services, government procurement, competition and protection of intellectual property rights. The agreements contain provisions on investment promotion and through

Sustainable development features continue making their way into IIAs.

<sup>11</sup> <http://www.efta.int/free-trade/free-trade-news/2013-06-24-bosnia-and-herzegovina>.

<sup>12</sup> <http://www.kpmg.com/cn/en/issuesandinsights/articlespublications/newsletters/chinaalerts/pages/china-tax-alert-1307-15-china-switzerland-fta.aspx>.

<sup>13</sup> [https://www.ige.ch/fileadmin/user\\_upload/Juristische\\_Infos/e/Switzerland\\_China\\_FTA\\_Main\\_Agreement.pdf](https://www.ige.ch/fileadmin/user_upload/Juristische_Infos/e/Switzerland_China_FTA_Main_Agreement.pdf).

<sup>14</sup> <http://www.gob.cl/destacados/2013/10/04/presidente-sella-acuerdo-de-libre-comercio-con-tailandia-en-el-inicio-de-su-gira-por-asia.htm>.

<sup>15</sup> This information is not exhaustive.

<sup>16</sup> [http://europa.eu/rapid/press-release\\_IP-13-749\\_en.htm](http://europa.eu/rapid/press-release_IP-13-749_en.htm) and [http://europa.eu/rapid/press-release\\_IP-13-758\\_en.htm](http://europa.eu/rapid/press-release_IP-13-758_en.htm). The official title of the FTA between the *EU* and *Honduras, Nicaragua* and *Panama* is "Agreement establishing an Association between Central America, on one hand, and the European Union and its member States, on the other".

The move towards regional IIAs continues as several such agreements entered into force, were successfully concluded or are currently negotiated.

positive list schedules grant market access and national treatment to establishments and investors in committed sectors.<sup>17</sup>

On 1 September 2013, the FTA between the *Gulf Cooperation Council* (GCC) States and *Singapore* entered into force. The treaty is a comprehensive FTA covering, among others, trade in goods and services, rules of origin, customs procedures, and government procurement. The FTA grants market access and national treatment to service suppliers through commercial presence in the territory of a Contracting Party.<sup>18</sup> Investment issues will be dealt with at a later stage through the conclusion of BITs. Currently *Singapore* does not have BITs with three GCC States (*Kuwait*, *Qatar* and the *U.A.E.*). If commenced, negotiations of new BITs between the interested parties will have to be concluded within two years.<sup>19</sup>

- Concluded negotiations<sup>20</sup>

On 17 September 2013, *Canada* and *Serbia* concluded negotiations for a Foreign Investment Promotion and Protection Agreement (FIPA).<sup>21</sup> On 26 September 2013, *Canada* and *Côte d'Ivoire* concluded negotiations for a FIPA.<sup>22</sup> Both agreements are expected to include, in addition to investment protection and liberalization provisions, sustainable development-oriented features.

On 19 July 2012, the *EU* and the *Ukraine* concluded negotiations on the Deep and Comprehensive FTA (DCFTA).<sup>23</sup> This completes the earlier initialing of the overall *EU-Ukraine* Association Agreement, which took place on 30 March 2012. The DCFTA provides for a right of establishment in services and non-services sectors subject to a number of reservations identified in a negative list.<sup>24</sup> The negative list approach, which guarantees automatic coverage for new services not listed in the reservations, is unprecedented for the EU. The formal signing of the Agreement is expected to occur at the EU-Eastern Partnership (EaP) Summit (Vilnius, 28–29 November 2013).<sup>25</sup>

On 18 October 2013, the *EU* and *Canada* concluded negotiations on a Comprehensive Economic and Trade Agreement (CETA). Investment provisions cover the pre-establishment phase through market access and pre-establishment national treatment. The investment chapter also includes an investor-State dispute settlement mechanism. CETA is the first FTA with a fully-fledged investment protection chapter signed by the EU and could therefore set the benchmark for future EU investment negotiations.

- Ongoing IIA negotiations

On 14 June 2013, EU Member States authorized the European Commission to start negotiations on behalf of the *EU* with the *United States* on the Transatlantic Trade and Investment Partnership Agreement (TTIPA).<sup>26</sup> During the first round of talks held in Washington, D.C. (8–12 July

<sup>17</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:354:FULL:EN:PDF> and [http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc\\_147664.pdf](http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147664.pdf).

<sup>18</sup> [http://www.fta.gov.sg/fta\\_C\\_gsfta.asp?hl=49](http://www.fta.gov.sg/fta_C_gsfta.asp?hl=49).

<sup>19</sup> <http://www.fta.gov.sg/gsfta/exchange%20of%20letters%20on%20investments.pdf>.

<sup>20</sup> This information is not exhaustive .

<sup>21</sup> <http://news.gc.ca/web/article-eng.do?nid=772479>.

<sup>22</sup> <http://news.gc.ca/web/article-eng.do?nid=775569>.

<sup>23</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/>.

<sup>24</sup> [http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc\\_150981.pdf](http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf).

<sup>25</sup> [http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_118238.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf).

<sup>26</sup> <http://ec.europa.eu/trade/policy/in-focus/ttip/>.

2013), negotiators laid out the concepts for the agreement.<sup>27</sup> Substantive negotiations on the TTIP were due to be held in autumn in Brussels but were postponed due to the temporary shutdown of US government services.<sup>28</sup> The TTIP is set to cover around seventeen separate areas and include a specific chapter on investment liberalization and protection.<sup>29</sup>

On 11 July 2013, *China* and the *United States* announced their intentions to resume negotiations on a BIT that would cover pre- and post-establishment phases of investment in all economic sectors.<sup>30</sup> Negotiations between the two countries were launched in 2008 but were suspended since 2009. This is the first time ever that China entered into bilateral negotiations that are based on a pre-establishment model.

Discussions on the Trans-Pacific Partnership Agreement (TPP) continued, with the 19<sup>th</sup> negotiation round concluded on 30 August 2013.<sup>31</sup> Currently, 12 countries are participating in the negotiations (*Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam*).<sup>32</sup> During this round, negotiators worked on investment, services and financial services. TPP Leaders met again on 8 October 2013 in Bali, Indonesia and additional discussions were held on a wide range of issues including market access for goods, services/investment, financial services, government procurement, investment, temporary entry, and labor.<sup>33</sup> The TPP is expected to include a fully-fledged investment chapter.<sup>34</sup>

On 20 September 2013, the *EU* and *Singapore* initialed the text for a comprehensive FTA to include, among others, chapters on trade in goods and services, technical barriers to trade, investment in renewable energy generation, government procurement, intellectual property rights and competition.<sup>35</sup> With respect to trade in services, the agreement grants market access and national treatment to establishments and entrepreneurs in committed sectors.<sup>36</sup> The talks on investment protection – that started after the Lisbon Treaty entered into force – are ongoing.<sup>37</sup> The aim is to integrate the investment chapter into the rest of the text before its final adoption by the parties.

From 23-27 September 2013, delegations from the 10 ASEAN member States, plus *Australia, China, India, Japan, New Zealand* and the *Republic of Korea* attended the second round of Regional Comprehensive Economic Partnership (RCEP) negotiations in Brisbane, Australia.<sup>38</sup> The working group on investment, established in the first round of negotiations,<sup>39</sup> discussed which elements should be covered by a

Four ongoing regional IIA negotiations involve two regional blocks (EU and ASEAN) and together with their partners a total of 49 economies.

<sup>27</sup> <http://www.bizjournals.com/jacksonville/news/news-wire/2013/07/30/5-messages-to-business-on-trade-from.html>.

<sup>28</sup> <http://www.cnbc.com/id/101093136>.

<sup>29</sup> <http://www.marietjeschaake.eu/wp-content/uploads/2013/06/TTIP-mandate.pdf>.

<sup>30</sup> <http://www.treasury.gov/connect/blog/Pages/U.S.-and-China-Breakthrough-Announcement-.aspx>.

<sup>31</sup> [http://www.sice.oas.org/TPD/TPP/Negotiations/Round19\\_e.pdf](http://www.sice.oas.org/TPD/TPP/Negotiations/Round19_e.pdf).

<sup>32</sup> For detailed information on the IIA-BIT overlap arising from regional negotiations please see UNCTAD IIA Issues Note, No. 3, 2013, “*The Rise of Regionalism in International Investment Policymaking: Consolidation or Complexity?*” available at [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d8\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d8_en.pdf).

<sup>33</sup> <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP%20Ministers'%20Report%20to%20Leaders%20%20October.pdf>.

<sup>34</sup> <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP%20Ministers'%20Report%20to%20Leaders%20%20October.pdf>.

<sup>35</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=962>.

<sup>36</sup> [http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc\\_151743.pdf](http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151743.pdf).

<sup>37</sup> [http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc\\_118238.pdf](http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf).

<sup>38</sup> <http://www.dfat.gov.au/media/releases/department/2013/dfat-release-20131003.html>.

<sup>39</sup> The first round of RCEP negotiations was held from 9-13 May in Brunei Darussalam.

future agreement.<sup>40</sup> Based on the Guiding Principles and Objectives for Negotiating the RCEP,<sup>41</sup> the RCEP aims at creating a liberal, facilitative, and competitive investment environment in the region and will cover the four pillars of promotion, protection, facilitation and liberalization. The next round will be held in Kuala Lumpur, Malaysia, 20-24 January 2014. RCEP negotiations are scheduled to conclude by end-2015.

Against the impasse of the WTO Doha Round and multilateral services negotiations, an informal group of 23 WTO Members<sup>42</sup> continued negotiations on a multilateral Trade In Services Agreement (TISA). Negotiators from the *United States* and *Japan* have submitted their market access offers in September and the other participants are expected to make theirs in November.<sup>43</sup> More countries are expected to join these negotiations, including China that has expressed its interest.

- Other developments

Besides the conclusion, entry into force and negotiations of IIAs, a number of other important events related to international investment policies took place during the reporting period.

On 23 June 2013, *South Africa* notified the termination of its BIT with Spain. This was followed by further termination notices by South Africa for its BITs with the Netherlands (2 October), Germany (23 October)<sup>44</sup> and Switzerland (30 October)<sup>45</sup>. Termination of the agreements will become effective within six or twelve months since the notice was issued. By virtue of the “survival clause” however, investments made by investors before the end of the BITs will remain protected for another ten years in case of Spanish investments, 15 years in case of Dutch investments and 20 years in case of German and Swiss investments. These developments follow South Africa’s earlier termination of the BIT with the Belgium-Luxembourg Economic Union, based on an earlier policy decision to review its BITs.<sup>46</sup>

On 24 September 2013, *Mongolia* and *the United States* signed an Agreement on Transparency in Matters Related to International Trade and Investment.<sup>47</sup> The agreement sets out commitments to promptly publish or otherwise make available final laws and regulations relating to trade in goods and services, investment and intellectual property rights. In addition, the contracting parties shall strive to publish in advance legislative measures they plan to adopt and provide interested persons of the other party reasonable opportunity to comment on such proposed measures.<sup>48</sup> The parties may also conduct consultations on any matter covered by the treaty. The Transparency Agreement builds on

<sup>40</sup> <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/RCEP/#negot>.

<sup>41</sup> <http://www.meti.go.jp/press/2012/11/20121120003/20121120003-4.pdf>.

<sup>42</sup> Australia; Canada; Chile; Colombia; Costa Rica; Hong Kong, China; Iceland; Israel; Japan; Korea, Republic of; Mexico; Liechtenstein; New Zealand; Norway; Panama; Pakistan; Paraguay; Peru; Switzerland; Taiwan, Province of China; Turkey; the United States; and the 28 Member States of the European Union, <http://ictsd.org/i/news/bridgesweekly/176518/>.

<sup>43</sup> <http://ictsd.org/i/news/bridgesweekly/176518/>.

<sup>44</sup> <http://www.fin24.com/Economy/Germans-jittery-over-end-of-SA-trade-treaty-20131028>

<sup>45</sup> <http://www.eda.admin.ch/pretoria>.

<sup>46</sup> <http://hsf-arbitrationnotes.com/2013/08/21/south-africa-terminates-its-bilateral-investment-treaty-with-spain-second-bit-terminated-as-part-of-south-africas-planned-review-of-its-investment-treaties/>.

<sup>47</sup> <http://www.state.gov/r/pa/prs/ps/2013/09/214654.htm>.

<sup>48</sup> <http://www.ustr.gov/sites/default/files/US-Mongolia%20Transparency%20Agreement-English-Final-As%20Posted.pdf>.



the cooperation established by the two countries under the Trade and Investment Framework Agreement (TIFA) signed on 15 July 2004.<sup>49</sup>

On 5 October 2013, *Ecuador* set up a special commission to audit the conclusion of BITs.<sup>50</sup> The role of the special audit commission would be to determine, among other things, whether the agreements have violated Ecuador's sovereignty and if they were beneficial to the country.<sup>51</sup> This development comes amid Ecuador's denunciation of nine BITs<sup>52</sup> in 2008, as well as Ecuador's denunciation of the ICSID Convention in 2009, following the submission of 14 arbitration cases against the country in the 2000-2010 period.

On 12 October 2013, *Myanmar* signed the Convention establishing the Multilateral Investment Guarantee Agency (MIGA).<sup>53</sup> Membership in MIGA allows inward foreign direct investment (FDI) to be eligible for the Agency's political risk insurance.<sup>54</sup> This insurance protects investments against the risks of transfer restriction, expropriation, breach of contract, war, terrorism and civil disturbance, and non-honoring of financial obligation. Investors from Myanmar going into other developing countries may also receive coverage for their investments from MIGA. Membership in MIGA will be completed once Myanmar makes its required capital contribution to the Agency.

- Developments relevant to investor-State dispute settlement (ISDS)<sup>55</sup>

On 19 June 2013, the Convention on the Settlement of Disputes between States and National of other States (ICSID Convention) entered into force for *Sao Tome and Principe*.<sup>56</sup> The Convention establishes procedural rules for the institution and conduct of conciliation and arbitration proceedings under the auspices of ICSID.

On 11 July 2013, the United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.<sup>57</sup> The Rules require the publication of information on the commencement of arbitral proceedings, publication of arbitration-related documents such as the statement of claim, disputing parties' written submissions and others. The Rules also provide for opening of arbitral hearings to the public, govern submissions by a third person (*amicus curia*) and by a non-disputing party to the treaty and set out exceptions from transparency.<sup>58</sup> The Transparency Rules, which will

<sup>49</sup> <http://www.ustr.gov/about-us/press-office/press-releases/2013/september/united-states-mongolia-sign-transparency-agreement>.

<sup>50</sup> <http://online.wsj.com/article/BT-CO-20131008-712214.html>.

<sup>51</sup> The Commission will work in a similar way to how Ecuador audited its external debt in 2008. <http://online.wsj.com/article/BT-CO-20131008-712214.html>.

<sup>52</sup> These were BITs with Cuba, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Romania, and Uruguay. (UNCTAD, *World Investment Report 2013*, p. 108, available at [http://unctad.org/en/PublicationsLibrary/wir2013\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf)).

<sup>53</sup> <http://www.worldbank.org/en/news/press-release/2013/10/12/myanmar-wbg-sign-electricity-investment-guarantee-agreements-at-annual-meetings>.

<sup>54</sup> Eligibility for the MIGA insurance requires that both the home and the host country are members of MIGA.

<sup>55</sup> For detailed information on recent ISDS awards please consult UNCTAD's IIA Issues Note No. 1, 2013, "*Recent developments in investor-State Dispute Settlement (ISDS)*", available at [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf).

<sup>56</sup> <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ContractingStates&ReqFrom=Main>.

<sup>57</sup> <http://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/pre-release-UNCITRAL-Rules-on-Transparency.pdf>.

<sup>58</sup> <http://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/pre-release-UNCITRAL-Rules-on-Transparency.pdf>.

come into effect on 1 April 2014, will apply to disputes under future treaties with a reference to the UNCITRAL rules, unless the Parties to a treaty opt out of their application. The new rules will not apply to disputes brought under existing treaties unless the disputing parties agree otherwise. The UNCITRAL Arbitration Rules are the second most frequently used set of rules for ISDS.<sup>59</sup>

On 15 July 2013, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention) entered into force for *Myanmar*.<sup>60</sup>

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<sup>59</sup> UNCTAD's IIA Issues Note No. 1, 2013, "*Recent developments in investor-State Dispute Settlement (ISDS)*", available at [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf).

<sup>60</sup> <http://www.newyorkconvention.org/contracting-states/list-of-contracting-states>.

## Annex 1. Investment measures taken between June and October 2013

	Description of Measure	Date	Source
Bolivia, Plurinational State of			
Treatment	A new banking law (Ley de Servicios Financieros) was passed on 21 August 2013 (in effect after 90 days). It allows direct control by the State over the setting of interest rates by commercial banks. It also authorizes the government to set specific quotas for lending to specific sectors or activities.	21 August 2013	Law 393 on Financial services, National Assembly, 21 August 2013
Burundi			
Promotion	The Government of Burundi updated the Mining Code. The new mining code removes some legal hurdles, simplifies procedures and strengthens investor protection. The state will no longer be a direct operator in the mining sector, although it will have the right to a 15 per cent stake in mining projects in the country. In contrast with the 1976 code, the hydrocarbons sector will not be regulated by the mining code; separate legislation is currently under preparation.	8 October 2013	Mining legislation is updated, Economist Intelligence Unit, 16 October 2013
Canada			
Entry	On 26 June 2013, changes to the Investment Canada Act (ICA) received Royal assent. The changes introduce the possibility for the Minister (Industry Canada) to decide – in the context of ‘net benefit’ reviews under the ICA – that an entity is controlled by one or more state-owned enterprises even though it would qualify as Canadian-controlled under the criteria established by the act; this decision can be made retroactively for any date after the 29 April 2013.	26 June 2013	Bill C- 60, Royal Assent (41-1), Parliament of Canada, 26 June 2013
Entry	The Government of Canada rejected the proposed acquisition of the Allstream division of Manitoba Telecom Services Inc. (MTS) by Accelero Capital Holdings under the national security provisions of the Investment Canada Act. Accelero Capital Holdings is an investment and management firm controlled by an Egyptian national.	7 October 2013	Press Release, Government of Canada, 7 October 2013
China			
Entry	China launched the «China (Shanghai) Pilot Free Trade Zone», introducing various new policy measures in the areas of trade, investment and finance. With regard to inward FDI, the zone adopts a new approach providing for pre-establishment national treatment with a negative list. Specific segments in six service sectors – finance, transport, commerce and trade, professional services, cultural services, and public services – were opened to foreign investors.	18 September 2013	Circular of the State Council on the Framework Plan for the China (Shanghai) Pilot Free Trade Zone, The State Council, Guo Fa [2013] No. 38, 18 September 2013
Cuba			
Promotion	Cuba has set up a new Special Economic Zone (SEZ) for foreign investors in Mariel. Foreign companies in the zone will benefit, 1 November 2013, of exemptions from employment taxes and customs duties, a one-year waiver on sales and services taxes, and a ten-year tax holiday for tax on profits. GAESA, a state controlled company, will administer the zone.	1 November 2013	Decree 313/2013, Official Gazette No. 026, 23 September 2013
Denmark			
Promotion	On 27 June 2013 the Government adopted a gradual reduction of the corporate taxation rate from the current 25 per cent to 22 per cent by 2016.	27 June 2013	Act No. 792, Official Gazette, 28 June 2013
Ecuador			
Treatment	The “Consejo Nacional de Telecomunicaciones” (Conatel) has issued rules for the return of radio and television frequencies in accordance with the media law passed by Congress last June. The law rules that 66 per cent of radio frequencies should be in the hands of private and public media (33 per cent each), with the remaining 34 per cent to go to «community» media.	25 June 2013	Ley Orgánica de Comunicación, Official Gazette No. 22, 25 June 2013

France			
Treatment	The French Parliament passed a bill imposing penalties on companies that shut down operations deemed economically viable. The law requires firms with more than 1,000 employees to prove that they have exhausted options for selling a plant before closing it. A commercial court can fine firms up to 20 times the minimum wage per employee laid off if it is judged not to have done enough to find a buyer. The bill also includes a measure to curb attempts to take over a company by gradually building up a dominant position in its shares. It lowers the threshold at which a public buy-out bid has to be made for all of its target's capital to 25 per cent from 30 per cent.	1 October 2013	Text 1037, 1270, 1283 and adopted text 214, National Assembly, 1 October 2013  French parliament passes law punishing plant closures, Reuters, 1 October 2013  The bill still has to be examined in the Senate
Germany			
Promotion	Germany passed new immigration rules which aim to cut red tape for people in target industries, allowing them to get their qualifications recognized in Germany more easily.	6 June 2013	Verordnung zur Änderung des Ausländerbeschäftigungsrechts, Official Gazette No. 28, 13 June 2013
Ghana			
Entry	Ghana revised the Ghana Investment Promotion Centre Act 478 of 1994. The Act requires Ghanaian citizens who partner with foreign investors to have at least 30 per cent equity participation in the joint enterprise.	18 July 2013	Ghana Investment Promotion Centre Bill, Parliament of Ghana, 24 July 2013
Greece			
Entry	On 12 August 2013, Greece completed the sale of a 33 per cent stake in the state-controlled gambling firm OPAP to the Greek-Czech fund Emma Delta.	12 August 2013	Press Release, Hellenic Republic Asset Development Fund, 12 August 2013
Treatment	The Greek Government modified the capital markets law. Under the new rules shareholders controlling 90 per cent of a company must agree to a transfer which results in its delisting from the Athens Stock Exchange and listing outside of Greece. Until recently, a 67 per cent majority was required for listed companies.	11 October 2013	Νόμος υπ' αριθ 4199, Official Gazette No. 216, 11 October 2013
India			
Entry	The Indian Government has raised the cap on foreign direct investment to 100 per cent in telecom and to more than 26 per cent on a case-to-case basis in defense, and allowed FDI up to 49 per cent under the automatic route in nine industries, including single-brand retail, state-run oil refineries, commodity bourses, power exchanges, stock exchanges and clearing corporations.	22 August 2013	Press Note No 6, Department of Industrial & Promotion, 22 August 2013
Treatment	India relaxed FDI rules in multi-branded retail trading. Earlier pre-conditions required foreign retailers to source 30 per cent of their products locally from the time they began operations in India. The new rules allow the figure of 30 per cent local sourcing to be calculated as an average of five years' total value of purchased products over a period of five years.	22 August 2013	Press Note No 5, Department of Industrial & Promotion, 22 August 2013
Treatment	The Reserve Bank of India clarified the guidelines in respect of overseas direct investment to facilitate genuine outward investment requirements of the Indian companies. Among others, it has been clarified that in respect of funding of overseas direct investments by way of external commercial borrowings, instead of a limit of 100 per cent of the net worth, the earlier limit of 400 per cent of the net worth will continue to apply.	4 September 2013	Reserve Bank of India /2013-14/220 A.P. (DIR Series), Circular No.30
Entry	The Reserve Bank of India permitted non-residents, including non-resident Indians, to acquire shares of a listed Indian Company in Stock Exchange through registered brokers under the FDI Scheme.	6 September 2013	Reserve Bank of India /2013-14/232 A.P. (DIR Series) Circular No. 38
Entry	To restrict foreign investors from controlling companies indirectly, the Indian government expanded the scope of the term 'control' to cover management and policy decisions, shareholding, management rights and shareholders agreements. Before this revision, control rested with the one who has the power to appoint a majority of its directors in a company.	22 August 2013	Press Note No.4 , Department of Industrial & Promotion, 22 August 2013



Entry	The Indian government introduced a definition of 'group company' in the FDI policy contained in 'Circular 1 of 2013 - Consolidated FDI Policy' as below. "Group company" means two or more enterprises which, directly or indirectly, are in a position to : (i) exercise 26 per cent, or more of the voting rights in another enterprise; or (ii) appoint more than 50 per cent of the members of board of directors in the other enterprise.	3 June 2013	Press Note No. 2, Department of Industrial & Promotion, 3 June 2013
Entry	On June 3, the State of Himachal Pradesh was added to the list of Indian States in which foreign ownership in multi-brand retail is allowed to up to 51 per cent.	3 June 2013	Press Note No.1, Department of Industrial & Promotion, 3 June 2013
Indonesia			
Promotion	The Government of Indonesia unveiled an emergency fiscal package to promote foreign investment, reduce imports and boosts its depreciating currency	23 August 2013	Economic Policy Package to Maintain Economic Growth Sustainability and Tranquillize Markets, Ministry of Finance, 26 August 2013
Israel			
Promotion	The Ministry of Economy finalized the criteria upon which companies operating in Israel will receive investment grants in accordance with the Law for the Encouragement of Capital Investment. The incentive budget for 2013 includes NIS 300 million grant authorization and NIS 250 million cash grants.	23 August 2013	Press Release, Invest in Israel, August 2013
Republic of Korea			
Entry	The Republic of Korea passed the amended Telecommunications Business Act, which allows foreign investors covered by an FTA with Korea to acquire up to 100 per cent of Korea's facility-based telecommunication businesses.	2 July 2013	Amendment to Telecommunications Business Act, National Assembly, 2 July 2013
Promotion	The Act on Supporting the Return of Overseas Korean Enterprises was passed by the National Assembly. The Korean Government founded the Reshoring Support Center and is planning to provide reshoring businesses with incentives that are similar to those provided to foreign-invested companies.	27 June 2013	Act on Supporting the Return of Overseas Korean Enterprises, National Assembly, 27 June 2013
Kuwait			
Entry	The Government of Kuwait enacted the Direct Investment Promotion Law (Decree Law No. 116 of 2013). Under the law foreign investors are allowed to own up to 100 per cent equity in a Kuwaiti company. It also allows the establishment of branches and representative offices.	16 June 2013	Law No. 116 of 2013 Regarding the Promotion of Direct Investment in the State of Kuwait, Kuwait Foreign Investment Bureau, 16 June 2013
Mexico			
Entry	The Government amended the telecommunications law to allow more foreign investment. The reforms increased the threshold for foreign investment in telecommunication (100 per cent in all areas except radio, where the limit is 49 Per cent). Other reforms seek to bolster access to information rights; set up a unified regulation on concessions, as well as new competition regulations.	11 June 2013	Telecommunications Reform Decree, Official Gazette, 11 June 2013
Mozambique			
Promotion	Mozambique's Council of Ministers has passed a decree that will facilitate the establishment of new companies through a single business registration form. Under the new regulation businesses will only have to fill out a single form to register. According to the government, this will reduce the time needed to set up a company to a maximum of 25 days, as opposed to 65 days at present.	8 October 2013	Government streamlines business registration procedures, Economist Intelligence Unit, 9 October 2013
Panama			
Entry	The National Assembly has approved Law 41 which restricts foreign-owned vessels in the maritime auxiliary services sector. The new law mandates that ships involved in maritime auxiliary services must belong to a company in which 75 per cent of the shares are controlled by nationals of Panama and that the crew employed in these vessels be 90 per cent of Panama nationality.	14 June 2013	Official Gazette No. 27309, 14 June 2013

Philippines			
Entry	The Philippines has amended its Rural Bank Act to allow foreign individuals or entities to have equity of up to 60 per cent in rural banks in the country. Prior to the passage of this Act, foreign banks were allowed to acquire equity in rural banks, but not foreign individuals or foreign entities.	8 June 2013	Official Gazette, 24 May 2013
Portugal			
Promotion	The Government approved new measures to support and promote investment. It, amongst others, amended the existing Contractual Investment Tax Regime (RFAI) and the Business R&D Tax Incentive System (SIFIDE).	17 June 2013	Decree Law 82/2013, Official Gazette No. 114, 17 June 2013
South Sudan			
Promotion	The Government of South Sudan has officially launched the establishment of the Juba Specialized Economic Zone (SEZ), an industrial area for business and investments activities. The 625 square km land is located about 30km from the South Sudan capital Juba.	22 June 2013	Press Release, Government of South Sudan, 22 June 2013
Sweden			
Entry	The Government of Sweden has completed the sale of 260 million shares of Nordea Bank AB through an accelerated auction process aimed at Swedish and international institutional investors. The sale represents approximately 48 per cent of total government ownership in the company and reduces the state's holding in Nordea from the previous 13.4 per cent to 7 per cent.	19 June 2013	Press Release, Ministry of Finance, 19 June 2013
United Kingdom			
Promotion	The Government of the United Kingdom introduced additional requirement for big offshore wind farms to apply for subsidies. Developers of offshore wind farms will have to explain how they plan to create more British jobs before applying for subsidies.	1 August 2013	Department of Energy & Climate Change, 1 August 2013
Promotion	The United Kingdom has cut the corporate tax rate to 21 per cent in 2014 and 20 per cent in 2015.	17 July 2013	Finance Act 2013
Viet Nam			
Promotion	Vietnam reduced the corporate income tax rate. The tax rate will be cut to 22 per cent from 25 per cent starting 1 January 2014 and to 20 per cent from 1 January 2016. The rate for companies with fewer than 200 employees and total revenue of less than 20 billion dong will be lowered to 20 per cent from July 1, 2013 and to 17 per cent from 1 January 2016.	19 June 2013	Press Release, National Assembly, 21 June 2013

## **Annex 2. Summary table of IIAs signed between June and October 2013**

	Name of Agreement	Date of Signature
1	Bilateral Investment Treaty between Japan and Mozambique	01.06.2013
2	Bilateral Investment Treaty between Guinea and Turkey	18.06.2013
3	Free Trade Agreement between the EFTA States and Central American States	24.06.2013
4	Free Trade Agreement between the EFTA States and Bosnia and Herzegovina	26.06.2013
5	Free Trade Agreement between the Swiss Confederation and the People's Republic of China	06.07.2013
6	Bilateral Investment Treaty between Colombia and Singapore	16.07.2013
7	Bilateral Investment Treaty between Djibouti and Turkey	25.09.2013
8	Free Trade Agreement between Chile and the Kingdom of Thailand	04.10.2013

## **Annex 3. Summary table of IIAs by type of agreement and country/economy, between June and October 2013**

Country / Economy	BITs	Other IIAs
Bosnia and Herzegovina	1	
Colombia	1	
Costa Rica		1
Chile		1
China		1
Djibouti	1	
Guinea	1	
Iceland		2
Japan	1	
Liechtenstein		2
Mozambique	1	
Norway		2
Panama		1
Singapore	1	
Switzerland		3
Thailand		1
Turkey	2	

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