

### **Key findings**

Geopolitical tensions and industrial policy drove investment policymaking

Activity reached near-record levels in 2024, driven by continued attraction efforts in developing countries and national security concerns in developed countries.

- Incentives dominated investment promotion measures
  Investment incentives accounted for a record 45 per cent
  of favourable measures, with a sharp rise in financial
  incentives, particularly in developed countries.
- Facilitation remained a key focus across developing regions

  More than 30 per cent of favourable measures in developing regions
  addressed facilitation. Liberalization continued in Africa and Asia.

  Promotion strategies for clean tech appeared in Latin America.
- FDI screening was the main form of investment restriction More than 40 per cent of restrictive measures expanded screening, nearly all in developed countries, increasingly targeting high-tech and critical raw materials.
- Investment agreements increasingly focus on facilitation and cooperation

In 2024, countries concluded 30 treaties. Most turned to proactive facilitation and cooperation provisions, with relatively reduced reliance on investor–State arbitration.

Yet, new agreements are still implemented alongside an aging network of unreformed treaties

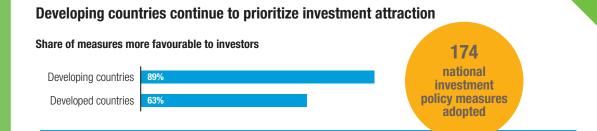
The network continues to limit regulatory space for key policy areas, including public health, climate change and digitalization.

- Investor–State arbitration cases reached 1,401

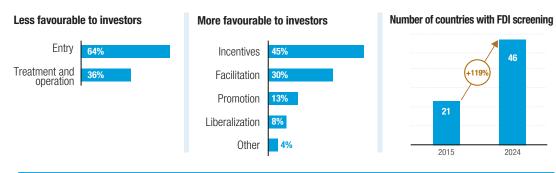
  Most of the cases about 75 per cent arose in the past 15 years.

  About 60 per cent of the claims for damages exceeded \$100 million.
- In 2024, investors initiated 58 arbitrations
  Claims related to extractive activities and energy supply accounted for more than half of the cases.

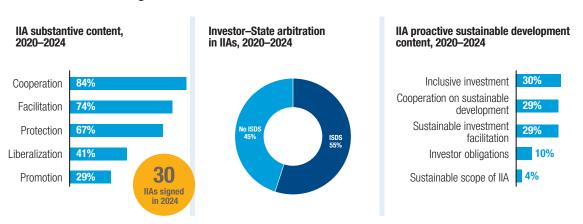




#### Incentives are the dominant policy tool and FDI screening gains ground



## Investment agreements continued to evolve, yet more is needed to place sustainability at the core of the regime



Most of the 1,401 investor–State arbitration cases arose since 2010. In 2024, about 55 per cent of new cases were brought against developing countries



### A. National investment policies

In 2024, global investment policymaking remained strongly influenced by geopolitical tensions and industrial policy goals. The number of new investment policy measures reached the second-highest level on record (174). Of these, 78 per cent were favourable to investors. In developing countries, the share favourable to investors increased marginally from an already high level, reflecting continued emphasis on attracting investment. In developed countries, the number of restrictive measures – particularly related to FDI screening for national security – continued to increase. Despite this, 63 per cent of new measures in those countries were favourable to investors, largely due to new incentives in Europe to support the energy transition.

#### 1. Overall trends

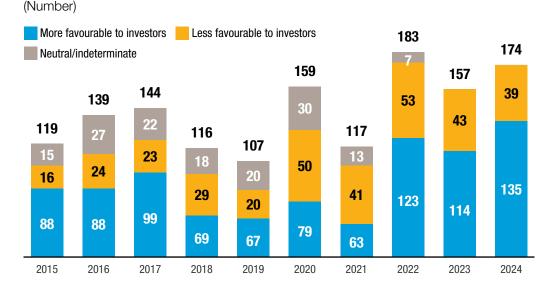
In 2024, 174 policy measures affecting FDI were introduced across 83 countries, marking an 11 per cent increase from 2023 and the second-highest figure on

record, surpassed only by the surge in measures implemented during the response to the coronavirus 19 (COVID-19) pandemic (figure II.1; box II.1).



Figure II.1

**Investment policy measures rebounded in 2024**Measures by nature, worldwide







#### Box II.1

#### Methodology for analysing trends in national investment policy

The analysis of national investment policy trends is based on official measures affecting FDI that United Nations Member States adopted, as compiled in the UNCTAD Investment Policy Monitor database. They encompass FDI-specific measures as well as general investment measures with a clear impact on FDI. They are reported by Member States in annual surveys or identified from publicly accessible sources (e.g. government websites, specialized policy databases). The analysis excludes coercive economic measures that affect investment. Classification of measures as more or less favourable is based solely on their potential impact on investors (box table II.1.1). It does not reflect a value judgement on merit or suitability. When a measure contains more than one component, the components are analysed separately.

Source: UNCTAD.



#### Box table II.1.1

#### **Classification of measures**

#### More favourable to investors

Liberalization	Privatization			
	Lifting of entry restrictions (e.g. opening of sectors to FDI) and entry conditions (e.g. minimum capital requirement)			
	Removal (total or partial) of FDI screening or approval mechanisms			
	Lifting of foreign exchange restrictions			
	Liberalization of land access			
Facilitation	Streamlining of investment procedures (e.g. one-stop shops)			
	Greater transparency of investment-related laws and procedures			
	Introduction by IPAs and others of new services (e.g. linkages programmes, investor visa facilitation or alternative dispute resolution mechanisms)			
Promotion	Establishment of IPAs or other institutions with a remit as investment promoters and expansion of their mandate			
	Adoption of investment promotion strategy and plans			
	Introduction of PPPs, auctions, and concessions initiatives or framework			
	Introduction of OFDI promotion initiatives			
Incentives	Adoption of new tax and financial incentives schemes for investment			
	Introduction of other incentives (e.g. citizenship by investment programmes)			
	Adoption of new SEZ-related incentives			
Other	Enhancement of investor treatment and protection guarantees			
	Easing of labour or migration regulations on foreign hires and key personnel			
	Removal of operational restrictions on investment (e.g. local content requirements)			

#### Less favourable to investors

	Introduction or tightening of entry restrictions (e.g. total or partial sectoral ban)			
Entry	Introduction or tightening of entry conditions (e.g. minimum investment threshold, joint venture requirements or State participation in strategic sectors)			
	Introduction or expansion of screening mechanisms for national security			
Treatment and operation	Introduction or expansion of foreign exchange restrictions			
	Introduction or expansion of restrictions on foreign hires and key personnel			
	Removal or reduction of investment incentives			
	Introduction or expansion of post-establishment requirements for local content			
	Reduction of guarantees for investment treatment and protection			
	Introduction or expansion of restrictions on OFDI			

Source: UNCTAD.

Abbreviations: FDI, foreign direct investment; IPA, investment promotion agency; OFDI, outward FDI; PPP, public-private partnership; SEZ, special economic zone.

The share of measures more favourable to investors rose to 78 per cent, up from 73 per cent in 2023 and the highest level since 2017 (figure II.2).

This shift is driven primarily by developed countries, in which the share of measures more favourable to investors increased significantly – from one third of all measures over the past five years, to two thirds in 2024. In developing countries, the proportion of policies more favourable to investors also rose, though from an already high level, reaching 89 per cent in 2024. These converging trends signal a return to the mid-2010s balance between measures more and less favourable to investors in both developed and developing countries.

However, regional disparities among developed countries were pronounced. In Europe, despite the continued expansion of policy measures aimed at addressing national security concerns related to FDI, 78 per cent of newly adopted measures favoured investors. reflecting the rising emphasis on industrial policy and the expansion of State aid schemes for promoting renewable energy investment (section A.2). In contrast, in North America, 92 per cent of newly introduced measures were less favourable to investors. They focused primarily on national security concerns, tightening restrictions on foreign ownership of critical infrastructure, core technologies and other sensitive assets (section A.3).

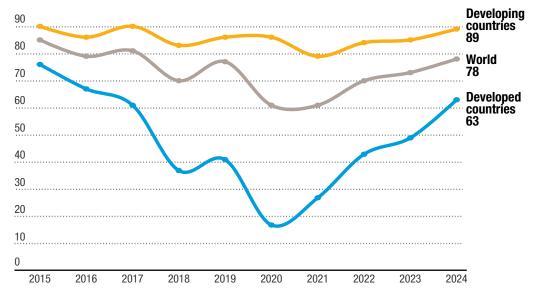
For the first time, Europe led in the number of new investment policy measures adopted, accounting for one third of all measures introduced globally - a notable increase from 2023. Among developing regions, Asia was the most active, introducing the highest number of new measures, followed by Africa. Latin America and the Caribbean recorded the highest share of measures favourable to investors. In other developed countries, three quarters of the measures introduced in 2024 were less favourable to investors, consistent with the 2023 trend (figure II.3).



Figure II.2

### Policies favourable to investors became more prevalent in both developed and developing countries in 2024

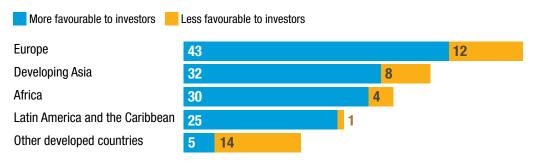
Share of policy measures more favourable to investors (Percentage)





## Europe and developing Asia adopted the most investment policy measures in 2024

Nature of measures, by region (Number)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2025.

Note: Other developed countries include Australia, Canada, Japan, New Zealand, the Republic of Korea and the United States.



#### 2. Policy measures more favourable to investors

Investment incentives accounted for a record 45 per cent of all policy measures more favourable to investors in 2024. Financial incentives, in particular, have proliferated since 2022, accounting for nearly half of all investment incentives adopted globally. Investment facilitation measures remained a key component of strategies to attract investment in both developed and developing countries.

In recent years, investment policies have undergone significant transformation, not only in the balance between measures more or less favourable to investors but also in type (UNCTAD, 2024c). This evolution continued in 2024, with a sharp rise in the use of incentives to stimulate

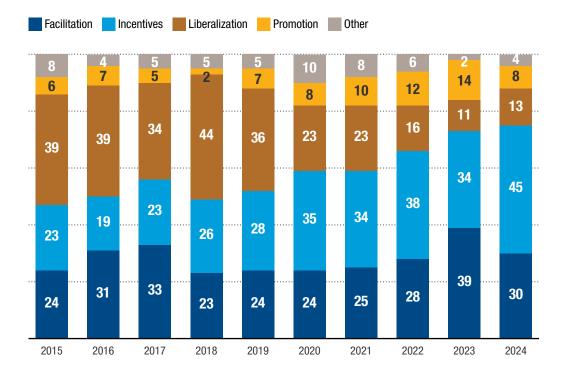
investment, particularly in developed countries. This trend, which began before the pandemic, is the result of a broader shift towards industrial policy and a reduced emphasis on liberalization. Incentives, often targeting priority industries, have become the primary investment attraction tool, accounting for 45 per cent of all measures more favourable to investors.

While facilitation and investment promotion measures reached record highs in 2023, their relative importance declined in 2024, to 30 per cent and 8 per cent of measures favourable to investors, respectively. The share of liberalization policies remained modest at 13 per cent, still well below pre-pandemic levels (figure II.4).



#### Figure II.4

The role of investment incentives has expanded over the past decade Measures more favourable to investors, by category (Percentage)



In 2024, incentives emerged as the most prevalent policymaking instrument across most regions, comprising two thirds of measures favourable to investors in developed countries and approximately two fifths of measures in Asia and in Latin America and the Caribbean. In contrast, Africa prioritized facilitation measures, which rose to 36 per cent in 2024, from 29 per cent between 2014 and

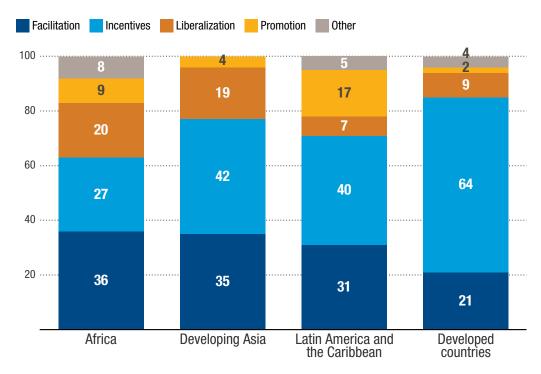
2024. Liberalization remained a pivotal component of investment policymaking in Africa and in Asia, where it accounted for one fifth of measures adopted. In Latin America and the Caribbean, policymakers also concentrated relatively more on investment promotion, introducing novel FDI attraction strategies and public-private partnerships (PPPs) (figure II.5).



#### Figure II.5

## Incentives were the main policy instrument to promote investment across most regions in 2024

Measures more favourable to investors, by category and region (Percentage)



#### a. Incentives

The rise in the adoption of investment incentives in 2024 marks an acceleration of a trend that began in 2018, driven by growing global trade tensions and uncertainties. It was reinforced by the pandemic, followed by a sharp rise since 2021 in policy measures that introduce or expand investment incentives across both developed and developing countries (figure II.6).

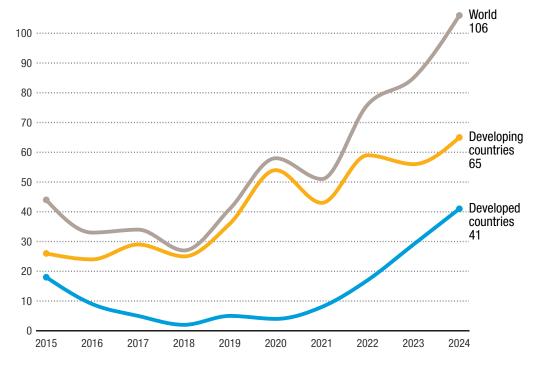
It is also evident in the evolution of investment laws, in which the growing inclusion of incentives has emerged as a key trend (box II.2). The greater reliance on incentives as investment attraction instruments runs counter to the objectives of international tax reform efforts aimed at curbing harmful tax competition for investment.



#### Figure II.6

### The number of investment incentives has risen sharply since the COVID-19 pandemic

Policy measures introducing investment incentives, total and by economic grouping (Number)





#### Box II.2

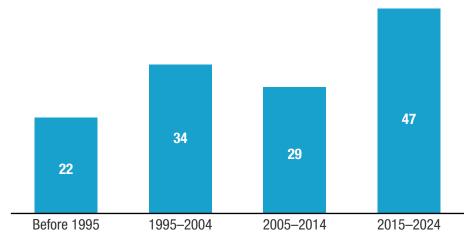
#### Key trends in the evolution of investment laws

Many countries use investment laws to shape their investment policy frameworks. A recent issue of the UNCTAD Investment Policy Monitor catalogued 132 investment laws in force across 130 economies, including 115 enacted by developing economies and 15 by developed ones. Regionally, investment laws are more prevalent in Africa and in Asia, where 93 per cent and 79 per cent of countries, respectively, have adopted such legislation.

Between 2015 and 2024, at least 47 new investment laws were enacted globally, 43 of which replaced earlier legislation (box figure II.2.1).

#### **Box figure II.2.1**

### **Investment laws continue to be popular**Number of laws in force by period of adoption



Source: UNCTAD, Investment Laws Navigator database, accessed 1 April 2025.

Investment laws have evolved to align with changing national and international policy priorities and challenges. Compared with laws enacted before 1995, those adopted in the last decade display greater emphasis on sustainability, balancing investor rights with obligations and providing incentives tied to developmental goals. In particular:

- Recent investment laws have increasingly incorporated sustainability objectives, with 40 per cent of those enacted since 2015 including relevant provisions, up from just 5 per cent of those adopted before 1995.
- They also increasingly emphasize balancing investor rights with obligations, including adherence to environmental, labour and corporate social responsibility standards. Provisions addressing these obligations are present in 57 per cent of laws adopted in the last decade, compared with 14 per cent before 1995.

- The inclusion of incentives in investment laws has grown significantly, now featuring in 81 per cent of such laws enacted between 2015 and 2024. The proportion of investment incentives tied to specific development objectives has risen from 44 per cent before 1995 to 60 per cent in the last decade, with a stronger focus on projects that contribute to employment, regional development and green initiatives.
- Investment facilitation provisions are also increasingly present. Nearly half of
  investment laws globally include facilitation-related measures, rising to two thirds
  in Africa. Common provisions involve streamlining processes through one-stop
  shops and offering facilitation services such as permitting support, land access
  and dispute prevention mechanisms.
- Finally, reflecting trends in international investment agreements, the inclusion of clauses granting the State's consent to investor–State arbitration has declined. Such clauses appear in only one quarter of investment laws adopted in the last decade, down from more than half previously. Conversely, provisions designating domestic courts for dispute resolution now feature in more than two thirds of recent laws, compared with less than one third before 1995.

Source: UNCTAD (2024b).

The share of financial incentives, in particular, has increased, to account for 43 per cent of all investment incentives adopted globally in 2024 up from 19 in 2022. Although both developed and developing countries have expanded the use of financial incentives, the trend has been significantly more pronounced in developed countries, where the share grew from just above one third (35 per cent) in 2022 to more than two thirds (69 per cent) in 2024 (figure II.7).

The rise in financial incentives for investment in developed countries, from fewer than 5 new incentives schemes per year before 2022 to at least 27 in 2024, was largely driven by European countries, which have introduced several State aid schemes to promote renewable energy investment under the Temporary Crisis and Transition Framework introduced by the European Union in 2023. This framework aims to accelerate support for sectors relevant to the net zero transition, in alignment with

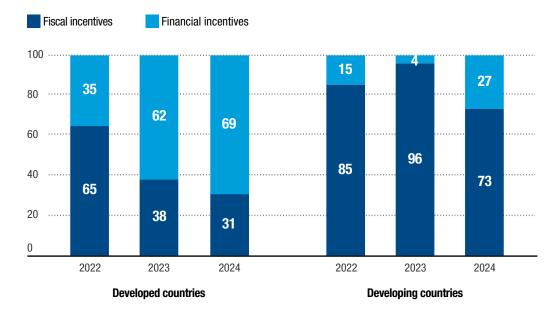
the Green Deal Industrial Plan. In 2024, the value of new State aid schemes for investment by European countries exceeded €33 billion. This includes more than €14 billion for industrial decarbonization, another €14 billion for renewable energy and green hydrogen investments, and more than €5 billion to support clean technology manufacturing and energy efficiency. (Unless indicated otherwise, all examples provided in this section, including additional information and links to official sources, can be found in the UNCTAD Investment Policy Monitor database.¹)

In developing countries, fiscal incentives remain the predominant form of incentives, accounting for nearly three quarters of all incentives introduced in 2024, despite a rise in the use of financial incentives. As a result, fiscal incentives continue to represent the majority of new incentive measures adopted globally (57 per cent).



# Figure II.7 Growing reliance on financial incentives across developed and developing countries

Incentive measures by type (Percentage)



<sup>&</sup>lt;sup>1</sup> Accessible at https://investmentpolicy.unctad.org/investment-policy-monitor.

### **Chapter II**Investment policy trends

The sectoral distribution of incentives has also shifted over the past decade from broad, cross-sectoral measures to more targeted, sector-specific ones. Before 2020, cross-cutting incentives – such as horizontal tax breaks and general investment incentives – accounted for more than half of all incentives. However, by 2024, their share had dropped to less than a quarter of all incentives introduced globally (figure II.8).

This transition, observed in both developed and developing countries, is more pronounced in the latter. It reflects evolving economic policy priorities, with a stronger focus on directing investment towards strategic sectors, particularly the digital economy (see chapter IV) and the green transition. Notably, the number of incentives targeting services and manufacturing has increased significantly.

In 2015, incentives related to services accounted for only 10 per cent of the total; by 2024, this figure had surged to 40 per cent. In 2024, for example, several countries introduced new incentives for renewable energy production, including Bangladesh, Belgium, Ecuador, Italy and Panama. Others have targeted the digital sector: Brazil introduced incentives for artificial intelligence investment, Chile for data centres and Viet Nam for investment in research and development centres focused on semiconductors and artificial intelligence.

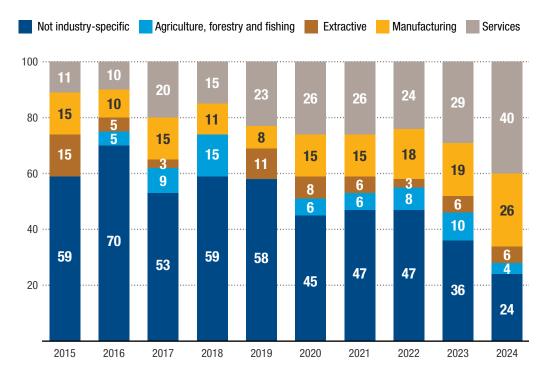
Prior to 2021, manufacturing incentives consistently accounted for 15 per cent or less of all incentives. Their share has since expanded significantly, exceeding 25 per cent of all incentives adopted globally in 2024. In addition to numerous European Union Member States implementing



#### Figure II.8

## Incentives are increasingly targeting specific activities in services and manufacturing

Incentive measures by sector (Percentage)



#### International investment in the digital economy

schemes to support green hydrogen, several other countries introduced incentives in this sector (e.g. the Plurinational State of Bolivia, Brazil, Chile, Mauritania and Peru). Moreover, several countries have introduced incentive schemes to promote high-tech manufacturing, particularly of semiconductors, electric vehicles and batteries (e.g. Brazil, Costa Rica, Mexico, South Africa, Thailand, Türkiye and Viet Nam).

#### b. Facilitation

Investment facilitation efforts remained strong in 2024 (see figure II.4). Although facilitation measures accounted for just 30 per cent of policy measures, down from 39 per cent in 2023, this decline reflects a surge in investment incentives rather than a reduction in facilitation measures globally.

As observed in 2023, streamlining initiatives aimed at improving the efficiency of investment procedures remained the most prevalent, representing more than half (29) of facilitation measures adopted in 2024 (figure II.9). To enhance efficiency, several countries have introduced digital

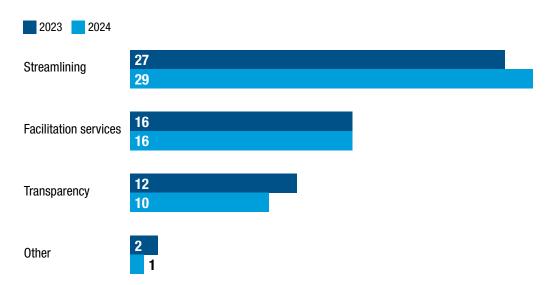
platforms to streamline procedures in 2024. Cambodia, for instance, launched the Investment Project Management System to digitize investment processes, Tonga introduced an online company registration system and Kazakhstan implemented a digital platform for licensing. Algeria launched the Investor's Digital Platform to facilitate access to State-owned land, and in Egypt the General Authority for Investment and Free Zones introduced an electronic service for company establishment.

Other streamlining measures include simplifying procedures, fast-tracking certain types of investment and establishing one-stop shops, Greece and Kazakhstan. for instance, introduced fast-track mechanisms to expedite procedures for priority investment projects, and Malawi established a one-stop shop for investors. Simplification efforts also include reforms in Chile to accelerate permitting for investment in green hydrogen and data centres, streamlined processes in Costa Rica for the semiconductor industry and unification of procedures for economic licence registration in the United Arab Emirates by Abu Dhabi.



#### Figure II.9

Streamlining remained the top investment facilitation initiative in 2024 Investment facilitation measures by category (Number)



### **Chapter II**Investment policy trends

Facilitation services provided by investment promotion agencies (IPAs), special economic zones and other administrative entities accounted for 30 per cent of all facilitation measures in 2024. Malaysia, for instance, launched the Golden Pass scheme to attract unicorn start-ups and venture capitalists, facilitating visa, employment and licensing procedures. The Philippines adopted the Create More Act, allowing the IPA to issue special visas to foreign nationals with highly specialized skills or executive roles. Türkiye introduced facilitation services for employment and land access to support its growing high-tech sectors. Aftercare services are also a key component of investment facilitation. Kazakhstan, for instance, established a unified registry of investor issues and complaints to improve aftercare mechanisms and investor advocacy.

Key transparency measures adopted in 2024 include the introduction of information portals for foreign investors. For instance, Brazil launched a new platform to boost green investment, and Chile introduced a digital investment

platform integrating data on energy, land use, fibre optics and environmental factors to guide investment in data centres.

Jamaica launched a platform to engage its diaspora. Additional measures focused on clarifying investment-related procedures. For example, Belgium, Poland and the United Kingdom issued guidance on the approval processes of their FDI screening regimes, and Angola issued a decree clarifying licensing procedures and helping investors better understand compliance requirements in the pharmaceutical sector.

#### c. Liberalization

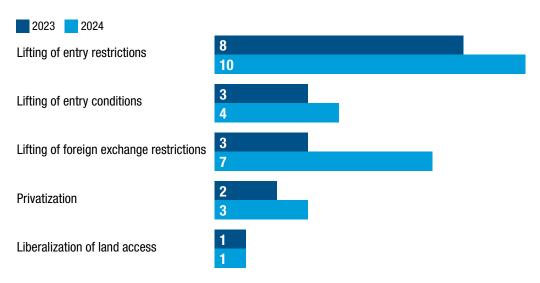
As in 2023, the removal of entry and foreign exchange restrictions accounted for the majority of the liberalization measures adopted in 2024, followed by the easing of FDI entry conditions, new privatization initiatives and the liberalization of land access (figure II.10). Countries that relaxed foreign exchange restrictions included Argentina, Ethiopia, Mozambique, South Africa and Ukraine. Ecuador and



#### Figure II.10

### Most liberalization measures in 2024 lifted entry and foreign exchange restrictions

Liberalization measures by type (Number)



South Africa liberalized their electricity markets to attract additional investment in renewable energy. China opened telecommunication services to foreign investment and relaxed restrictions on investment in healthcare. India opened the space sector to foreign ownership.

#### d. Promotion

Most investment promotion measures adopted in 2024 involved the launch of investment promotion plans and strategies, either sector-specific or cross-sectoral. Other measures included the establishment of investment promotion institutions, the adoption of PPP laws and the opening of new concessions (figure II.11). For instance, the Plurinational State of Bolivia, Chile, Mauritania and Peru adopted green hydrogen plans and laws aimed at attracting investors in this sector. Cambodia introduced a national policy on the development of

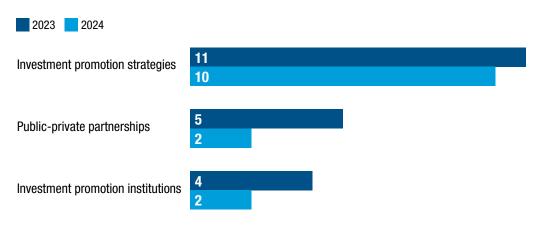
electric vehicles, and Costa Rica launched a semiconductor road map to attract FDI. Kenya expanded investor aftercare services, and Malawi established a new IPA. Colombia opened concessions for bidding to stimulate offshore wind development, and Rwanda adopted a new PPP law.

In measures related to outward FDI (OFDI), most developed countries (71 per cent), along with some developing ones (15 per cent), continued to implement programmes to promote OFDI. Globally, the most common mechanisms were investment facilitation services, followed by fiscal and financial support, investment guarantees and State equity participation in foreign investment projects. Among these, political risk insurance (PRI) has a critical and potentially expanding role to play in fostering investment in sectors relevant to the Sustainable Development Goals in developing countries, especially LDCs (box II.3).



#### Figure II.11

The adoption of new strategies led investment promotion efforts in 2024 Promotion measures by type (Number)





#### Box II.3

#### The role of political risk insurance in fostering investment

Climate change, geopolitical tensions and supply chain disruptions are amplifying investment risks. In this context, PRI is an investment guarantee that has a crucial role to play in facilitating FDI in developing countries, where real and perceived investment risks tend to be higher. Between 2018 and 2022, PRI providers insured projects worth approximately \$150 billion in developing countries.

Although LDCs account for only 15 per cent of the total value of projects insured by PRI providers, the ratio of PRI to FDI inflows in developing countries underscores its critical role. Between 2014 and 2023, PRI issued by members of the Berne Union, the leading global association for the export credit and investment insurance industry, equated to 2 per cent of FDI inflows in developed countries and 6 per cent in developing countries. However, in LDCs, this ratio surged to 28 per cent, reflecting the higher reliance on PRI in countries with higher perceived risks (box figure II.3.1).



#### **Box figure II.3.1**

Political risk insurance equates to more than a quarter of FDI in least developed countries

PRI to FDI ratio by economic grouping, 2014–2023 (Percentage)

Least developed countries<sup>a</sup> 28

Developing countries (excluding least developed)

Developed countries 2

Source: UNCTAD, based on data from UNCTAD and the Berne Union Secretariat.

<sup>a</sup> Excludes Angola, which has recorded negative FDI flows in the last eight years.

Abbreviations: FDI, foreign direct investment; PRI, political risk insurance.

Excluding the financial services sector, PRI coverage is predominantly provided to industries involved in large-scale, capital-intensive projects with long-term payback periods, which heighten risks for private investors. Between 2019 and 2023, manufacturing accounted for the largest share of PRI coverage (20 per cent), followed by non-energy infrastructure (19 per cent), natural resources - including mining and fossil fuel extraction (14 per cent), and non-renewable energy projects (14 per cent). Renewable energy projects received only 4 per cent of total PRI coverage during this period, although their share of all projects increased from 3.7 per cent in 2019 to 6.2 per cent in 2023.

The analysis highlights the need for a more targeted and inclusive approach to PRI, to better support sustainable and climate-resilient investments while balancing the interests of investors and host countries. Expanding PRI coverage in underrepresented sectors in LDCs will require enhanced collaboration among multilateral institutions, export credit agencies and private insurers. Key priorities include fostering innovation in risk mitigation instruments, enhancing PPPs, streamlining PRI processes and leveraging blended finance to bridge the sustainable development financing gap.

Source: UNCTAD (2025).

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#### 3. Policy measures less favourable to investors

More than 40 per cent of measures less favourable to investors concerned new or expanded FDI screening mechanisms. Almost all were adopted by developed countries and targeted high-tech sectors and critical raw materials essential for the energy transition and supply chain resilience. Concerns about national security are also prompting the introduction of new restrictions on OFDI. In developing countries, measures less favourable to investors primarily consisted of foreign equity restrictions and tightened permit

requirements in extractive industries.

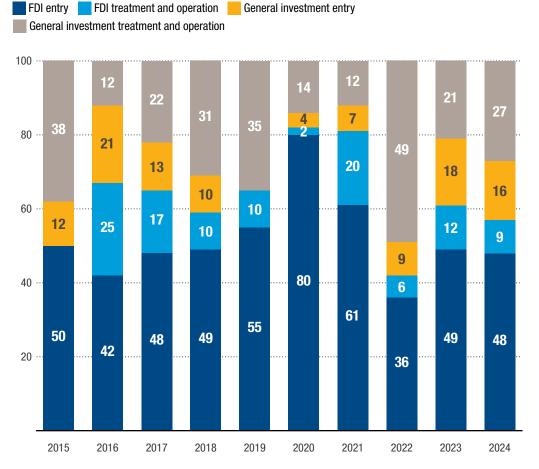
As highlighted in recent editions of the World Investment Report, numerous countries – particularly developed ones – have implemented stricter foreign investment entry regulations over the past decade, especially in sectors deemed critical to national and economic security. In 2024, investment screening mechanisms continued to expand across multiple sectors, with economic resilience and technological sovereignty emerging as central national security concerns (figure II.12).



Figure II.12

#### Foreign investor entry restrictions persisted in 2024

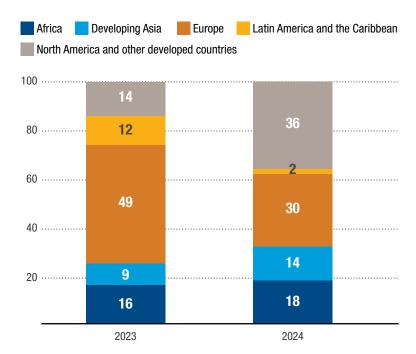
Measures less favourable to investors by category (Percentage)





#### Developed countries adopted most investment restrictions in 2024

Measures less favourable to investors by region (Percentage)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2025.

Note: Other developed countries include Australia, Japan, New Zealand and the Republic of Korea.

A notable shift in 2024 is the changing geography of investment restrictions (figure II.13). In 2023, European countries accounted for nearly half of all restrictive policy measures. This share declined to 30 per cent in 2024, while other developed countries – primarily Canada and the United States – became the main adopters of measures less favourable to investors, representing 36 per cent of the total.

Within developing countries, distinct regional patterns emerged in 2024. Developing Asia accounted for 14 per cent of all restrictive measures (up from 9 per cent in 2023), with entry-related regulations specifically targeting foreign investors on the rise. In Africa, restrictive measures affecting investor entry, treatment and operation remained general in nature, without specifically targeting

foreign investors. In Latin America and the Caribbean, regulatory activity was minimal.

#### a. Entry

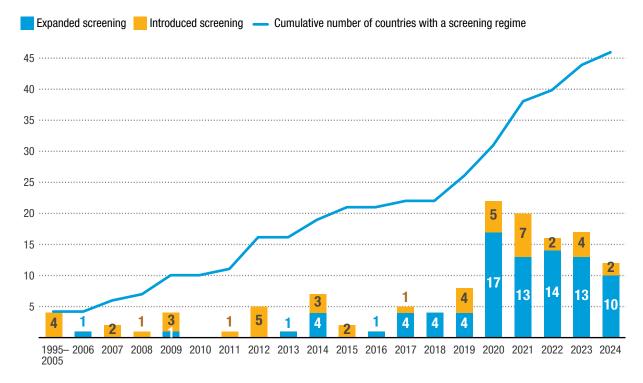
#### i. Investment screening for national security

In 2024, new or expanded measures to screen investment for national security accounted for 43 per cent of all restrictive investment measures, on par with 2023. Developed countries led the trend, introducing most of the new measures. New screening frameworks in Bulgaria and Singapore have raised the total number of countries with comprehensive investment screening regimes to 46 (figure II.14.2)

The database has been updated to include the FDI screening regimes of Andorra, Fiji and the Republic of Moldova, which were previously omitted from the Investment Policy Monitor. The screening regime introduced in 2024 by Kosovo (United Nations Administrative Region, Security Council Resolution 1244 (1999)) is excluded from the calculations.



#### Screening regimes continued to gain ground in 2024 Countries introducing or expanding security-related investment screening (Number)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2025.

Countries that implement FDI screening for national security now account for 71 per cent of global FDI flows and 80 per cent of FDI stock.

The boundary between traditionally defined national security sectors and purely economic industries is increasingly blurring, as technology becomes central to geopolitical competition. This shift has prompted major economies to tighten their FDI screening mechanisms to maintain technological leadership and ensure resilient supply chains (see chapter IV). In 2024, the Republic of Korea, for instance, expanded its FDI screening regime by adding "national high-tech strategic technologies" to the list of sectors requiring security reviews. Japan broadened its screening framework to include industries related to semiconductor manufacturing, advanced electronic components, machine tool components and marine engines, aiming to secure supply

chains and maintain industrial resilience. The United States reinforced its focus on high-priority technologies, particularly those related to artificial intelligence, clean energy and other security-critical innovations. It also emphasized protecting critical infrastructure, addressing supply chain vulnerabilities and preventing illicit access to sensitive information.

Concerns about access to personal, genetic and biometric data have also led to expanded scrutiny. Canada, for example, revised its screening regime to factor in intellectual property developed with Government support and the protection of personal information. In Sweden, the regime was expanded to cover public electronic communication services, data programming, educational platforms and biometric data handling. Another key area of concern is access to critical raw materials, particularly those necessary for a sustainable energy

### **Chapter II**Investment policy trends

transition. In 2024, Canada introduced stricter monitoring of foreign investments in critical minerals operations deemed vital for economic security and the transition to a low-carbon economy. France expanded its foreign investment controls to include activities related to critical raw materials, as well as research and development in photonics and low-carbon energy.

At the same time, screening frameworks continued to evolve to address vulnerabilities in traditional national security sectors.

France, for instance expanded its foreign investment screening to prison security. Australia and the United States imposed new restrictions on investment near sensitive government facilities.

Finally, some European Union countries have adopted a more stringent approach to intra-European Union investments. Czechia, for instance, established a requirement that all investors notify acquisitions in critical energy infrastructure, and Romania extended sanctions for non-compliance with the notification requirements of their screening regime to European Union investors.

Table II.1 presents investment screening data compiled by UNCTAD from country surveys and official sources. Only an average 1.6 per cent of projects that undergo screening are prohibited or require divestment (in Canada, this figure stands at 5 per cent, while in the United States, it is 0.3 per cent). Conversely, 13 per cent are either conditionally approved or subjected to mitigation measures imposed by the screening authority. Countryspecific figures differ sharply (e.g. Germany at 52 per cent and the United States at 29 per cent). Furthermore, 10 per cent of projects under review are withdrawn by the investor. Although some withdrawals may be driven by commercial considerations, others occur when investors are unable to

resolve national security concerns raised by the screening authority and anticipate a likely rejection. Withdrawal rates, too, vary by country – exceeding 20 per cent in Canada, Germany and the United Kingdom.

The adoption and expansion of FDI screening regimes is set to continue. In 2024, Cyprus, Greece, Iceland and Switzerland all continued consultations on their proposed FDI screening frameworks. The European Union is also advancing economic security initiatives, including policies on both inward and outward FDI. The European Commission's 2024 proposal to reform the FDI screening framework highlights the need for all Member States to establish ex ante screening mechanisms and recommends broadening the scope of national regimes to include intra-European Union transactions involving foreign-controlled entities.3

The Standing Committee of the European Free Trade Area States submitted comments that emphasized the importance of a balanced approach and cautioned that any new legislation should not create trade barriers, market fragmentation or discriminatory effects within the internal market of the European Economic Area.<sup>4</sup>

In the United States, the America First Investment Policy adopted in February 2025, proposes to significantly expand the scope of both inward and outward FDI screening (box II.4).

In 2025, UNCTAD added a catalogue of investment screening laws to its Investment Laws Navigator. This platform provides a comprehensive mapping of key aspects of screening frameworks across various countries, offering insights into regulatory approaches, procedural requirements and policy considerations.

Adoption and expansion of FDI screening regimes is set to continue

Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council, <a href="https://eur-lex-europa.eu/legal-content/EN/TXT/?uri=CELEX:52024PC0023">https://eur-lex-europa.eu/legal-content/EN/TXT/?uri=CELEX:52024PC0023</a>.

European Economic Area, EEA EFTA Comment on the Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council, <a href="https://www.efta.int/sites/default/files/uploads/2025-02/EEA%20EFTA%20Comment%20-%20Screening%20Proposal.PDF">https://www.efta.int/sites/default/files/uploads/2025-02/EEA%20EFTA%20Comment%20-%20Screening%20Proposal.PDF</a>.



#### Table II.1

#### Few screened investment projects are rejected

Investment projects undergoing screening for national security, selected countries (Number)

Modified or authorized

Country	Period	Screened <sup>a</sup>	Authorized <sup>b</sup>	with conditions	Rejected	Withdrawn
Belgium	7/2023–12/2024	8	98	1	0	1
	2022	35	24	0	3	8
Canada	2023	28	19	0	2	7
	2024	31	11	2	0	9
Czechia	2022	13	7	0	0	3
	2023	28	18	0	0	1
	2024	21	20	0	0	0
	2019–2021	119		38		
Germany	2022	27		13		
defilially	2023	20	248	12	0	6
	2024	18	231	8	0	2
Hungary	2023–2024	19	17	0	2	0
	2019–2020	425	174	53	2	
Italy	2021	496	183	26	3	1
italy	2022	608	242	18	4	3
	2023	577	225	28	2	2
	2021	81	2	6	2	0
Malta	2022	22	0	10	1	3
	2023	20	1	2	0	3
Slovakia	2023	11	6	0	0	0
Siovakia	2024	10	14	0	0	0
	2019–2021	100	91	9	0	2
Spain	2022	78	67	9	1	1
	2023	109	105	12	4	4
	2024	113	106	9	1	6
United Kingdom <sup>d</sup>	4/2022-3/2023	65	57	9	5	11
omicu Kiliyuulii	4/2023–3/2024	41	23	5	0	10
	2021	130		31	0	11
United States	2022	163		52	0	20
	2023	128		43	0	14

Source: UNCTAD, based on official sources and country inputs.

*Notes:* Data may differ from previously published figures as a result of adjustments and corrections for prior periods. Includes data only from countries that report sufficient details to measure key indicators such as rejection rates, conditional approvals or other parameters required for cross-country comparison.

<sup>&</sup>lt;sup>a</sup> Screened transactions are those that underwent extended review by the respective authorities.

<sup>&</sup>lt;sup>b</sup> Authorized projects do not include projects modified or authorized with conditions.

 $<sup>^{\</sup>circ}$  For Germany (2019–2022), conditions include prohibitions, side conditions, public legal contracts and administrative orders.

 $<sup>^{\</sup>mbox{\tiny d}}$  The review mechanism applies equally to domestic and foreign parties.



The America First Investment Policy adopted by the United States on 21 February 2025 is a two-pronged strategy that prioritizes economic and national security interests. The policy promotes FDI from some countries by streamlining security and environmental reviews and assigning additional administrative resources towards facilitating investment from partner countries, while simultaneously restricting FDI from other economies.

#### FDI promotion and facilitation measures

The policy establishes an expedited, fast-track review process for investment originating from specified countries, particularly in sectors such as advanced technology. Such investment remains subject to appropriate security safeguards.

To encourage large-scale investment, the policy mandates accelerated environmental reviews for projects worth more than \$1 billion. In addition, an Investment Accelerator, announced on 31 March 2025, will support and streamline such high-value investment by reducing regulatory hurdles, enhancing access to national resources, facilitating research collaborations with national laboratories and coordinating efforts across federal agencies and state governments.

More administrative resources will be directed towards facilitating investment from partner countries.

#### **FDI** restriction measures

To safeguard critical sectors – such as technology, infrastructure, healthcare, agriculture, energy and raw materials – the policy directs the use of legal instruments, including the Committee on Foreign Investment in the United States, to limit investment from certain foreign countries. The policy proposes expanding the Committee's jurisdiction to include greenfield investment, especially in such sensitive sectors as artificial intelligence.

The policy indicates that for investment from certain countries, the use of open-ended mitigation agreements (agreements to address national security concerns deriving from foreign investment through compliance obligations) will cease.

The policy also seeks to restrict certain countries' access to United States talent and operations in sensitive technologies (especially artificial intelligence).

#### **Outward FDI**

The America First Investment Policy outlines a framework for reviewing and potentially expanding restrictions on outward investment. Specifically, it targets the following:

"Sectors such as semiconductors, artificial intelligence, quantum, biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and other areas implicated by the PRC's national Military-Civil Fusion strategy" (ad litteram).

An expanding range of investment types, including private equity, venture capital, greenfield investment, corporate expansion and investment in publicly traded securities, from sources including pension funds, university endowments and other limited-partner investors.



#### International investment in the digital economy

Tax-related incentives to further discourage United States persons from investing in certain foreign countries.

The measures outlined in the directive are to be implemented through appropriate administrative actions by relevant authorities, including the Committee on Foreign Investment in the United States. They may require legislative or other necessary interventions.

Source: America First Investment Policy (accessible at <a href="https://www.whitehouse.gov/">https://www.whitehouse.gov/</a> presidential-actions/2025/02/america-first-investment-policy/).

#### ii. Other entry-related measures

Other types of entry-related measures adopted in 2024 accounted for 21 per cent of all policies less favourable to investors, down from 27 per cent in 2023. Developing countries adopted more than two thirds of these restrictions, which aimed primarily to strengthen State oversight in critical sectors. Angola, for instance, banned foreign investment in mining and in oil and gas within natural reserves. Burkina Faso revamped its Mining Code to require partial local ownership, strengthening national stakes in resource extraction. Kazakhstan imposed new financial guarantees for land allocation in investment projects, ensuring greater State control. Mexico expropriated a hydrogen plant, citing concerns about national energy security. Oman reserved 28 additional business activities for local investors, ranging from handicrafts to traditional products. Meanwhile, Viet Nam tightened regulations on foreign investment in education, requiring universities to meet local facility and faculty standards before granting accreditation.

#### b. Treatment and operation

Treatment and operation provisions represented 36 per cent of policy measures less favourable to investors in 2024. They aimed at increasing transparency in ownership structures and corporate operations, imposing additional taxation on investment or reducing certain incentives.

Transparency has emerged as a central theme. The Republic of Korea introduced new requirements for foreign companies listed on the Composite Stock Price Indexes to disclose key business information in English, covering aspects such as dividends, capital changes and major decision-making processes. Similarly, the United States now requires companies to report their beneficial owners to the Financial Crimes Enforcement Network, with exemptions for certain entities such as banks and tax-exempt organizations.

Some countries have implemented additional taxation measures affecting foreign investors or have withdrawn previously established incentives. For instance, in 2024 Kenya introduced a 10-year cap on incentives for SEZ developers, and the United Arab Emirates imposed an annual 20 per cent tax on the taxable income of foreign banks.

In addition, stricter regulatory requirements have been introduced in various areas. Angola, for example, tightened environmental regulations for investment projects in protected areas. In Burkina Faso, post-establishment provisions for local content were introduced in the minerals sector, including the creation of a fund to support local content development. The United States enhanced protections for sensitive personal data to prevent access by countries of concern through investment, vendor or employment relationships.

As of 31 March 2025, at least 49 countries, primarily developed economies in Europe,

### Chapter II Investment policy trends

had adopted legislation integrating the Pillar Two model rules of the Organisation for Economic Co-operation and Development (OECD) in their national laws.<sup>5</sup>

Known as the Global Anti-Base Erosion model rules, this international tax framework is designed to ensure that multinational companies with annual revenues over €750 million are subject to a minimum effective tax rate of 15 per cent on any excess profits arising in each jurisdiction where they operate. However, recent policy developments – such as the United States withdrawing from the Pillar Two discussions and suggesting the introduction of retaliatory measures against countries that implement the global minimum tax on United States companies<sup>6</sup>— may alter the course of international tax reform efforts.

Restrictions on OFDI in sectors related to national security are gaining prominence in developed countries (UNCTAD, 2024c). In October 2024, the United States issued a Final Rule implementing an earlier executive order on outbound investment. The order prohibits certain outward investment in China and requires notifications for others in semiconductors, quantum technologies and artificial intelligence, covering various investment types and intangible benefits such as managerial support and market access. The America First Investment Policy of February 2025 proposed additional restrictions on OFDI (see box II.4).

In parallel to developments in the United States, at the European Union level, following the adoption of the White Paper on Outbound Investments in January 2024, the European Commission in January 2025 recommended that Member States review outbound investment in critical technologies. The recommendation urges the establishment of mechanisms to monitor outward investment transactions, assess technology leakage risks, and evaluate geopolitical and supply chain impacts.

Recent policy developments may alter the course of international tax reform efforts

Based on data from the PricewaterhouseCoopers Pillar Two Country Tracker, accessed on 3 April 2025, https://www.pwc.com/gx/en/tax/international-tax-planning/pillar-two/pwc-pillar-two-country-tracker-summary-v2.pdf.

Memorandum of the President of the United States dated 20 January 2025 regarding the Organisation for Economic Co-operation and Development (OECD) Global Tax Deal, accessed on 3 April 2025, https:// www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-anddevelopment-oecd-global-tax-deal-global-tax-deal/.

### **B.** International investment policies

The divergence between old and new international investment agreements (IIAs) continued to widen in 2024. New agreements are turning to proactive facilitation and cooperation, with relatively reduced reliance on investor–State dispute settlement (ISDS). Yet most of them are implemented alongside an aging network of unreformed treaties that limit regulatory space for key policy areas, including e.g. public health, climate change and digitalization. The ISDS case count reached 1,401 at the end of 2024, with the bulk of cases arising in the past 15 years. About 60 per cent of all ISDS cases involved damages claims of \$100 million and higher, including 143 cases in which investors sought more than \$1 billion. Building on the momentum to reform the international investment regime, and on its core policy guidance tools, UNCTAD is developing a set of guiding principles to facilitate the reform of IIAs for sustainable development.

#### 1. Trends in international investment agreements

## a. Conclusion and termination of investment agreements

In 2024, countries concluded at least 17 bilateral investment treaties (BITs) and 13 broader economic treaties with investment provisions (TIPs). This brought the size of the IIA universe to 3,323 (2,843 BITs and 480 TIPs). In addition, at least 22 IIAs entered into force and 4 were terminated, bringing the total number of IIAs in force to at least 2,625 at the end of the year. Continuing the trend from previous years, most IIAs concluded in 2024 were implemented alongside existing agreements rather than replacing them. This leaves the IIA universe dominated by treaties signed in the 1990s and 2000s, thereby raising the risk of investor-State disputes (figure II.15).

Developing economies were signatories to all 30 of the IIAs concluded in 2024. The United Arab Emirates concluded at least nine agreements, followed by India (four), Türkiye (four) and China (three). Developed economies concluded 11 agreements. Of those, Australia signed three and the Republic of Korea two. In addition, two agreements were concluded by regional organizations – the European Union and the European Free Trade Association (EFTA).

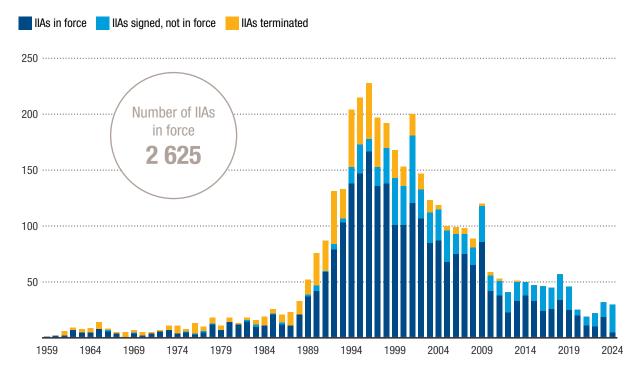
As in the past four years, in 2024 the importance of TIPs in comparison to BITs continued to grow, both in terms of numbers and based on the number of new treaty relationships that they created. The regional coverage of three of the TIPs signed in 2024 created a treaty relationship among 47 countries.<sup>7</sup>

The European Union-Kyrgyzstan Enhanced Partnership and Cooperation Agreement (2024), the EFTA-India Trade and Economic Partnership Agreement (TEPA) (2024) and the Indo-Pacific Economic Framework for Prosperity Agreement Relating to a Clean Economy (2024).



## Agreements from the 1990s and 2000s continued to dominate the international investment regime

Number and status of agreements by year of signature



Source: UNCTAD, IIA Navigator database, accessed 24 March 2025.

Note: The UNCTAD IIA Navigator is updated continuously as new IIA-related information becomes available. Abbreviation: IIA, international investment agreement.

After the high number of terminations in 2020–2022 related to the coordinated termination of BITs between Member States of the European Union (UNCTAD, 2021; UNCTAD, 2022b; UNCTAD, 2023), the annual number of terminations in the past two years slowed down. Of the four IIAs terminated in 2024, two were terminated by consent, one was unilaterally denounced and one was replaced by a new agreement.

This brought the total number of terminations to at least 592 by the end of 2024. About 70 per cent of them took place in the last decade (figure II.16). Whereas in earlier decades the majority of terminated IIAs were replaced by new ones, in the last decade only 11 per cent of terminations have led to replacements. Notably, IIAs between developed economies, which represent less than 20 per cent of the

IIA universe, account for 58 per cent of terminations without replacement in this period. Of the total number of IIAs terminated without replacement, 52 per cent were terminated by consent, 43 per cent were unilaterally denounced and the remaining 4 per cent expired. Terminations by consent mostly concerned IIAs among developed economies (95 per cent), while unilateral denunciations and expirations were prevalent methods for IIAs with developing-country participation (94 per cent).

Under sunset clauses, IIAs may continue to protect investments in existence at the time of termination or withdrawal and may grant investors access to ISDS for up to 25 years. In view of this risk, most terminations by consent included a provision neutralizing the sunset clause in the agreement (94 per cent).8

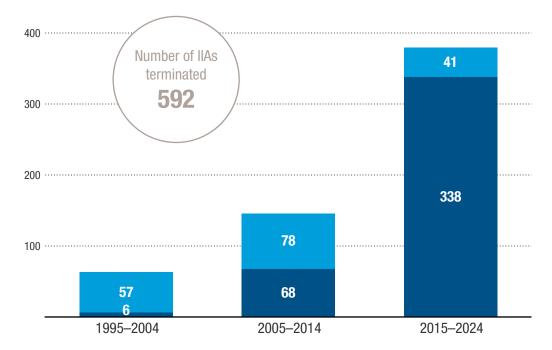
<sup>&</sup>lt;sup>8</sup> Based on 206 IIAs for which information on the termination process was available.



## The past decade has seen few replacements of old-generation agreements

Number of terminations by decade





Source: UNCTAD, IIA Navigator database, accessed 24 March 2025.

Abbreviation: IIA, international investment agreement.

## b. Developments in the content of investment agreements

IIAs concluded between 2020 and 2024 exhibit five salient trends:9

- IIAs increasingly incorporate more proactive commitments aimed at cooperation, facilitation and promotion of investment.
- 2. Traditional investment protection standards are becoming more refined.
- 3. Liberalization commitments are on the rise.

- 4. ISDS is becoming less prominent.
- 5. Attention to sustainable development in IIAs continues to increase.

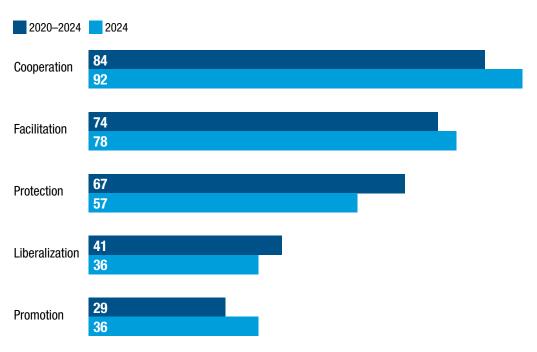
## i. Cooperation, facilitation and promotion

IIAs concluded in the period between 2020 and 2024 continued to incorporate more proactive provisions on facilitation, cooperation and promotion compared with old-generation IIAs, which typically focused on protection (figure II.17).

<sup>9</sup> IIA texts often become available only upon entry into force (often two and sometimes more years after signature). Analysing the content of IIAs signed in the past five years provides a clearer analysis of the relevant trends.



# The content of investment agreements has continued to evolve Agreements signed by type of provision, 2020–2024 (Percentage)



Source: UNCTAD, IIA Navigator database, accessed 24 March 2025.

Note: Based on 75 IIAs with investment content for which texts are available, 14 of which were signed in 2024. Abbreviation: IIA, international investment agreement.

#### Cooperation

More than 80 per cent of IIAs concluded since 2020 contain cooperation provisions. They provide for an institutional mechanism for cooperation, such as an investment committee or a consultation process. In addition, a growing number of IIAs are becoming platforms for lasting engagement and cooperation between relevant domestic institutions on questions of common interest and they set schedules and targets for joint activities in sectors of particular relevance to the contracting parties. This can be done through novel green economy agreements that focus strongly on cooperation provisions (such as the Indo-Pacific Economic Framework Clean Economy Agreement (2024)) or chapters in broader TIPs (such as the European Union-Kenya Economic Partnership Agreement (EPA) (2023)). About a third of the IIAs analysed include such topic-specific cooperation

provisions, often referring to infrastructure, information and communication technology and digitalization, agriculture, the blue economy, or renewable energy. In other agreements, cooperation goals are defined as part of joint working programmes (e.g. the Brazil-India BIT (2020)) or under complementary memorandums of understanding (e.g. the Australia-United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA) (2024) includes six memorandums on investment cooperation on data centres and artificial intelligence projects, food and agriculture, green and renewable energy, and infrastructure development, as well as in the minerals sector).

#### **Facilitation**

Of IIAs signed in the past five years, 74 per cent contain commitments on investment facilitation. Most commonly, facilitation provisions require transparency of the investment framework or other improvements to the regulatory environment, as well as improvements to the procedures for entry of investors and/or their key personnel. A small but growing number of such provisions call more specifically for the streamlining of administrative procedures (e.g. the Regional Comprehensive Economic Partnership (RCEP) (2020)) and for digitalization of investment procedures (e.g. the Angola–European Union Sustainable

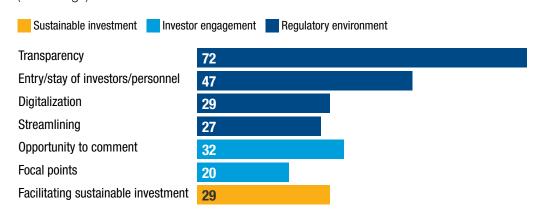
Investment Facilitation Agreement (SIFA) (2023)), mirroring the types of domestic facilitation measures known to be effective in improving the investment climate. Less than 30 per cent of facilitation commitments directly target sustainable investment, and a still smaller share include provisions that prescribe more specific actions in this respect (e.g. the African Continental Free Trade Agreement (AfCFTA) Investment Protocol (2023)) (figure II.18).



#### Figure II.18

### Investment facilitation continued to gain ground in investment agreements

Agreements signed by facilitation feature, 2020–2024 (Percentage)



Source: UNCTAD.

Note: Based on 75 IIAs for which texts are available. Abbreviation: IIA, nternational investment agreement.

#### **Promotion**

While remaining modest, the share of promotion provisions has more than doubled compared with old-generation IIAs. These provisions often complement facilitation ones (as in the Sri Lanka–Thailand Free Trade Agreement (FTA) (2024)) or constitute the focus of the cooperation provisions in the agreement (as in the Chile–United Arab Emirates CEPA (2024)). Some recent IIAs include commitments to promote investment with a view to achieving specific levels of investment flows (e.g. the EFTA–India Trade and Economic Partnership Agreement (2024)).

#### ii. Protection

Investment protection standards increasingly include refinements aimed at safeguarding the State's right to regulate, including for the provisions that are most commonly invoked in ISDS – the fair and equitable treatment (FET) standard and indirect expropriation. Most notably, close to 50 per cent of the IIAs with protection standards signed in the past five years replace the FET standard with a closed list of obligations (e.g. the Australia–United Arab Emirates BIT (2024), the Chile–European Union Advanced Framework Agreement (AFA) (2023), the

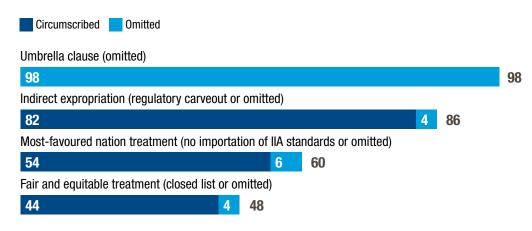
AfCFTA Investment Protocol (2023) and the Serbia–Türkiye BIT (2022)) or omit it (e.g. the Bolivarian Republic of Venezuela–Colombia BIT (2023) and the MERCOSUR (Southern Common Market)–Singapore FTA (2023)). More than 70 per cent provide a carveout from expropriation provisions for generally applicable regulatory measures

and refine the scope of application of non-discrimination standards, thus limiting the systemic implications of the most-favoured-nation clause. Umbrella clauses, which could extend protection offered by the treaty to non-treaty commitments made by the host State, are omitted in almost all IIAs analysed (figure II.19).



#### Figure II.19

**Protection standards increasingly safeguard regulatory space**Agreements signed by type of protection standard, 2020–2024
(Percentage)



Source: UNCTAD, IIA Navigator database, accessed 24 March 2025.

Note: Based on 50 IIAs with investment protection provisions for which texts are available.

Abbreviation: IIA, international investment agreement.

#### iii. Liberalization

The share of IIAs that include investment liberalization provisions is also growing. Forty per cent of IIAs concluded since 2020 contain pre-establishment provisions that commit to removing entry restrictions and conditions for new investments from the IIA counterparty. They typically provide national treatment and most-favoured-nation treatment for the admission of investment, often based on a negative-list approach. Two thirds of these IIAs also prohibit the imposition of performance requirements as a condition for entry of an investment. In a related upward trend, compared with old-generation IIAs, performance requirements specific to the operation of

the investment are prohibited in about 18 per cent of IIAs analysed that provide solely for post-establishment protection of the investment (e.g. the Türkiye-United Arab Emirates BIT (2022)). Some countries have excluded strategic sectors or resources, including critical minerals, from liberalization commitments to ensure sufficient policy space for the management of these resources (e.g. Chile-European Union AFA (2023)). Carefully crafted flexibilities are of particular importance in liberalization commitments, including as they pertain to performance requirements, to ensure that IIAs can support the development of priority sectors of the economy without negatively affecting local enterprises or stifling technology transfer and diffusion.

#### iv. Investment dispute settlement

In recent IIAs, reliance on investor-State arbitration has become less common: 45 per cent of those concluded in the past five years do not contain any ISDS provisions (figure II.20). The trend is prevalent in TIPs - 80 per cent of which do not contain such a mechanism - and is present in certain BITs as well (such as the Australia-United Arab Emirates BIT (2024) and the Brazil-India BIT (2020)).

Two complementary developments have contributed to this trend. First, with the greater share of IIAs focusing on facilitation, cooperation and liberalization, it is natural that ISDS - which emerged in relation to protection provisions of IIAs - is less prominent. IIAs that include only provisions on facilitation, cooperation or liberalization consistently opt for amicable dispute resolution mechanisms and/or State-State dispute settlement (see e.g. the Angola-European Union SIFA (2023), the Indo-Pacific Economic Framework Clean Economy Agreement (2024), the Türkiye-United Arab Emirates CEPA (2023), the European Union-New Zealand FTA (2023) and the EFTA-Moldova FTA (2023)). Where such provisions exist in IIAs that include protection provisions and ISDS,

they are commonly excluded from the scope of ISDS as well. This is the case for the majority of facilitation commitments (e.g. the Indonesia-Switzerland BIT (2022), the Cabo Verde-Morocco BIT (2023) and the Sri Lanka-Thailand FTA (2024)) and of a growing share of liberalization commitments (e.g. the Chile-European Union AFA (2023), the China-Nicaragua FTA (2023), the Indonesia-Republic of Korea FTA (2020), the Israel-Viet Nam FTA (2024) and the Sri Lanka-Thailand FTA (2024)).

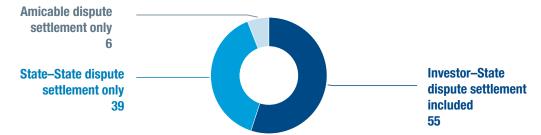
Second, the broad consensus on the need to reform the investor-State arbitration system drives new and more cautious approaches to dispute settlement in relation to protection provisions as well. Since 2020, half of the TIPs with protection content and one in five IIAs overall have opted for only State-State dispute resolution (as in the Australia-United Arab Emirates BIT (2024), the MERCOSUR-Singapore FTA (2023), the New Zealand-United Kingdom FTA (2022) and the Costa Rica-Ecuador FTA (2023)) or deferred negotiations on a possible ISDS mechanism (as in the RCEP (2020) and the AfCFTA Investment Protocol (2023)). Some countries also opted for a two-tier standing tribunal, moving away from the ad hoc arbitration system (e.g. the Chile-European Union AFA (2023)).



#### Figure II.20

#### Close to half of recent investment agreements did not include investor-State arbitration

Agreements signed by type of dispute settlement included, 2020-2024 (Percentage)



Source: UNCTAD.

Note: Based on 75 IIAs for which texts are available. Abbreviation: IIA, international investment agreement. IIAs concluded since 2020 that allow for ISDS also more commonly contain improvements to the dispute settlement process. Nevertheless, broad consent to arbitration with few procedural refinements continues to appear in some IIAs.

## v. Sustainable development features

IIAs concluded since 2020 contain a variety of sustainable development provisions (figure II.21).

#### Right to regulate

The most common sustainable development-oriented provisions in IIAs remain safeguards to the right to regulate. Notably, the majority of recent IIAs contain public policy exceptions for the protection of the environment, health and labour standards (e.g. the Chile–European Union AFA (2023) and the Sri Lanka–Thailand FTA (2024)). At times IIAs also adopt a

novel approach to exceptions, adapted to each protection standard (as in the AfCFTA Investment Protocol (2023)).

#### Sustainable development cooperation

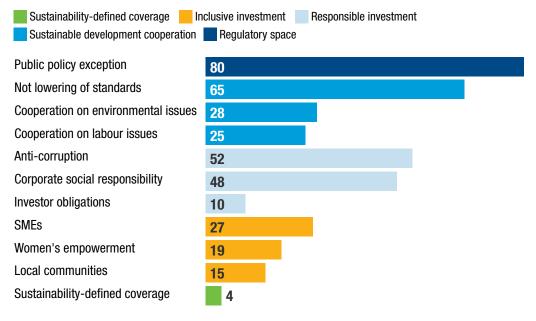
The most common provision on investment and sustainable development is the not lowering of standards provision, present in two thirds of IIAs analysed. Examples of more specific commitments include requirements for human capital development (as in the EFTA-India Trade and Economic Partnership Agreement (2024)), environmental and social impact assessment (as in the Canada-Ukraine Modernized FTA (2023)) or cooperation on investmentrelated climate measures and technologies (as in the Australia-United Arab Emirates CEPA (2024) and the European Union-New Zealand FTA (2023); see also the Italy Model BIT (2024)). Such more detailed and proactive commitments continue to appear in less than a third of IIAs.



#### Figure II.21

### More remains to be done to mainstream sustainable development in investment agreements

Agreements signed by sustainable development feature, 2020–2024 (Percentage)



Source: UNCTAD.

Note: Based on 75 IIAs for which texts are available. Abbreviation: SMEs, small and medium-sized enterprises.

#### Responsible investment

About half of IIAs signed since 2020 contain responsible investment provisions. This shift represents a welcome development, vet the most common provisions on responsible business conduct - those on anti-corruption requirements and corporate social responsibility - remain soft references, applicable at the inter-State level. So far they have had limited effect in investor-State disputes. The small but growing share of IIAs that include direct investor obligations may offer a more effective tool for rebalancing investors' rights and obligations in that context. About 10 per cent of treaties signed during 2020-2024 include such obligations - on anti-corruption, transparent corporate governance practices, the environment, labour, local communities or taxation (e.g. the Belarus-Zimbabwe BIT (2021), the Brazil-India BIT (2020), the Indonesia-Switzerland BIT (2022), the AfCFTA Investment Protocol (2023) and the Cabo Verde-Morocco BIT (2023)).

#### Inclusive investment

Among the most recent developments in IIA drafting is a nascent trend towards encouraging traditionally disadvantaged economic actors or communities to benefit from the opportunities created by international trade and investment agreements. Most common among these provisions are commitments related to small and medium-sized enterprises (as in the RCEP (2020)), women's empowerment and gender (as in the Angola-European Union SIFA (2023)) and local communities (as in the Australia-United Arab Emirates CEPA (2024) and the AfCFTA Investment Protocol (2023)). Other inclusive investment commitments refer to the needs of persons with disabilities (e.g. the Australia-United Kingdom FTA (2021)) and youth (e.g. the AfCFTA Investment Protocol (2023)). IIAs with such commitments typically provide for joint promotion activities and cooperation, through dedicated information channels supporting the use of the IIA advantages

(as in the Costa Rica–Ecuador FTA (2023)). They may also encourage the establishment of accessible financial support and mechanisms for local supplier linkages for small and medium-sized enterprises (as in the Kenya–United Kingdom EPA (2020) or provide for not lowering of standards regarding gender equality laws (as in the Canada–Ukraine Modernized FTA (2022)).

#### Sustainability-defined coverage

Notably, 96 per cent of recent IIAs continue to cover investors and investments across all economic sectors and do not condition treaty application on the sustainable development impact or performance of the investments. Under the handful of recent IIAs that break away from that trend, investment coverage is at times contingent on specific conditions: the contribution of the investment to the sustainable development of the host State (as in the AfCFTA Investment Protocol (2023)), the exclusion of certain assets from coverage (as in the modernized Energy Charter Treaty (ECT) (2024)) or, for cooperation-focused agreements, sector-specific proactive measures defined in line with the shared priorities of treaty partners (as in the Indo-Pacific Economic Framework Clean Economy Agreement (2024) and the Australia-Singapore Green Economy Agreement (2022)).

# c. Other developments related to international investment rule-making

In July 2024, the United Nations
Commission on International Trade Law
(UNCITRAL) adopted in principle the Statute
of the Advisory Centre on International
Investment Dispute Resolution. The year
witnessed progress in negotiations at the
UNCITRAL Working Group III on ISDS
reform that addressed other topics as
well, including procedural and crosscutting issues, the draft statute for the
standing mechanism for ISDS and the
multilateral ISDS reform instrument.

The 2024 Brazil Presidency of the Group of 20 identified sustainable development in IIAs as one of the key priorities for the Trade and Investment Working Group (box II.5). For the purpose of informing the discussions of the Group, UNCTAD provided a document Mapping Sustainable Development and Investment Facilitation Provisions in IIAs Concluded by G20 Members and Invited Countries. The report includes inputs from the Organisation for Economic Co-operation and Development (OECD). Key findings of the report, annexed to the Group of 20

Leaders' Declaration, were the growing presence of sustainable development and the stronger focus on investment facilitation considerations in recent IIAs.

The text of the Investment Facilitation for Development (IFD) Agreement was finalized during the Ministerial Conference of the World Trade Organization (WTO) in February 2024. In October 2024, IFD-participating members of the WTO formally requested the incorporation of the IFD Agreement into Annex 4 of the WTO Agreement.<sup>10</sup>



### Box II.5

## Sustainable development and facilitation in investment agreements in focus in the Group of 20

The 2024 Brazilian Presidency of the Group of 20 defined "sustainable development in international investment agreements" as a priority for the 2024 work of the Trade and Investment Working Group. The group's discussions and ministerial deliberations on trade and investment were informed by an UNCTAD report mapping and analysing IIAs concluded by Group of 20 members and the 15 invited countries.

Annex 1 to the Group of 20 Leaders' Declaration on Trade and Investment welcomed the report as "contributing to ongoing discussions on creating an international Investment welcomed the report policy environment that fosters sustainable development and as a reference for countries, where relevant, when designing future IIAs" (p. 2).

The report is based on UNCTAD data on more than 1,700 agreements and incorporates additional information from OECD. It documents the evolution towards greater attention to sustainable development and proactive facilitation provisions seen in recent IIAs concluded by members of the Group of 20. It also notes the divergence between these recently concluded IIAs and earlier treaties, which do not systematically address sustainable development and investment facilitation but which account for 85 per cent of IIAs in force among Group of 20 members.

Building on the outcomes of the Brazilian Presidency, the 2025 South African Presidency called on UNCTAD to develop a toolbox of voluntary, non-prescriptive policy options related to IIAs to be used to leverage investment to meet three critical policy objectives: cleaner energy, digital transformation and better public health.

Source: UNCTAD, based on various sources. See also https://unctad.org/publication/mapping-sustainable-development-and-investment-facilitation-provisions-iias-concluded and https://g20.gov.br/en/documents/sherpa-track.

World Trade Organization, Communication from the Members parties to the Investment Facilitation for Development Agreement to the General Council on the Incorporation of the Investment Facilitation for Development Agreement into annex 4 of the WTO Agreement, WT/GC/W/927/Rev.2, 14 October 2024, https://docs.wto.org/dol2fe/Pages/FE\_Search/FE\_S\_S006.aspx?DataSource=Cat&query=@Symbol=%22WT/GC/W/927/Rev.2%22%20OR%20@Symbol=%22WT/GC/W/927/Rev.2/\*%22&Language=English&Context=ScriptedSearches&languageUIChanged=true.

## International investment in the digital economy

The Energy Charter Conference adopted several decisions relating to the modernization of the ECT, including substantial amendments to the treaty, on 3 December 2024. The amendments are set to become effective on a provisional basis starting in September 2025. At least seven contracting parties - Belgium, Estonia, Finland, Japan, Lichtenstein, Lithuania and Switzerland - have opted out of the provisional application and will apply the amendments upon ratification only. Earlier in 2024, the European Union and the Kingdom of the Netherlands sent their notifications of withdrawal from the treaty to the ECT Depositary, and the

withdrawals of Luxembourg and Slovenia took effect. The withdrawals of Portugal, Spain and the United Kingdom took effect in 2025 (in February and April).

The Association of Southeast Asian Nations (ASEAN) Economic Community (AEC) is closing its 10-year work programme – AEC Blueprint 2025 and adopting the programme for the next decade. The AEC includes a significant IIA component – updating the existing network of TIPs and negotiating new ones with external partners. UNCTAD, through the ASEAN Investment Report 2024, supported ASEAN in taking stock of AEC 2025 and developing the next 10- year programme (box II.6).



### **Box II.6**

### **ASEAN** continues to reform its investment agreements

The ASEAN Investment Report 2024: ASEAN Economic Community 2025 and Foreign Direct Investment analysed the progress of the AEC Blueprint 2025 implementation. The report evaluates the relationship between regional integration, investment policy development and FDI inflows in ASEAN in the past decade. As a whole, the bloc has attracted record levels of FDI inflows, particularly since 2020. The report, prepared under a technical assistance agreement with UNCTAD, found that the investment environment continued to improve during AEC 2025, underpinned by significant policy developments.

TIPs continue to be a core element of the AEC toolbox, both for internal ASEAN relations and with external partners. In line with global trends, the evolution of ASEAN investment agreements has moved towards giving greater attention to liberalization and facilitation, including updating and consolidating the region's existing instruments.

AEC Blueprint 2025 saw the adoption and implementation of the ASEAN Investment Facilitation Framework (2021), an instrument for facilitating investment in the bloc. ASEAN also worked on expanding and operationalizing liberalization and promotion commitments under the ASEAN Comprehensive Investment Agreement (2009) through the Fourth and Fifth Protocols for its amendment. The Fourth Protocol, in force since 2023, expanded the commitment on prohibition of performance requirements. The Fifth Protocol, signed in 2024, will transition the reservations in the Agreement to a two-annex negative list; it includes the scheduling of the new commitments on performance requirements.

The bloc continued to develop a "global ASEAN" by negotiating new TIPs with external trading partners and reforming existing instruments. This work included conclusion and implementation of the RCEP agreement (2020), consolidating the ASEAN network of investment instruments with its dialogue partners. Amendments in other TIPs, such as the bloc's FTA with Australia and New Zealand (2023) and with Japan (2019), focused on liberalization and reform of investment protection and ISDS content. In April 2025, ASEAN concluded negotiations on the amendment of its FTA with China.

Source: ASEAN Secretariat and UNCTAD (2024).

## **Chapter II**Investment policy trends

In December 2024, at the UNCTADorganized annual High-level IIA Conference,
policymakers and experts discussed
challenges in mainstreaming sustainable
development in the IIA regime. They called
for UNCTAD to develop guiding principles
for sustainable development-oriented IIA
reform (box II.7). The reform of the IIA regime
has been gaining momentum since 2012 but
is also becoming more complex, covering a
broader set of issues related to the need for
policy space and to proactively promoting

and facilitating sustainable investment (UNCTAD, 2024c). Yet, the impact of these changes depends on large-scale action to reform the old-generation agreements that continue to dominate the regime and on better synchronization of reform efforts at all levels of policymaking (national, bilateral, regional and multilateral). Work on these and other aspects of international investment governance continued in various international forums (table II.2).



## **Box II.7 UNCTAD to develop Guiding Principles of IIA Reform**

Following the call from stakeholders at the High-level IIA Conference 2024, UNCTAD is in the process of developing Guiding Principles on IIA Reform, to facilitate IIA reform for sustainable development.

The principles build on the leading role of UNCTAD as the convening forum on IIA reform over the past decade, on the basis of which consensus emerged on the need to reform the international investment regime. More than 130 countries and regional organizations have benefitted from the core policy guidance tools developed by UNCTAD – the Investment Policy Framework for Sustainable Development launched in 2012 and updated in 2015 (UNCTAD, 2015), the IIA Reform Package (UNCTAD, 2018) and the IIA Reform Accelerator (UNCTAD, 2020).

With the increase in IIA reform activity around the world in recent years, countries' experiences offer valuable insights on the effectiveness of different actions. The increasing activity has also translated into novel challenges, such as managing and overcoming fragmented approaches across countries and regions.

Building on UNCTAD expertise and incorporating lessons from the past decade of reform in action, the principles aim to provide a framework that guides international investment policymakers on both the process and the substantive aspects of IIA reform. The overarching goal is to embed sustainable development at the core of the international investment regime, covering all practical steps in the reform process. The principles will support countries in developing an IIA reform strategy, in designing and negotiating reformed IIAs and in operationalizing new-generation IIAs on the ground for maximum impact.

The draft principles will form the basis for discussion at the High-level IIA Conference 2025 and will gather comments from a broad range of stakeholders, including as part of the UNCTAD Multistakeholder Reform Platform.

Source: UNCTAD, based on various sources.



### Table II.2

# Work relating to international investment rule-making in international forums, 2024–2025

Organization or initiative	IIA-related coverage	Most recent outputs and events
AfCFTA	Negotiations, dispute settlement	Negotiations on the investment dispute settlement Annex to the Protocol on Investment
ASEAN	Investment treaty reform and implementation	AEC 2025 implementation progress report
		Amendments to IIAs internal to ASEAN and with external treaty partners
COMESA	Investment treaty reform, alignment with AfCFTA	Draft revising COMESA Common Investment Area Agreement under discussion by Member States (September 2024)
ЕСТ	Investment treaty reform	Decisions relating to ECT modernization adopted (December 2024)
Group of 20 Trade and Investment Working Group	Sustainable development in IIAs	UNCTAD-OECD Trade and Investment Working Group report of mapping key provisions in IIAs related to the Group of 20 (October 2024)
Investment Facilitation for Development, WTO joint statement initiative	Investment facilitation	Request from Member States to incorporate the IFD Agreement into Annex 4 of the WTO Agreement (October 2024)
League of Arab States	Investment agreement reform	Draft of new Arab Investment Agreement under discussion by Member States (July and December 2024, April 2025)
OECD Work Programme on the Future of Investment Treaties	Modernizing investment treaties	OECD-UNCTAD-UNCITRAL investment treaty conference (March 2025)
OIC Intergovernmental Experts Group on ISDS	ISDS, permanent mechanism	Third expert meeting on the establishment of a permanent mechanism for the settlement of investment disputes (October 2024)
UNCITRAL Working Group III	ISDS reform	Draft statute of advisory centre for ISDS adopted (July 2024), followed by meetings on its operationalization (December 2024, May 2025)
		Negotiations on standing mechanism for ISDS, draft multilateral instrument, procedural and cross-cutting issues (latest meeting: April 2025)
UNCTAD		2024 High-level IIA conference (December 2024)
	Sustainable development in IIAs  Policy analysis, technical assistance, consensus building	First and Second meetings of Multi-stakeholder Platform for IIA Reform (February and September 2024)
		Capacity-building and technical assistance on IIA reform provided for more than 90 countries
UNFCCC COP29	IIAs and climate change	Baku Initiative for Climate, Investment and Trade launched, led by the COP presidency and co-facilitated by UNCTAD and UNDP (November 2024)
		Draft papers on trade and investment policies to advance national climate plans under the Paris Agreement, published by UNCTAD (November 2024)
UNIDROIT and ICC Working Group	International investment contracts (codification)	Fourth working group meeting on international investment contracts (November 2024)

Source: UNCTAD, based on various sources.

Abbreviations: AEC, ASEAN Economic Community; AfCFTA, African Continental Free Trade Agreement; ASEAN. Association of Southeast Asian Nations, COMESA. Common Market for Eastern and Southern Africa, COP29, 29th Conference of the Parties to the UNFCCC; ECT, Energy Charter Treaty; ICC, International Chamber of Commerce; IIA, international investment agreement; ISDS, investor–State dispute settlement; OECD, Organisation for Economic Co-operation and Development; OIC, Organization of Islamic Cooperation; UNCITRAL, United Nations Commission on International Trade Law; UNDP, United Nations Development Programme; UNFCCC, UN Framework Convention on Climate Change; UNIDROIT, International Institute for the Unification of Private Law; WTO, World Trade Organization.

## 2. Trends in investor-State dispute settlement

### a. New cases initiated in 2024

In 2024, investors initiated 58 known ISDS cases based on IIAs (figure II.22). Annual caseloads have declined after a peak in 2018. As some arbitrations that are kept confidential at the time of initiation become public later in the proceedings, retroactive upwards adjustments can be expected for 2024 and preceding years. Annual case numbers initially reported between 2015 and 2022 have retroactively increased by about 20 per cent over

time, incorporating previously unknown cases that surfaced after delays.

The total count of treaty-based ISDS cases reached 1,401 at the end of 2024. Three quarters of them were brought between 2010 and 2024.

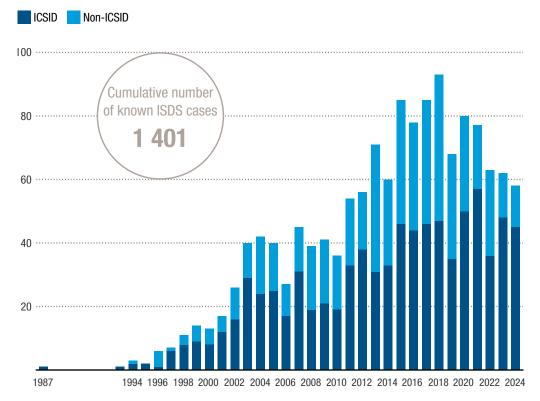
To date, 135 countries and one economic grouping (the European Union) are known to have been respondents to one or more ISDS claims. The new cases in 2024 were initiated against 38 countries. Mexico and the Russian Federation were



### Figure II.22

### The bulk of investor-State dispute settlement cases emerged between 2010 and 2024

Annual number of known treaty-based cases



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Information compiled from public sources, including specialized reporting services. UNCTAD statistics do not cover cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signaled its intention to submit a claim to ISDS but has not commenced the arbitration. Annual and cumulative case numbers are continually adjusted as a result of verification processes and may not exactly match numbers reported in previous years.

Abbreviations: IICSID, International Centre for Settlement of Investment Disputes; ISDS, investor-State dispute settlement.



### International investment in the digital economy

the respondents most frequently named, with four new cases each, followed by Honduras and Panama with three cases. Angola, Burkina Faso and Luxembourg faced their first known ISDS claims.

About 55 per cent of all new cases were brought against developing countries, including six least developed countries (Angola, Burkina Faso, Ethiopia, Mozambique, Rwanda and the United Republic of Tanzania). For context, only about one third of inward FDI stock is in developing economies. Least developed countries had less than 1 per cent of inward FDI stock in 2024.

Developed-country claimants initiated most of the 58 known cases – about 80 per cent. The highest numbers of cases were brought by claimants from the United Kingdom (10) and Canada (7). Investors from developed economies hold the largest share of outward FDI stock globally (about 80 per cent).

The amounts claimed by investors in 2024, disclosed in about one fourth of the cases at the time of research, ranged from \$17 million (Kent Kart v. Serbia) to \$45 billion (A\$69 billion in Zeph v. Australia (III)). At least seven cases involved claims greater than \$1 billion.

The ISDS cases filed in 2024 arose in different economic sectors, with disputes related to extractive and energy supply activities increasing to more than half of the new cases, a larger share than in previous years (figure II.23). Between 1987 (when the first ISDS case based on an IIA was brought) and 2023, one third of ISDS cases related to extractive activities and energy supply.

Five cases in 2024 involved the mining of critical minerals, such as copper (Orla Mining v. Panama, Walnort Finance v. Armenia), lithium (Bacanora Lithium and others v. Mexico), titanium potentially contained in heavy mineral sands deposits (Rome Resources and IM v. Mozambique) and zinc (Vedanta v. India (II)). Several other cases related to the mining of precious metals (e.g. gold and silver).

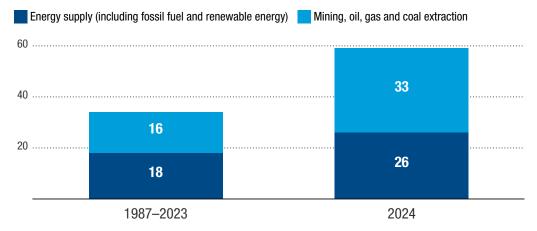
Claimants filed 13 fossil fuel-related cases in 2024, and at least 6 proceedings concerning investment in the renewable energy sector. ISDS cases in fossil fuels and renewable energy are particularly relevant to the sustainable energy transition (box II.8). The share of cases related to renewable energy started growing after 2010. Spain has faced 40 per cent of



### Figure II.23

## The share of disputes about extractive activities and energy supply grew in 2024

Cases in these sectors as a share of all cases (Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Some cases concerned both sectors.

## **Chapter II**Investment policy trends

these cases, which were filed primarily by solar power investors. Before 2010, only a small number of ISDS cases related to renewable energy projects, usually projects concerning hydroelectric power plants.

The ECT (1994) was the IIA most frequently

invoked in 2024, giving rise to nine cases. They include four initiated by a claimant from one European Union Member State against another ("intra-European Union" investor—State arbitrations). In addition, one case arose under an intra-European Union BIT.

#### Box II.8

# Fossil fuel and renewable energy-related dispute settlement cases based on investment agreements

ISDS cases related to fossil fuels and renewable energy have received growing attention in light of the urgency of climate action and the need for energy transition implementation (UNCTAD, 2023).

By the end of 2024, investors had filed at least 249 fossil fuel-related cases, encompassing economic activities in the fossil fuel supply chain (mining and extraction, transportation, the manufacturing of refined products and power generation). Fossil fuel investors challenged a range of State conduct, such as alleged treaty breaches with respect to changes in regulatory frameworks applicable to the investment and the denial or revocation of permits.

Not all of these disputes involved challenges to measures related to climate action or environmental protection. However, some high-profile cases concerned issues that are directly relevant to countries' efforts to combat climate change, for example the phaseout of energy production from coal:

- Two arbitrations against Australia brought in 2024 (Zeph v. Australia (III) and Zeph v. Australia (IV)) related to the decision by the Queensland Government not to approve permits for a coal project in conjunction with a proposed coal-fired power plant. An earlier court decision recommended the refusal of the coal mining project on the basis of factors that included the contribution of the project to carbon emissions and climate change. The legal basis invoked was the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (2009).
- A 2020 Government decision to phase out coal-fired power plants is the subject of an ongoing ISDS case (AET v. Germany) brought against Germany in 2023 under the ECT (1994).
- The disputes in RWE v. the Netherlands and Uniper v. the Netherlands arose out
  of a 2019 law prohibiting the use of coal for electricity production, which required
  the shutdown of the claimants' coal-fired power plant at the end of a 10-year
  transitional period. The two cases were intra-European Union arbitrations based
  on the ECT and were eventually discontinued.
- Two cases against Canada (Westmoreland v. Canada (II) initiated in 2019 and Westmoreland v. Canada (III) in 2022) challenged the 2015 decision of the Alberta Government to phase out coal-fired power plants in the province by 2030. The cases were decided in favour of the State for lack of jurisdiction, under the North American Free Trade Agreement (1992) and/or the United States—Mexico—Canada Agreement (2018). Another claim brought by the same claimant was withdrawn at an early stage in 2018.

#### **World Investment Report 2025**

International investment in the digital economy

The second group of cases particularly relevant to the sustainable energy transition are the 129 ISDS proceedings that have arisen in relation to renewable energy investments. Many of these concerned legislative changes that involved reductions in feed-in tariffs for renewable energy production.

Several countries that had introduced incentives to promote renewable energy investments and subsequently modified their regimes (e.g. Bulgaria, Italy, Romania, Spain) have faced ISDS cases. Spain has been the respondent in most of these cases, followed by Italy:

- At least 51 cases were brought against Spain starting in 2011. By the end of 2024, 43 were concluded and 8 were pending a final outcome; 70 per cent of the concluded cases (31 of 43) were decided in favour of the investor and Spain was ordered to pay damages to the claimants in these cases. The high share of cases won by investors stands in contrast to the overall outcomes of ISDS cases worldwide: about 29 per cent of the 1,050 total cases were decided in favour of the investor.
- Thirteen cases were brought against Italy, with four pending at the end of 2024.
   Of the nine concluded cases, three were decided in favour of the investor and six in favour of the State.

The outcomes of individual cases depend on the facts of each case and the circumstances surrounding the measures challenged in the respective country. Overall, however, fossil fuel and renewable energy cases show that IIAs with ISDS provisions may raise the costs of adapting energy-related regulatory frameworks in host States, including the shift away from fossil fuels. Whereas investors seek stability and guarantee of returns, States need regulatory flexibility for the transition to a low-carbon economy (UNCTAD, 2022a; UNCTAD, 2023).

Source: UNCTAD.

Between 1987 and 2024, about 75 per cent of the 1,401 known ISDS cases invoked BITs; the remaining cases invoked TIPs. A large share of the latter relied on the ECT (172 cases) or the North American Free Trade Agreement (1992) (92 cases).

About 85 per cent of ISDS cases in 2024 were brought under IIAs signed before 2010, including 60 per cent of cases based on treaties from the 1990s or earlier. This mirrors the fact that most investment treaties in force today (85 per cent) are pre-2010 agreements. Even as new reformed treaties enter into force, prospective claimants may

still be able to access ISDS under older treaties. A significant share of new IIAs coexist with old treaties, with both in force for the same parties (e.g. with ISDS being available under a BIT and a plurilateral TIP; UNCTAD, 2023). Investors may also engage in treaty shopping by utilizing different corporate ownership structures across multiple countries (UNCTAD, 2016). When selecting the most advantageous IIA to pursue claims, an aggrieved investor may be more likely to choose an unreformed treaty that offers broader ISDS access and lacks substantive refinements than a newer reformed treaty that is equally in force.

# b. Outcomes of investor-State dispute settlement cases

In 2024, ISDS tribunals rendered at least 78 known substantive decisions in investor—State disputes, 39 of which were in the public domain at the time of writing:

Seventeen of the public decisions principally addressed jurisdictional and preliminary objections. In 13 of them, tribunals upheld the objections and ceased the proceedings for lack of jurisdiction or admissibility; in 4, tribunals dismissed such objections (at least in part) and continued the arbitration proceedings.

Nineteen were rendered on the merits, with 11 holding the State liable for IIA breaches – typically accompanied by a compensation order – and 8 dismissing all investor claims.

Three concerned compensation after an earlier finding of treaty breaches and State liability, with two awarding compensation and one declining compensation.

In addition, eight were rendered in annulment proceedings at the International Centre for Settlement of Investment Disputes, five of which were publicly available. In four public and three non-public decisions, the ad hoc committees of the Centre rejected the applications for annulment; in one case (Agility v. Iraq) the award was partially annulled.

By the end of 2024, at least 1,050 ISDS proceedings had been concluded. The relative shares of case outcomes changed only slightly from those in previous years. Thirty-eight per cent of all concluded cases were decided in favour of the State (claims were dismissed either on jurisdictional grounds or on the merits), and 29 per cent were decided in favour of the investor, with monetary compensation awarded.

Seventeen per cent of the cases were settled; in most cases, the terms of settlement remained confidential. In the remaining cases, either proceedings were discontinued (14 per cent) or the tribunal found an IIA breach but did not award monetary compensation (2 per cent).

## i. Breaches of IIA provisions most frequently alleged and found

The FET provision was invoked by claimants in about 85 per cent of ISDS cases for which information on breaches alleged was available; 70 per cent invoked the indirect expropriation provision (figure II.24). In cases decided in favour of the investor, ISDS tribunals most frequently found breaches of FET (about 70 per cent) and indirect expropriation (about 25 per cent).

### ii. Damages claimed and awarded

Amounts claimed and awarded ranged from several millions to billions of dollars. About 60 per cent of ISDS cases initiated between 1987 and 2024 involved substantial damages claims of \$100 million or more. This share included 143 cases in which claimants sought more than \$1 billion.

The \$200 billion claimed in Zeph v. Australia (I)<sup>12</sup> and the combined \$114 billion claimed in the three cases related to the Yukos company (brought by Hulley Enterprises, Veteran Petroleum and Yukos Universal against the Russian Federation) were the highest amounts sought in ISDS proceedings so far. The \$50 billion awarded in the three Yukos-related cases remains the highest damages awarded in the history of investment treaty arbitration. Even when excluding these particularly large values as outliers, calculations show a shift towards larger claims and damages (figure II.25).

Information on damages claimed is available for 943 treaty-based ISDS cases (1987–2024), including Zeph v. Australia (I) and three Yukos-related cases (Hulley Enterprises v. Russia, Veteran Petroleum v. Russia, Yukos Universal v. Russia).

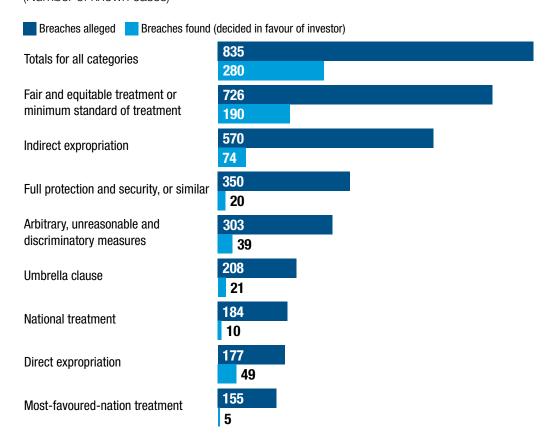
<sup>&</sup>lt;sup>12</sup> Zeph Investments Pte Ltd v. The Commonwealth of Australia (I) (PCA Case No. 2023-40), Procedural Order No. 2, 17 November 2023, para. 20.



### Figure II.24

# Fair and equitable treatment is the protection standard most often litigated

Breaches most frequently alleged and found, 1987–2024 (Number of known cases)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Based on cases for which such information was available since the first ISDS case based on an IIA.

Between 2015 and 2024, the average amount claimed was \$981.8 million.<sup>13</sup> The median amount claimed in this period was \$162.4 million. The average amount awarded stood at \$233.9 million, with a median of \$40 million.

On average, successful claimants were awarded about 25 per cent of the amounts they claimed as damages or compensation. <sup>14</sup> Between 1987 and 2014, tribunals ordered payments of \$98.6 million on average, whereas in the past decade

(2015–2024) the average increased to more than \$230 million. These figures are based on the principal amounts of damages awarded, excluding interest. The principal amounts may cover direct losses (e.g. lost tangible or intangible property of the investor) and the loss of projected future profits (UNCTAD, 2024a). The preand post-award interest incurred on the principal amounts can also be substantial (UNCTAD, 2024a). In addition, costs for the legal representation of each party, tribunal costs and administrative fees apply.

Information on damages claimed is available for 411 treaty-based ISDS cases initiated in this period, excluding the \$200 billion claimed in Zeph v. Australia (I) as an outlier. The three Yukos-related cases (Hulley Enterprises v. Russia, Veteran Petroleum v. Russia, Yukos Universal v. Russia) are outside the time frame, so the combined \$114 billion claimed in those cases is not included in the calculations.

For 2015 to 2024, information on damages claimed is available for 411 treaty-based ISDS cases (by year of initiation) and on damages awarded for 179 cases (by year of award).



### Figure II.25

# Average and median values of claims and awards trended upward in the past decade

Amounts claimed and awarded in treaty-based ISDS cases (Millions of dollars)



Source: UNCTAD, ISDS Navigator database, accessed 1 April 2025.

Note: Principal amounts claimed and awarded, excluding pre-award and post-award interest (where possible). Calculations exclude  $Zeph\ v$ . Australia (I) and three Yukos-related cases (Hulley Enterprises v. Russia, Veteran Petroleum v. Russia, Yukos Universal v. Russia) as outliers. For amounts claimed, n = 528 for 1987-2014 and n = 411 for 2015-2024 by year of initiation; for amounts awarded, n = 106 for 1987-2014 and n = 179 for 2015-2024 by year of award.

Abbreviation: ISDS, investor-State dispute settlement.

\* \* \*

New investment agreements increasingly include cooperation, facilitation and promotion provisions with relatively reduced reliance on ISDS. Investment protection standards are increasingly refined to ensure balance with States' right to regulate. At the same time, a growing share of IIAs include investment liberalization measures, requiring carefully crafted flexibilities. These developments are taking place against the backdrop of an aging network of investment treaties that continue to dominate the regime, placing constraints on governments' ability to regulate in the public interest and leaving them vulnerable to ISDS claims. About 60 per cent of all ISDS cases involved damages claims of \$100 million and higher, including 143 cases in which investors sought more than \$1 billion. The growing divergence between new- and old-generation IIAs is creating an increasingly complex IIA regime that is difficult for countries to navigate, especially developing ones and least developed ones.

UNCTAD has accelerated and deepened its collaboration with countries and regional organizations to reform the IIA regime effectively across all levels of policymaking. This work is conducted in partnership with relevant stakeholders through a combination of technical assistance, research and policy analysis, and consensus-building efforts, most notably through the UNCTAD Multi-Stakeholder Platform for IIA Reform and its Annual High-Level IIA Conferences. These efforts have delivered tangible outcomes in 2024, as more than 80 countries have embarked on the reform of older agreements, or the adoption and negotiation of modern ones designed to promote and facilitate sustainable investment. Building on this momentum, and on its core policy guidance tools, UNCTAD is developing a set of guiding principles to support countries in aligning old-generation IIAs with sustainable development objectives.

## References

- ASEAN Secretariat and UNCTAD (2024). ASEAN Investment Report 2024 ASEAN Economic Community 2025 and Foreign Direct Investment (ASEAN Secretariat. Jakarta.).
- UNCTAD (2015). *Investment Policy Framework for Sustainable Development*. UNCTAD/DIAE/PCB/2015/5. Geneva.
- UNCTAD (2016). World Investment Report 2016: Investor Nationality: Policy Challenges (United Nations publication. Sales No. E.16.II.D.4. Geneva).
- UNCTAD (2018). *UNCTAD's Reform Package for the International Investment Regime* (United Nations publication. New York and Geneva).
- UNCTAD (2020). *International Investment Agreements Reform Accelerator*. UNCTAD/DIAE/PCB/INF/2020/8. New York and Geneva.
- UNCTAD (2021). World Investment Report 2021: Investing in Sustainable Recovery (United Nations publication. Sales No. E.21.II.D.13. New York and Geneva).
- UNCTAD (2022a). The international investment treaty regime and climate action. *IIA Issues Note* No. 3. September.
- UNCTAD (2022b). World Investment Report 2022: International Tax Reforms and Sustainable Investment (United Nations publication. Sales No. E.22.II.D.20. Geneva).
- UNCTAD (2023). World Investment Report 2023: Investing in Sustainable Energy for All (United Nations publication. Sales no. E.23.II.D.17. Geneva and New York).
- UNCTAD (2024a). Compensation and damages in investor–State dispute settlement proceedings. *IIA Issues Note* No. 1. September.
- UNCTAD (2024b). Investment laws: Key trends and developments. *Investment Policy Monitor* No. 29. December.
- UNCTAD (2024c). World Investment Report 2024: Investment Facilitation and Digital Government (United Nations publication. Sales No. E.24.II.D.11. Geneva).
- UNCTAD (2025). Derisking Investment for the Sustainable Development Goals: The Role of Political Risk Insurance. Policy review (United Nations publication. Sales No. E.25.II.D.15. Geneva).