

INTERNATIONAL INVESTMENT AGREEMENTS

BENEFITING FROM INVESTMENT AGREEMENTS FOR DEVELOPMENT



GLOBAL CONTEXT

Countries' efforts to attract and benefit from foreign direct investment (FDI) have resulted in a network of investment rules embodied in numerous bilateral investment treaties, free trade agreements with investment components, double taxation treaties and other treaties with investment provisions. This network of investment rules is multilayered and multifaceted – partly overlapping and partly complementary – and consists largely of first-generation treaties in need of reform. Parties to international investment agreements and current negotiations should therefore be thoroughly familiar with key issues and concepts surrounding such agreements, including their sustainable development dimension and implementation.

UNCTAD helps developing countries to engage in international investment policymaking, with a focus on treaties' development dimensions and effects. In addition to supporting the participation of Governments and of relevant stakeholders in international investment policymaking, UNCTAD assists countries in mainstreaming sustainability in international investment agreements using the Investment Policy Framework for Sustainable Development and the Reform Package for the International Investment Regime. The Investment Policy Framework for Sustainable Development consists of a set of core principles for investment policymaking, guidelines for national investment policies and guidance for policymakers on the design and use of international investment agreements. The Reform Package consolidates UNCTAD research and policy guidance across the three phases of the reform. Together with the Reform Package, the Investment Policy Framework anchors all UNCTAD training and capacity-building activities on such agreements.



WHAT SERVICES HELP TO MAKE INTERNATIONAL INVESTMENT AGREEMENTS WORK FOR COUNTRIES?

UNCTAD activities pursue the common objective of assisting countries in better responding to the growing complexity of the international investment agreement regime and strengthening the sustainable development dimension of these agreements.

Demand drives the services that UNCTAD tailors to the specificities of each country and/or region. Support through the International Investment Agreements Programme covers several aspects, as follows:

- Advisory services provide legal commentary and advice on international investment agreements and their implementation and modernization.
- Capacity-building workshops include intensive training courses and preparatory distance-learning courses on international investment agreements, drawing on the advisory and analytical work of UNCTAD. Training activities are organized at the national, regional and interregional levels, often in cooperation with partner organizations.
- Evidence-based policy research, provided through tools such as the *Issues Notes* on international investment agreements, as well as reports to requesting countries and regional organizations.
- Information on bilateral investment treaties, other international agreements with investment components and investor–State dispute settlement cases, provided through databases. The web-based International Investment Agreements Navigator, for example, contains the texts of more than 2,250 bilateral investment treaties and 330 other international investment agreements, dating from 1959 to the present. The database covers 86 per cent of all bilateral investment treaties and 95 per cent of all other international investment agreements currently signed – a “one-stop shop” for delivering information on the latest trends to users and investment stakeholders.
- An international electronic network and online discussion forum on international investment agreements is maintained and backstopped as a service for negotiators and practitioners.



✓ RESULTS AND IMPACTS AT A GLANCE

Of the 29 international investment agreements concluded in 2018 (with texts available), most include a large number of provisions explicitly referring to sustainable development issues (including the right to regulate for sustainable development-oriented policy objectives). Nineteen of these agreements have general exceptions – for example, for the protection of human, animal or plant life or health, or the conservation of exhaustible natural resources, and 16 recognize that the parties should not relax health, safety or environmental standards to attract investment. Additionally, corporate social responsibility obligations and the inclusion of proactive investment promotion and facilitation provisions are becoming more prevalent; 13 of the 29 agreements feature corporate social responsibility provisions.

These developments point towards the effectiveness and impact of UNCTAD policy tools on reform of the international investment agreement regime. In addition, several emerging and large developing countries such as Brazil, India, Indonesia and South Africa, as well as countries with economies in transition, have begun to modernize their international investment policies to better align them with sustainable development objectives, frequently referring to UNCTAD work in this area, such as the 10 options for phase 2 of reform of the international investment agreement regime.

Feedback from participants in capacity-building workshops is generally very positive, with an average of 90 per cent stating that the courses contributed substantially to improving their understanding of the key issues at stake. An average of over 80 per cent of respondents also indicated that they had reported on issues related to the Investment Policy Framework for Sustainable Development to colleagues in their departments and 44 per cent noted that the Investment Policy Framework had prompted their country to reconsider its investment policy strategy.



“UNCTAD has played a vital role for the success of [international investment agreement] reform on two tracks. First, you keep feeding us (the small countries) with excellent information, analysis and technical assistances and second, by organizing different events (regional and multilateral), you give us voice.”

Samira Sulejmanovic, Head, Department for Bilateral Trade Relations, Ministry of Foreign Trade and Economic Relations, Bosnia and Herzegovina, 2017

“I had also the opportunity to learn more about UNCTAD’s idea of a systemic and sustainable, development-oriented reform for the [international investment agreement] regime. That whole experience provided me with some food for thought for what would later become Brazil’s [Cooperation and Facilitation Investment Agreements]. I can’t talk about Brazil’s [Cooperation and Facilitation Investment Agreements] construction process without mentioning UNCTAD.”

Abrão Neto, Secretary of Foreign Trade, Ministry of Industry, Foreign Trade and Services, Brazil, 2016



PROGRAMME FACTS AND FIGURES

Scope: all regions

Start date: 1997

Activities per year: 4 regional workshops organized, 6 expert advice services provided, 10 national, regional and international capacity-building events co-organized (average)

Activities (1998 –2018): 129 advisory services, 41 regional or other training courses

Website: unctad.org/iia



Sustainable Development Goals addressed:

Directly: 17

Indirectly: 1, 10



DONORS/FUNDING SOURCE (2014-2019)

China, Finland, Norway, Sweden, Switzerland, United Nations Institute for Training and Research, Multi-donor/Cross-cluster Trust Fund on Capacity-building in Investment for Development