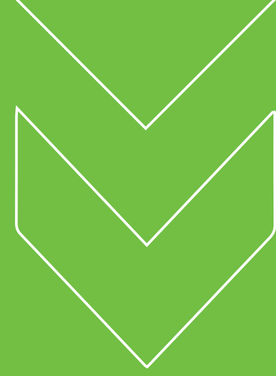


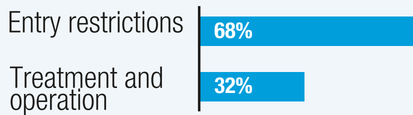
Chapter II

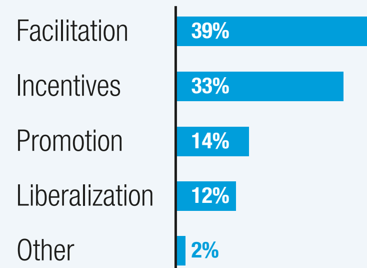
Investment policy trends

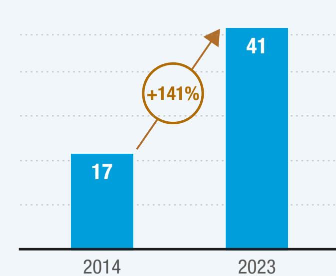
Developing countries continue to prioritize investment attraction

137 national measures

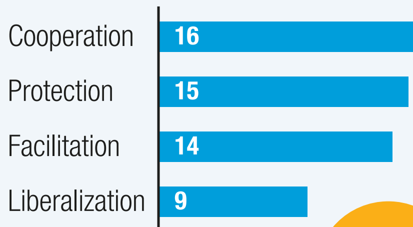
Key trends: facilitation and entry restrictions on the rise



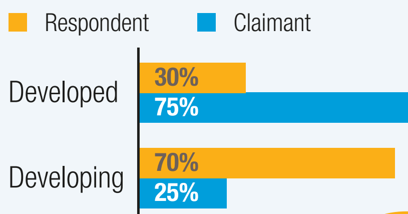




2023 agreements address new investment governance issues, yet old-generation ones persist, raising the risk of investor–State disputes

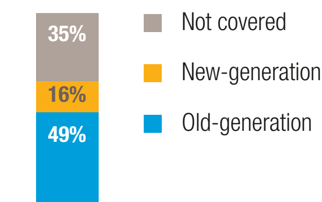


29 IIAs signed



60 new ISDS cases

Old-generation agreements cover half of global foreign direct investment stock – with greater exposure for developing countries



A. National investment policies

1. Overall trends

The number of investment policy measures adopted in 2023 remained consistent with the five-year average, despite declining by 25 per cent compared with 2022. In developing countries, most measures aimed at promoting and facilitating investment. Developed countries continued to introduce restrictive measures to address national security concerns related to investment.

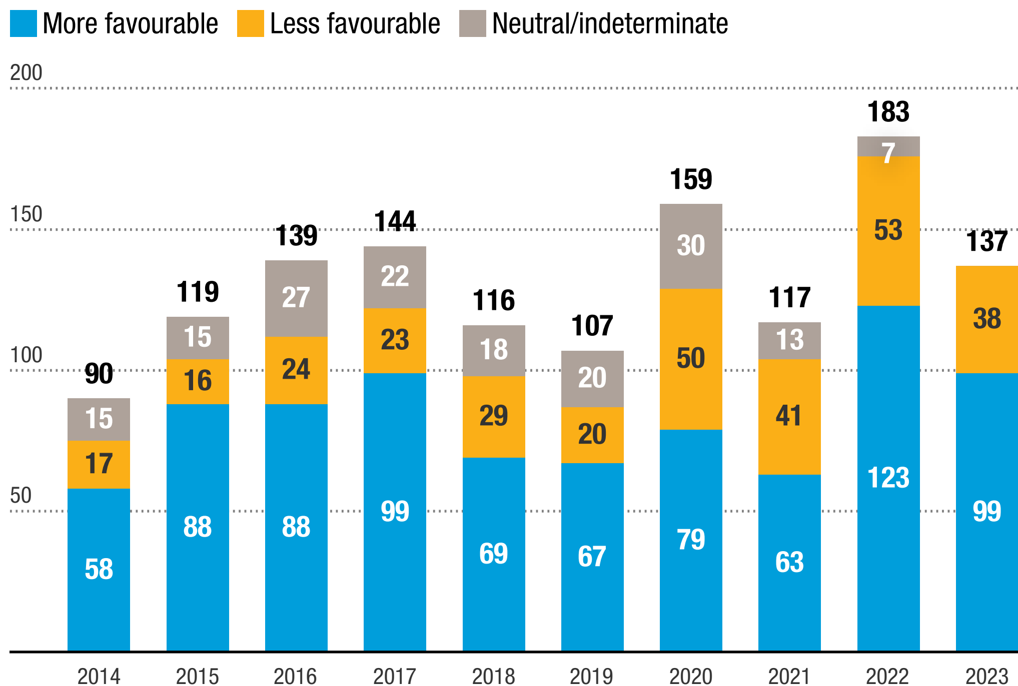
In 2023, 73 countries introduced a total of 137 policy measures affecting foreign direct investment (FDI), a 25 per cent decrease from 2022 but in line with the five-year average (figure II.1). The majority — 72 per cent — were favourable to investors (70 per cent in 2022) (box II.1). This confirms a return to the pre-pandemic distribution between policy measures more and less favourable to investors.

Figure II.1

Lower numbers of new investment policy measures in 2023

Nature of measures, worldwide

(Number)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

Box II.1
Methodology for analysing national investment policy trends

The analysis of national investment policy trends in this chapter is based on official measures affecting FDI adopted by United Nations Member States, as compiled in the UNCTAD Investment Policy Monitor database. These encompass measures explicitly targeting FDI (FDI-specific), as well as general investment measures with a clear impact on foreign investment (FDI-related).

The measures are either reported directly to UNCTAD by Member States through annual surveys or identified by UNCTAD researchers through publicly accessible sources (such as government websites and specialized policy databases). The analysis excludes restrictive economic measures that affect investment.

The classification of measures as more or less favourable is based solely on their potential impact on investors. The types of measures included in each category are described in box table II.1.1. When a measure – for example, the adoption of an investment promotion strategy – contains more than one component, such as incentives and facilitation, these components are analysed separately. This classification does not reflect any value judgement by UNCTAD on the merit or suitability of the measure.

Box table II.1.1
Classification of measures

Category	Type of measure
More favourable	
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 Other (e.g. liberalization of land access)
Facilitation	Streamlining of investment procedures (e.g. one-stop shops) Greater transparency of investment-related laws and procedures (e.g. information portals) Services by investment promotion agencies and other entities to assist investors (e.g. linkages programmes, investor visa facilitation and alternative dispute resolution mechanisms)
Promotion	Establishment of investment promotion agencies or other institutions with a remit as investment promoters Adoption of investment promotion strategy and plans Public–private partnership initiatives, auctions and concessions Outward FDI promotion initiatives
Incentives	Tax and financial incentives for investment Other incentives (e.g. citizenship by investment programmes) SEZ-related incentives
Other	Enhanced investor treatment and protection guarantees Easing of labour or migration regulations concerning foreign hires and key personnel Removal of operational restrictions on investment (e.g. local content requirements)
Less favourable	
Entry	Entry restrictions (e.g. total and partial ban on FDI in specific sectors) Entry conditions (e.g. minimum investment threshold, joint venture requirements or State participation in strategic sector) Introduction or expansion of screening mechanisms for national security
Treatment and operation	Foreign exchange restrictions Restrictions on foreign hires and key personnel Removal or reduction of investment incentives Post-establishment local content requirements or prioritization of national companies in procurement Other measures reducing guarantees for investment treatment and protection Restrictions on outward FDI

Source: UNCTAD.

Abbreviations: FDI = foreign direct investment, SEZ = special economic zone.

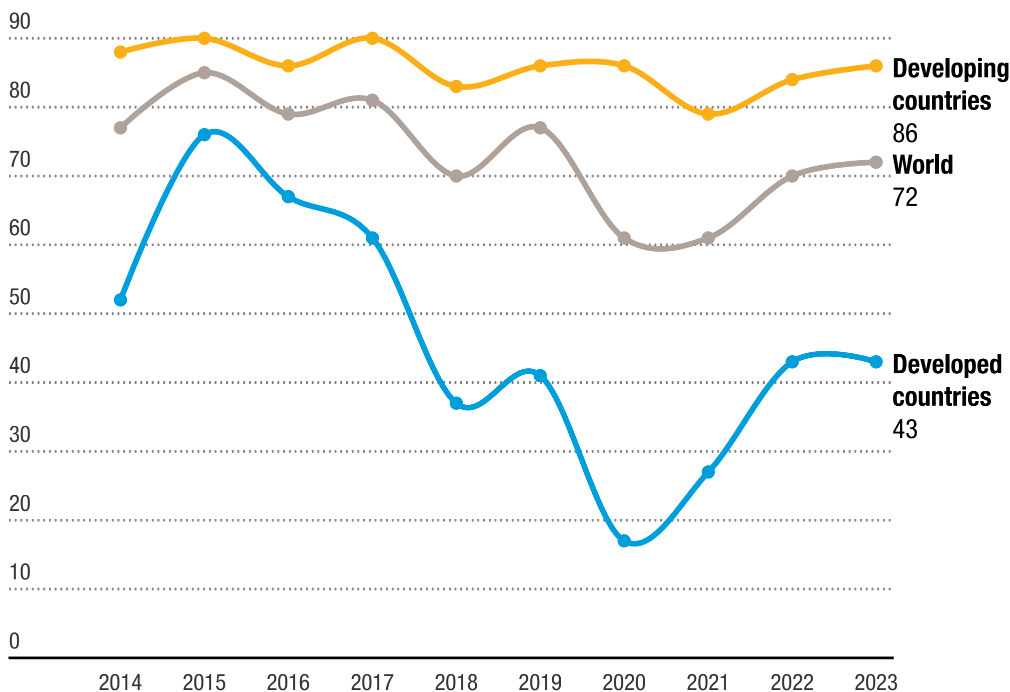
Significant differences persist between developing and developed countries (figure II.2). Developing countries continue to prioritize investment attraction as part of their economic development strategies. The proportion of policies more favourable to investors in developing countries has remained stable at well above 80 per cent since 2014, except for a low point registered during the pandemic. In 2023, 86 per cent of the measures adopted by developing countries were favourable to investors. Initiatives to promote and facilitate investment by simplifying or streamlining administrative processes and introducing incentive schemes were among the measures most frequently adopted (see section A.2). In contrast, in developed countries, policies more favourable to investors, which represented between half and two thirds of the total in the mid-2010s, started to decline in importance well before the pandemic. They reached an all-time low of 17 per cent in 2020 and have since stabilized at about 40 per cent of the total. In 2023, measures less favourable to investors adopted by developed countries made up two thirds of the world total. Many of these policies related directly or indirectly to national security concerns regarding foreign ownership of critical infrastructure, core technologies, or other sensitive assets (see section A.3).

African countries were the most active in adopting new investment policy measures in 2023, followed closely by developing countries in Asia. Africa and developing Asia also produced the highest share of policy measures more favourable to investors. Among developed regions, Europe led in the adoption of new investment policy measures, despite a decrease compared with 2022. Most new measures were less favourable to investors. The number of new investment policy measures in North America and other developed regions also declined significantly. Three quarters of them were less favourable to investors (figure II.3).

Figure II.2

Developing countries continue prioritizing investment attraction

Share of policy measures more favourable to investors in total measures
(Percentage)

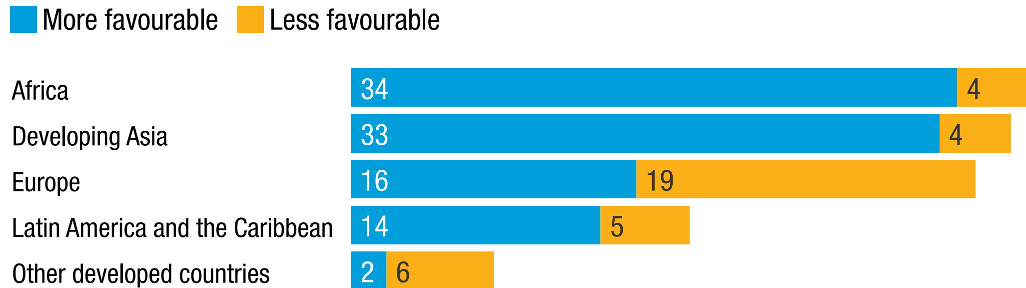


Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

Figure II.3

Africa and developing Asia adopted the most investment policy measures in 2023

Nature of measures by region, 2023
(Number)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

2. Policy measures more favourable to investors

In 2023, investment facilitation measures and incentives remained the primary components of investment attraction initiatives in developed and developing countries. Facilitation measures reached a record 39 per cent of the measures favourable to investors.

Over the last decade, the investment policy landscape has evolved significantly, with noticeable shifts not only in the distribution between measures more and less favourable to investors but also in their composition (figure II.4).

A marked change has been the diminishing prominence of liberalization measures, especially following the pandemic. In the period from 2014 to 2019, liberalization measures constituted approximately 40 per cent of the total – peaking at 44 per cent in 2018. Yet from 2020 to 2022, they represented less than a quarter and in 2023 further declined to a mere 12 per cent.

In contrast, the weight of investment incentives has increased significantly since the pandemic. Prior to 2020, measures related to the introduction of incentives represented about a quarter of all favourable measures. They have since grown to over a third of favourable measures, indicating a strategic pivot towards using incentives as a tool to foster investment. This trend is occurring despite ongoing international tax reforms that should make fiscal incentives a less effective tool for the attraction of FDI from large multinational enterprises (MNEs).

Investment facilitation and investment promotion measures also display a notable upward trend since the pandemic. Together with incentives, they were all complementary components of country efforts to promote economic recovery and resilience. In 2023, investment facilitation and investment promotion initiatives reached record shares of 39 and 14 per cent of all favourable measures, respectively. Investment promotion measures were fuelled

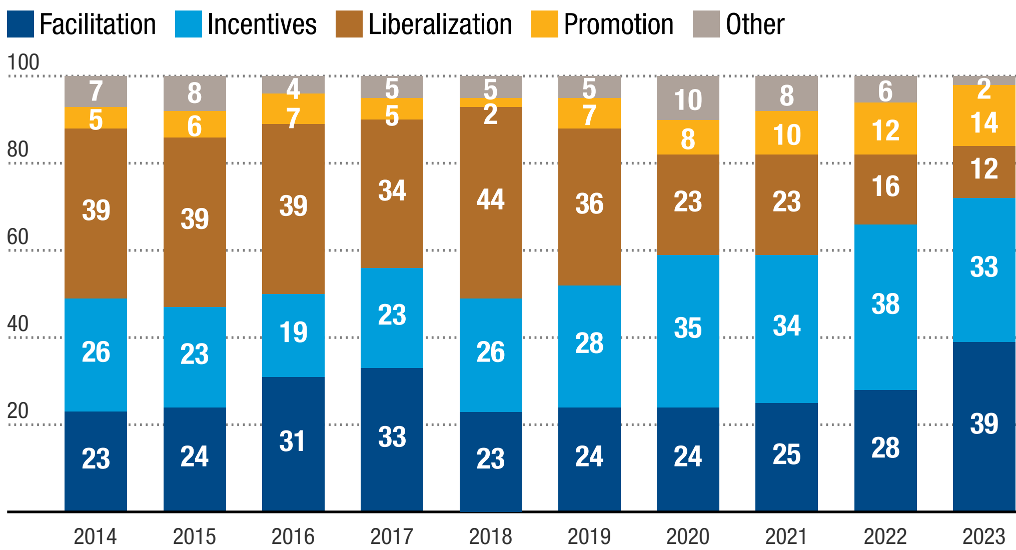
by an increase in the adoption of new investment promotion strategies and the creation of new investment promotion agencies (IPAs).

The regional breakdown of policy measures more favourable to investors adopted in the last decade reveals important differences (figure II.5). In Africa and in Latin America

Figure II.4

Investment policy shifts from liberalization to facilitation

Measures more favourable to investors by category
(Percentage)

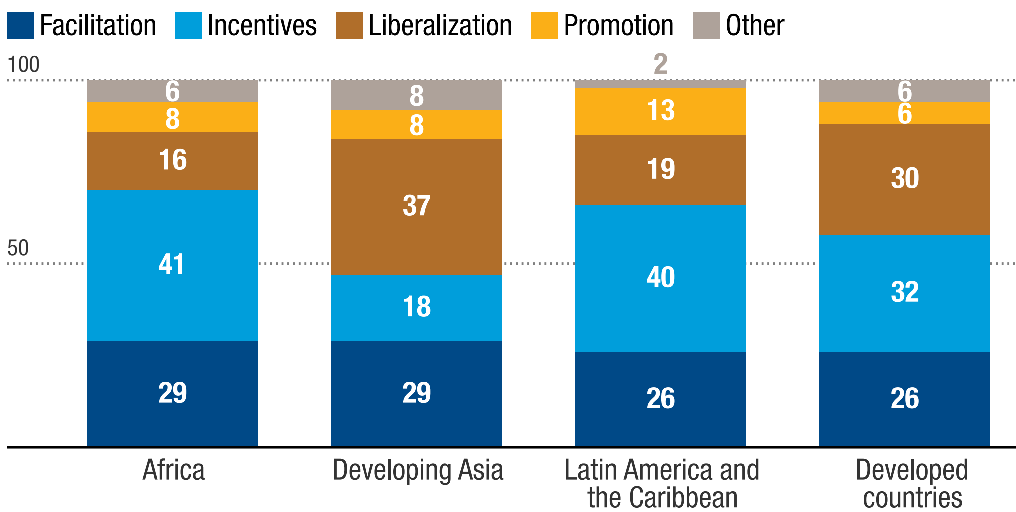


Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

Figure II.5

Investment facilitation is important across regions

Measures more favourable to investors by category and region, 2014–2023
(Percentage)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

Investment facilitation measures hit record high (39%)

and the Caribbean, incentives were the most common policy initiative, accounting for approximately 40 per cent of all measures in both regions. In contrast, Asia favoured liberalization, which accounted for 37 per cent of the measures, notably higher than in Africa (16 per cent) and in Latin America and the Caribbean (19 per cent). Investment facilitation measures consistently represented more than a quarter of the total across all regions. This underscores the widespread recognition of investment facilitation as a cornerstone of investment attraction efforts globally.

a. Facilitation

In 2023, investment facilitation measures reached a peak, constituting 39 per cent of the policy measures more favourable to investors implemented by countries worldwide, 45 per cent of the measures adopted by developed countries and 38 per cent of those adopted by developing ones.

Investment facilitation measures fall into three main categories: transparency, streamlining and facilitation services. Transparency measures aim at improving the clarity and accessibility of laws and procedures related to investment. They made up 21 per cent (12) of the facilitation measures in 2023. Streamlining measures encompass initiatives designed to enhance the efficiency of procedures related to investments. They accounted for almost half (27) of the facilitation measures. Facilitation services are provided by IPAs, special economic zones or other administrative entities. They constituted 28 per cent (16) of the total (figure II.6).

The introduction of single windows for investment figured prominently among the facilitation measures adopted in 2023. For instance, Egypt introduced a single-approval system for investment projects, encompassing various licences and permits relevant to investment activities. (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] The General Authority for Investment and Free Zones also announced plans to launch an online platform for company establishment. Uruguay introduced an online single window for investment, integrating various services related to company establishment and operation. Uzbekistan established a physical one-stop shop to assist investors upon entry and facilitate visa processes.

Transparency measures included the introduction of information portals for foreign investors. Jordan and Mexico, for example, unveiled platforms providing detailed investment procedures, opportunities and incentives. Additional measures involved initiatives to clarify investment-related procedures. For instance, the

Figure II.6
Streamlining of administrative procedures is top priority
Investment facilitation measures by category, 2023
(Number)

Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

[1] Accessible at https://investmentpolicy.unctad.org/investment-policy-monitor.

Kingdom of the Netherlands and the United Kingdom issued guidance on the approval processes of their FDI screening regimes.

Facilitation services ranged from assistance in obtaining specific permits to comprehensive support for foreign investors. Chile implemented a multi-agency cooperation agreement involving the Foreign Investment Promotion Agency, the National Immigration Service and the Economic Development Agency to streamline visa services for foreign investors and skilled professionals. Malaysia introduced a dedicated visa facilitation service for strategic investors identified by the Malaysian Investment Development Authority. Uzbekistan introduced the position of "investment managers" within the Ministry of Investments, Industry and Trade, to provide dedicated support to investors throughout the project life cycle, from resolving land acquisition issues to securing necessary permits. The rise in investment facilitation initiatives is discussed in greater detail in chapter IV.

b. Incentives

The introduction or expansion of investment incentives represented one third of the policy measures more favourable to investors in 2023 in both developed and developing countries. Although the number of new incentives decreased in comparison with 2022, it remained significantly higher than the average for the decade. Investment incentive measures encompass tax and financial incentives, including incentives related to special economic zones, alongside other types, such as infrastructure facilities or visa and work permits (e.g. citizenship-by-investment programmes).

Approximately 50 per cent of the sector-specific incentives introduced in 2023 aimed at promoting investment in the services sector, followed by manufacturing and agriculture (figure II.7). This confirms a growing focus on promoting investment in services, illustrated by the increase in the share of new incentives for the services sector from 35 per cent of non-industry-specific incentives in 2014–2018 to 46 per cent in 2019–2023. New incentives for manufacturing and agriculture remained stable at 31 per cent and 15 per cent, respectively. New incentives for extractive industries declined from 19 per cent in 2014–2018 to 9 per cent in 2019–2023.

As in 2022, the push for renewable energy investment stood out as the primary focus of new incentives enacted in 2023. Italy, Nigeria and South Africa adopted a range of fiscal and non-fiscal incentives aimed at encouraging investments in renewable energy. Canada and Egypt introduced an investment tax credit and other fiscal incentives focused specifically on the promotion of green hydrogen.

New incentives in manufacturing also aimed to support clean technologies, as well as high-tech manufacturing. For instance, France introduced a tax credit for producing batteries, solar panels, wind turbines and heat pumps. The United

Renewable energy: **key target of incentives** in 2023

Figure II.7

Sector-specific incentives primarily target services

Incentive schemes by sector, 2023
(Number)

Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

Kingdom established new green freeports offering several fiscal incentives for advanced manufacturing and the production of renewable energy equipment. Israel offered a tax credit in the high-technology sector. Mexico launched incentives for nearshoring in semiconductors, electromobility and medical devices.

c. Promotion

Investment promotion measures accounted for 14 per cent of all measures more favourable to investors in 2023. They included the formulation of new national investment policies and investment promotion strategies, the establishment or strengthening of investment promotion institutions and the adoption of public–private partnership (PPP) initiatives (figure II.8).

National investment policies on the rise

In recent years, several countries have adopted national investment policy documents to emphasize investment-related priorities and introduce measures to improve investment attraction. Notable examples include Kenya in 2019, Jamaica in 2020, El Salvador and New Zealand in 2021 and Australia in 2022. In 2023, Nigeria and Pakistan also introduced national investment policies. Both outlined comprehensive frameworks for regulating and promoting investments, identifying target sectors for investment attraction and enhancing the coordination among various entities involved in investment promotion at different levels of Government. The national investment policies of both Kenya and Nigeria were prepared with technical assistance from UNCTAD.

Enhancing the coordination and effectiveness of investment promotion activities was also the key objective behind the creation or strengthening of investment promotion institutions in 2023. In Botswana, for instance, four investment-related institutions were merged into the Botswana Investment and Trade Centre. Egypt established a Supreme Council for Investments under the chairmanship of the country's president. Papua New Guinea passed reforms to strengthen the Investment Promotion Authority, including through improved inter-agency coordination on investment matters.

In addition, several investor targeting strategies were implemented in 2023. Jordan introduced the Investment Promotion Strategy for 2023–2026, entrusting all international promotion activities to specialized marketing agencies charged with identifying potential investors and conducting focused campaigns in select countries. China launched the Invest in China initiative, targeting foreign investment from specific countries. Costa Rica debuted an FDI strategy aimed at attracting investment beyond the capital's metropolitan area.

Efforts to foster investment through PPPs were undertaken by Ecuador, Ethiopia, Kenya, Peru and the Russian Federation. Ecuador rolled out a new PPP framework, and Ethiopia introduced a mechanism for direct PPP negotiations with foreign firms. Kenya encouraged the development and operation of port infrastructure through PPPs. Peru made land access easier for PPP investors. The Russian Federation strengthened its PPP

Figure II.8

Adoption of new strategies leads investment promotion efforts

Measures by type, 2023
(Number)

Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

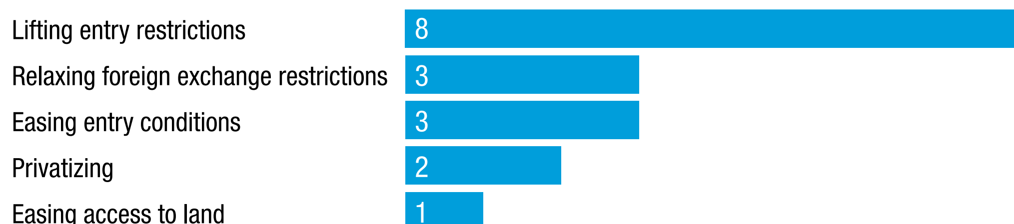
framework to reduce investment risks and initiated an electronic tender process.

d. Liberalization

Liberalization initiatives accounted for 12 per cent of all measures more favourable to investors in 2023. All of them were adopted by developing countries. The removal of FDI entry restrictions and conditions represented the majority of liberalization measures, followed by the removal of restrictions on foreign exchange, privatization initiatives and liberalization of land access (figure II.9).

As in the case of incentives, though most measures were cross-sectoral, sector-specific liberalization initiatives concerned primarily services. For instance, Ethiopia allowed foreign investment in digital payment systems. India permitted foreign lawyers and law firms to “practice foreign law within the country” (i.e. to advise clients on the international elements of mergers and acquisitions or appear as arbitrators). Nigeria opened its electricity sector to FDI at the state level, granting each state the authority to create an independent electricity market within its jurisdiction.

Figure II.9
Most liberalization measures lifted entry restrictions
Liberalization measures by type, 2023
(Number)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

3. Policy measures less favourable to investors

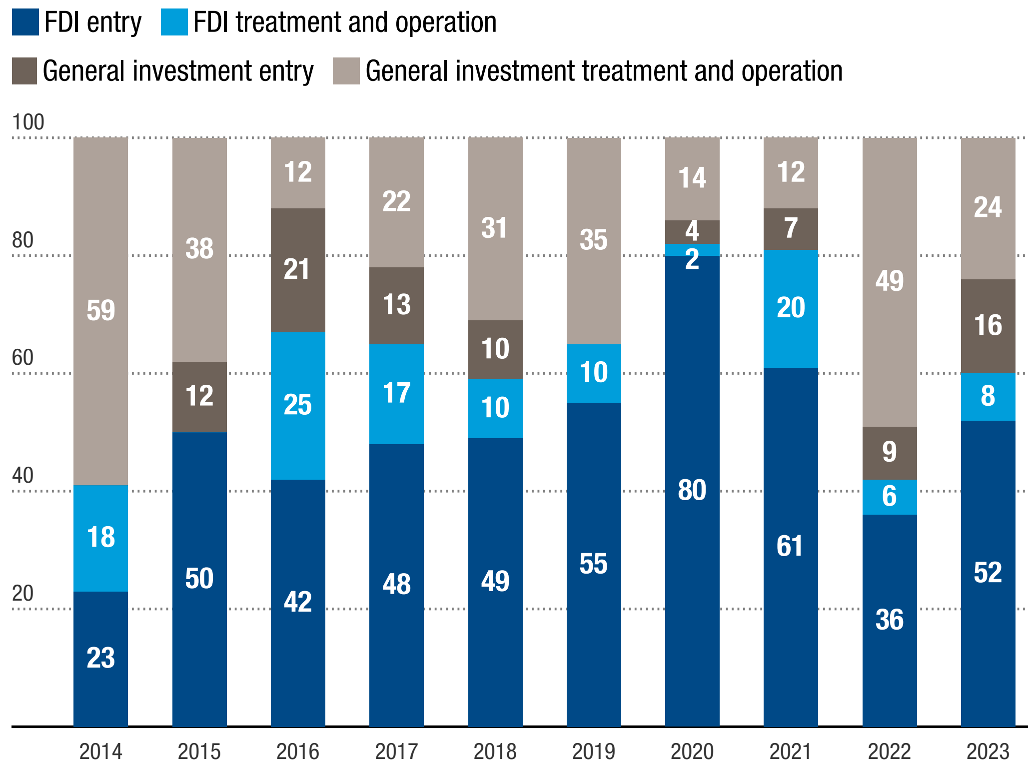
Heightened caution towards foreign investments in critical sectors persisted in 2023. New or expanded FDI screening mechanisms accounted for nearly half of the measures less favourable to investors (45 per cent). Four additional countries implemented FDI screening in 2023, and several others will follow in 2024.

A series of global crises, including the pandemic, have intensified geopolitical tensions, disrupted global supply chains and raised food and energy prices. This has led to greater caution towards foreign investment in sectors that are essential for national and economic security, prompting many countries, particularly developed ones, to tighten regulations on foreign investment. FDI-specific restrictions, which accounted for the minority of measures unfavourable to investors a decade ago, have since represented about 60 per cent of the total number of measures, with peaks of more than 80 per cent during the pandemic (figure II.10).

Figure II.10

Entry restrictions remain prominent

Policy measures less favourable to investors by category
(Percentage)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

FDI entry restrictions represented the majority of the measures less favourable to investors over the last decade. These primarily involved the adoption of investment screening mechanisms in developed regions, especially Europe. Other entry-related measures adopted by both developed and developing countries included primarily restrictions on foreign ownership of land and limitations on foreign investment in strategic sectors (e.g. financial services, mining, media or transport). Tax-related measures, e.g. the removal or reduction of investment incentives, accounted for the bulk of treatment and operation measures affecting FDI.

a. Investment screening for national security

Nearly half of the investment policy measures less favourable to investors adopted in the last decade concerned investment screening for national security. As documented in recent World Investment Reports and in a dedicated issue of the Investment Policy Monitor (UNCTAD, 2023d), screening has been the largest category among all less favourable measures adopted by countries since 2017, except in 2022, when tax measures predominated (UNCTAD, 2023f). In 2023, this trend persisted, with investment

screening accounting for 45 per cent of all measures less favourable to investors.

New FDI screening regimes were implemented in Belgium, Estonia, Luxembourg and Sweden, bringing the total number of countries with comprehensive FDI screening regimes to 41 (figure II.11). Of these, 26 are in Europe. Collectively, countries that conduct FDI screening for national security now represent more than half of global FDI flows and three quarters of FDI stock. As in previous years, countries continued to address vulnerabilities in their existing FDI screening mechanisms by covering a broader range of transactions to improve the detection of potential risks related to FDI.

Only a limited number of countries report on their screening mechanisms. Table II.1 displays data compiled by UNCTAD from country surveys and official sources. UNCTAD has previously pointed out the lack of a standardized methodology for collecting data on screened projects, highlighting the variety in metrics and reporting periods employed by various screening authorities (UNCTAD, 2023f). Despite these methodological differences, discernible trends emerge. In the majority of countries for which historical data are available, there has been an uptick in the number of projects subject to review. The rejection rate remains low, at less than 1 per cent in most countries.

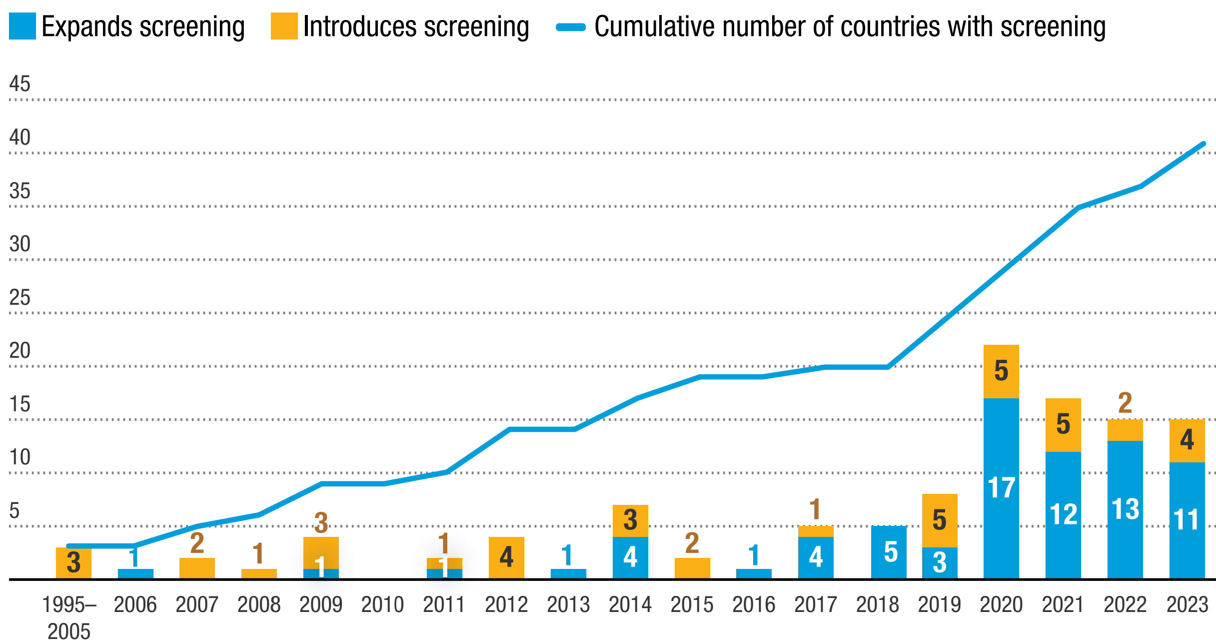
Transactions that underwent screening for national security concerned a variety of sectors, including defence and security, energy and utilities, critical infrastructure, automotives, financial services, health care and pharmaceuticals, electronics and semiconductors, media, communication and Internet services, and metals and mining.

The growing number of cases screened by authorities across several jurisdictions inevitably signifies a growing burden on administrative resources and

Figure II.11

Screening regimes continue to expand

Countries introducing or expanding security-related investment screening
(Number)



Source: UNCTAD, Investment Policy Monitor database, accessed 31 March 2024.

Table II.1
Screened investment projects on the rise but low rejection rates

Country	Period	Screened[a]	Authorized	Modified or authorized with conditions	Rejected	Withdrawn
Australia	4/2020–3/2021	..	28	4	..	..
	7/2021–6/2022	..	75	39	..	..
	7/2022–6/2023	..	100	18	..	..
Belgium	7/2023–12/2023	32	26	..	0	..
Canada	2022	35	24	0	3	8
	2023	27	16	0	0	3
Czechia	2022	13	7	0	0	3
	2023	28	20	0	0	1
Finland	2019	15	..	..	0	..
	2020	15	..	..	0	..
	2021	32	..	..	0	..
	2022	34	..	..	0	1
	2023	39	..	..	0	0
France	2021	328	57	67	..	..
	2022	325	61	70	..	..
Germany[b]	2019	106	..	12	..	..
	2020	160	..	12	..	..
	2021	306	..	14	..	..
	2022	306	..	12	..	..
	2023	257	..	10	..	..
Italy	2019	83	39	13	0	..
	2020	342	135	40	2	..
	2021	496	183	26	3	1
	2022	608	242	18	4	3
Malta	2021	81	2	6	2	0
	2022	22	0	10	1	3
	2023	20	1	2	0	3
Spain	2019	6	6	0	0	0
	2020	37	34	3	0	1
	2021	57	51	6	0	1
	2022	78	67	9	1	1
	2023	108	94	10	0	4
United Kingdom[c]	1/2022–3/2022	209	3	0	0	..
	4/2022–3/2023	776	757	9	5	11
United States	2019	231	..	28	2	12
	2020	313	..	16	2	9
	2021	436	..	26	0	11
	2022	440	..	46	1	20

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

[a] The total number of cases screened by the end of the period may include cases carried over from previous periods, depending on the methodology employed by each country.

[b] For Germany, the number of projects modified or authorized with conditions includes prohibitions, side conditions, public legal contracts and administrative orders.

[c] In the United Kingdom, the review mechanism applies equally to domestic and foreign parties. The cumulative number of cases is subject to continuous adjustment as a result of verification processes, which may result in discrepancies with case numbers reported in previous years.

case management. In response, in 2023, some countries established procedures such as pre-authorization and consultation (e.g. Denmark and Spain). Others introduced fees for FDI screening (e.g. Germany and Romania).

The trend towards the adoption of FDI screening regimes will continue in the coming years. The screening regimes of Bulgaria and Singapore entered into force in March 2024. The regime in Ireland is expected to become operational before the end of the year. The European Union has also put forward a reform proposal aimed at revising the current framework.[2] It emphasizes the need for all member States to adopt ex ante screening mechanisms and suggests extending the scope of the screening regimes to cover intra-European Union transactions controlled by foreign investors.

Bilateral initiatives also play a role in the expansion of FDI screening. They focus predominantly on establishing formal or informal mechanisms for exchanging information relating to national security and investment. In December 2023, Mexico and the United States signed a memorandum of intent to create a bilateral working group for regular exchanges of information.[3] The United States and the European Union have created a working group on investment screening to promote best practices and develop a holistic policy approach to addressing risks pertaining to specific sensitive technologies.[4]

b. Other entry-related measures

Other types of entry restrictions on investment accounted for 23 per cent of the measures less favourable to investors in 2023, with a significant emphasis on enhancing State control over extractive industries. Key examples included the National Lithium Strategy in Chile, mandating State majority ownership throughout the lithium production cycle, and the revised Mining Code of Mali, granting the State a 10 per cent stake in new mining ventures. Mining law reforms in Mexico tightened concession conditions and removed the expropriation rights of concessionaires for mining exploitation. Panama introduced a moratorium on new metallic mineral concessions.

Concerns regarding foreign investors' ownership of certain types of property also prompted various countries to enact new prohibitions. Canada, for instance, restricted the purchase of residential properties by foreign investors. The Russian Federation limited foreign ownership of news aggregators, and the United States imposed restrictions on foreign acquisition of agricultural and forest properties, as well as land or property near military installations and critical infrastructure.

c. Investor treatment and operation

The remaining one third of policy measures less favourable to investors in 2023 (12 measures) comprised various treatment and operation provisions adopted by both developing and developed countries that aimed to address a diverse array of specific policy concerns. The extractive sector was often affected by these measures. For instance, Chad nationalized the assets of Esso Exploration and Production Chad, and Mali abolished several tax incentives previously available to mining companies.

Countries with FDI screening represent **more than half of global FDI flows, three quarters of FDI stock**

[2] European Commission, 2024, 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, COM(2024 23 final, 2024/0017 (COD), https://circabc.europa.eu/ui/group/aac710a0-4eb3-493e-a12a-e988b442a72a/library/f5091d46-475f-45d0-9813-7d2a7537bc1f/details?download=true.

[3] United States, Department of the Treasury, 2023, Secretary of the Treasury Janet L. Yellen and Mexico's Secretary of Finance and Public Credit Rogelio Ramírez de la O announce intent to establish bilateral working group on foreign investment review, 7 December. See https://home.treasury.gov/news/press-releases/jy1965.

[4] European Commission, Working Group 8 – Investment Screening, Part of EU–US Trade and Technology Council, https://futurium.ec.europa.eu/en/EU-US-TTC/wg8.

In line with the recent trend towards more stringent controls on outbound investment, three countries introduced measures to address concerns directly related to outward FDI (OFDI). South Africa established an approval requirement for transfers abroad of capital funds in amounts greater than R1 million per year (approximately $50,000) and increased related documentation requirements. Spain expanded the mandatory reporting of OFDI to encompass new types of transactions. The United States introduced outbound investment controls on certain transactions relating to national security technologies and products.

From near the end of 2023 into the early months of 2024, at least 26 countries, primarily developed economies in Europe, enacted laws to implement the global minimum tax as outlined in the Pillar II reform of the Organisation for Economic Co-operation and Development (OECD).[5] Known as the Global Anti-Base Erosion Model Rules, the objective is to ensure that MNEs contribute a minimum amount of tax on earnings within each operating country (UNCTAD, 2023f). The reform targets multinationals with annual revenues above €750 million, enabling jurisdictions to levy a top-up tax to achieve a minimum effective rate of 15 per cent on income taxed below this threshold. These developments are not captured in the Investment Policy Monitor database because of its methodological specifications (see box II.1).

4. Outward foreign direct investment policies

The global landscape of OFDI promotion, facilitation and regulation has undergone substantial changes since the early 2000s. These changes reflect the evolving patterns of global investment and production, the sharpening focus on sustainability and the heightened geopolitical tensions and gradual shift from liberalization to regulation that have characterized FDI policies over the past decade.

a. Promotion and facilitation of outward investment

As highlighted in a recent issue of the Investment Policy Monitor (UNCTAD, 2024b), OFDI promotion and facilitation policies have been a significant component of economic strategies of developed countries for several decades. At least 31 of them (79 per cent of the total tracked) have adopted initiatives to promote outbound investment. Support for companies that are investing abroad typically serves two main objectives: the development and internationalization of domestic businesses, particularly small and medium-sized enterprises (SMEs), and the promotion of international cooperation and development efforts. The number of developing countries that have adopted OFDI promotion mechanisms has expanded in line with their expanding role as sources of investment. At least 19 developing countries (14 per cent) have established formal mechanisms to promote OFDI, including 11 countries in Asia, 6 in Africa, and 2 in Latin America and the Caribbean (figure II.12).

Four principal types of direct promotion instruments to support OFDI exist: fiscal and

[5] Based on data from OECD Pillar Two Country Tracker and Pillar Two Navigator, available at oecdpillars.com.

Figure II.12

Outward investment promotion and facilitation schemes introduced mainly in developed countries

Countries with a scheme, 2023
(Number)

Source: UNCTAD.

financial support, investment guarantees, investment facilitation services and direct capital participation. Facilitation services are the most widespread, adopted by 23 per cent of countries globally, including 64 per cent of developed countries and 11 per cent of developing countries. These services may include providing advisory assistance, supporting participation in international events, coordinating economic missions abroad, connecting with partners in the host country, training, and preparing feasibility and country risk analyses.

Fiscal or financial support encompasses loans, grants and tax incentives for companies that venture into OFDI. Loans are usually provided by home-country export promotion agencies, development banks or similar institutions. They generally offer better conditions than market standards or support projects that might otherwise struggle to secure private financing. This type of support is common in developed countries (62 per cent) but rare in developing countries (10 per cent).

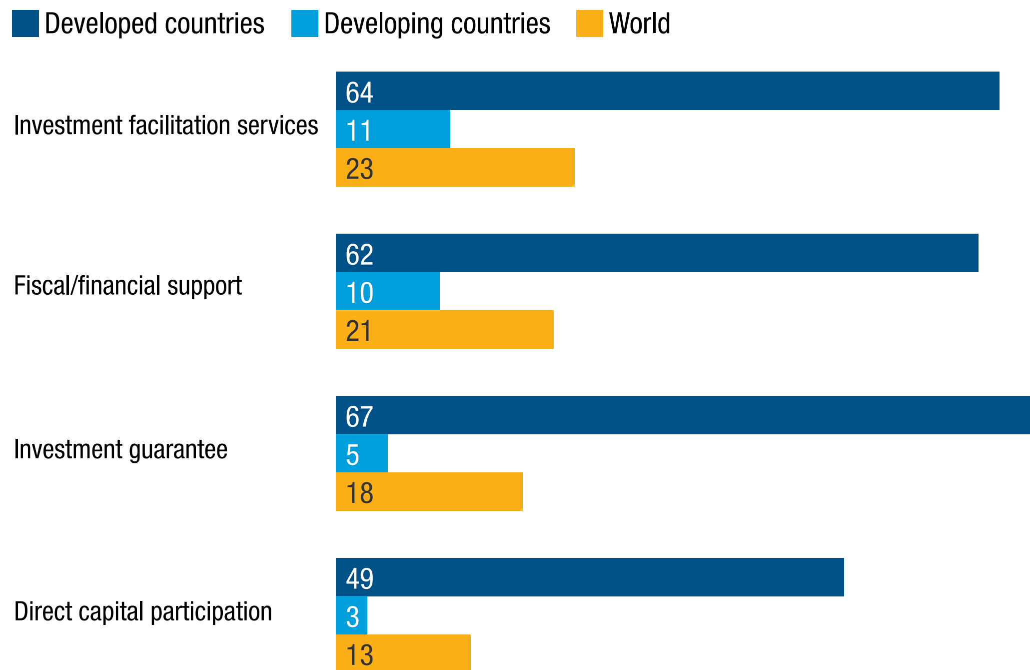
Foreign investment insurance or guarantees secure some level of political risk protection for domestic firms investing in more unpredictable and volatile markets. They are offered by 18 per cent of countries globally – 67 per cent of developed countries and 5 per cent of developing countries.

Direct capital participation through State-sponsored programmes is offered in 49 per cent of developed countries and 3 per cent of developing countries (figure II.13). These programmes enable domestic firms to invest abroad by providing patient capital through direct equity participation and private enterprise funds. These are made available through import–export banks, development banks or dedicated funds targeting particular sectors, countries or types of firms, such as SMEs.

A growing number of countries are leveraging OFDI as a tool to further the goals of the 2030 Agenda. Among the 50 countries worldwide with OFDI promotion mechanisms, 18 developed countries (58 per cent) and 5 developing countries (26 per cent) have put in place at least one instrument specifically designed to encourage OFDI in developing countries. In addition, numerous developed countries, especially in Europe, have integrated OFDI promotion schemes into their broader development assistance strategies. They actively engage the private sector in development cooperation initiatives, so as to capitalize on its strengths and capabilities to advance development goals, while promoting growth and global competitiveness of domestic firms. Consequently, OFDI promotion schemes often incorporate criteria that emphasize the benefits to the host country, particularly as regards investments that target developing countries (figure II.14).

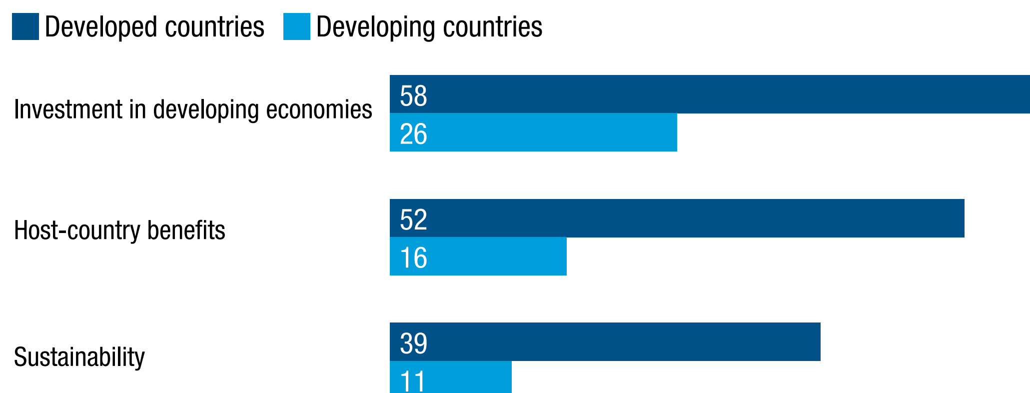
More countries using **outward investment as a tool for Agenda 2030**

Figure II.13
Facilitation is the main support tool worldwide for outward investment
Tools offered and share of countries using them, 2023
(Percentage)



Source: UNCTAD.

Figure II.14
Leveraging promotion of outward investment to achieve the Sustainable Development Goals
Criteria for accessing support schemes, by economic grouping
(Percentage)



Source: UNCTAD.

b. Regulation and screening of outward investment

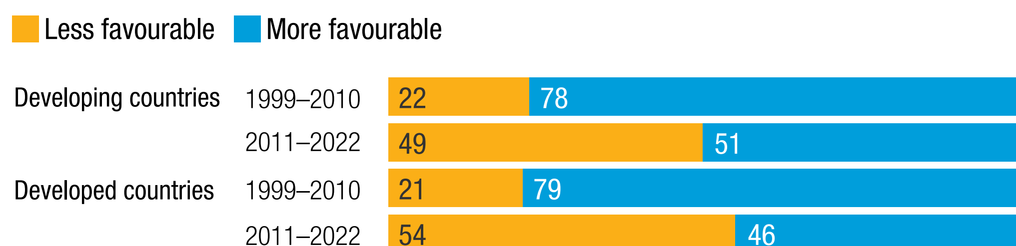
OFDI promotion and regulation policies often coexist within the same country. Historically, restrictions on OFDI were mainly observed in developing countries and related to balance-of-payments risks (UNCTAD, 2024b). In the early 2000s, the liberalization of OFDI gained momentum, as countries increasingly removed foreign exchange restrictions. In the last decade, by contrast, an observable shift in the regulatory approach to OFDI has seen restrictions increase by nearly one third in both developing and developed countries (figure II.15).

This increase can be partially explained by growing concerns over money-laundering practices, tax evasion and other illicit financial flows disguised as FDI. It was accentuated by the coronavirus pandemic of 2019, which led to a general slowdown in both inward and outward liberalization efforts. Finally, in recent years, concerns have been brought forward related to the potential risks that OFDI could pose to national and economic security, particularly in relation to strategic sectors and technologies.

In 2023, restrictions on OFDI were in place in nearly half (95) of the world's economies, including a majority of developing countries and least developed countries. The most common involve either the necessity for investors to secure prior approval for their projects (69 per cent of countries with OFDI restrictions) or to register their planned OFDI with authorities (14 per cent). Total bans on OFDI are in place in only three countries: Ethiopia, Nepal and the Syrian Arab Republic.

Screening mechanisms for OFDI based on national security concerns are also gaining traction. While some Asian countries have implemented them for decades (e.g. China, India and Japan), the focus on the security aspects of OFDI has recently broadened to include other major sources. Since 2020, the United States has introduced several initiatives to monitor and regulate OFDI, culminating in an executive order aimed at scrutinizing investments in key national security technologies in certain countries (August 2023).[6] In January 2024, the European Commission responded to growing national security concerns related to OFDI by proposing a framework to monitor outbound investment in critical sectors

Figure II.15
Outward investment restrictions on the rise
Measures by nature and economic grouping
(Percentage)



Sources: UNCTAD, based on Investment Policy Monitor database and IMF Annual Report on Exchange Arrangements and Exchange Restrictions database, both accessed on 31 March 2024.

[6] President of the United States, 2023, Addressing United States investments in certain national security technologies and products in countries of concern, Presidential Documents: Executive Order 14105 of August 9, 2023, Federal Register, 88:154, https://www.federalregister.gov/documents/2023/08/11/2023-17449/addressing-united-states-investments-in-certain-national-security-technologies-and-products-in.

such as advanced semiconductors and biotechnology. Member States have been tasked to provide initial risk assessments by mid-2025. Based on these assessments, the Commission will advise member States on the extent to which existing tools can mitigate these risks and whether additional proportionate policy actions are warranted at the European Union or national level.[7]

[7] European Commission, 2024, White paper on outbound investments, 24 January, https://circabc.europa.eu/ui/group/aac710a0-4eb3-493e-a12a-e988b442a72a/library/51124c0d-58d8-4cd9-8a22-4779f6647899/details?download=true.

B. International investment policies

1. Trends in international investment agreements

In 2023, new-generation international investment agreements (IIAs) included innovative provisions on investment facilitation and cooperation and tended to safeguard States' right to regulate. However, old-generation IIAs still cover about half of global FDI stock, making IIA reform more urgent. The year was also marked by intensified efforts to reform the IIA and ISDS regimes.

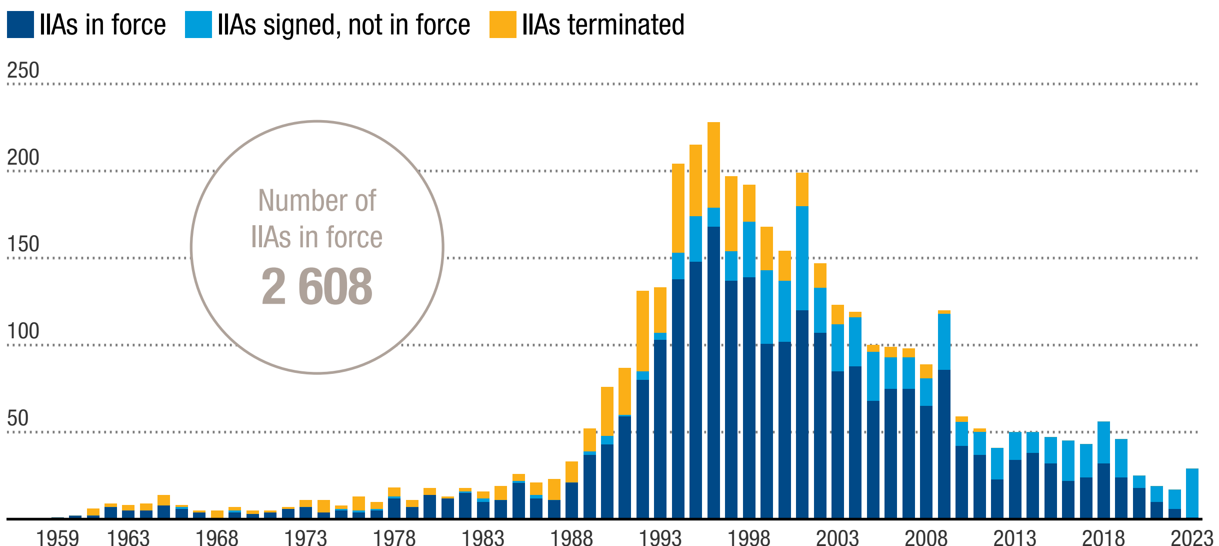
a. Conclusion and termination of investment agreements

In 2023, countries and regional organizations concluded at least 29 IIAs – 12 bilateral investment treaties (BITs) and 17 treaties with investment provisions (TIPs). This brought the size of the IIA universe to 3,291 (2,831 BITs and 460 TIPs), according to the UNCTAD IIA Navigator (figure II.16).

Figure II.16

Agreements from the 1990s and 2000s dominate the international investment agreements universe

(Annual number of agreements signed)



Source: UNCTAD, IIA Navigator database, accessed 25 March 2024.

Note: The UNCTAD IIA Navigator is updated continuously as new IIA-related information becomes available.

Abbreviations: IIA = international investment agreement.

In addition, at least 15 IIAs entered into force and 4 were terminated in 2023, bringing the total number of IIAs in force to at least 2,608 by the end of the year. These IIAs are largely dominated by old-generation treaties, signed in the 1990s and 2000s.

The total number of terminations reached at least 585 by 2023; about 70 per cent of these IIAs were terminated in the last decade (figure II.17). Under sunset clauses, IIAs may continue to protect investments in existence at the time of termination or withdrawal and grant investors access to investor–State dispute settlement (ISDS) for up to 20 years afterward.

IIAs signed and/or adopted in 2023 cover a range of investment governance issues that go beyond protection, such as investment facilitation, cooperation or liberalization (figure II.18). Notably, the majority of TIPs signed or adopted in 2023 included commitments on facilitation or cooperation. About half contained protection or liberalization provisions. In the Agreement Establishing the African Continental Free Trade Area (AfCFTA), the Protocol on Investment – adopted in February 2023 – provides an example of this nascent shift (box II.2).

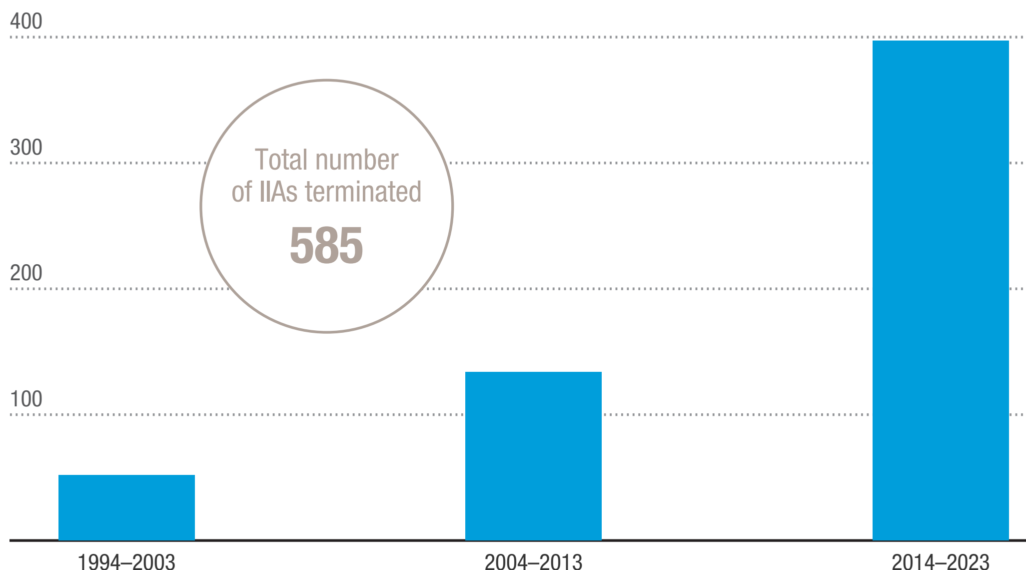
Newly concluded protection-focused IIAs continued the trend towards safeguarding States' right to regulate as well as reforming or omitting ISDS. It remains to be seen whether these refinements will be interpreted in line with the treaty parties' intent in ISDS. A lot remains to be done to focus the coverage of IIAs on sustainable investment and foster responsible business conduct by investors. New IIAs also commonly continue to bind countries for long periods of time, limiting their ability to adapt to changing economic realities and new regulatory imperatives (figure II.19).

The reform of old-generation IIAs continues to advance at a slow pace. Only 19 per cent of the IIAs signed since 2020 replace an old-generation IIA; 39 per cent ensure that the reformed provisions they contain would be effectively applied where parallel old-generation IIAs exist.

Figure II.17

Terminations of investment agreements reach nearly 600

(Annual number of terminations)



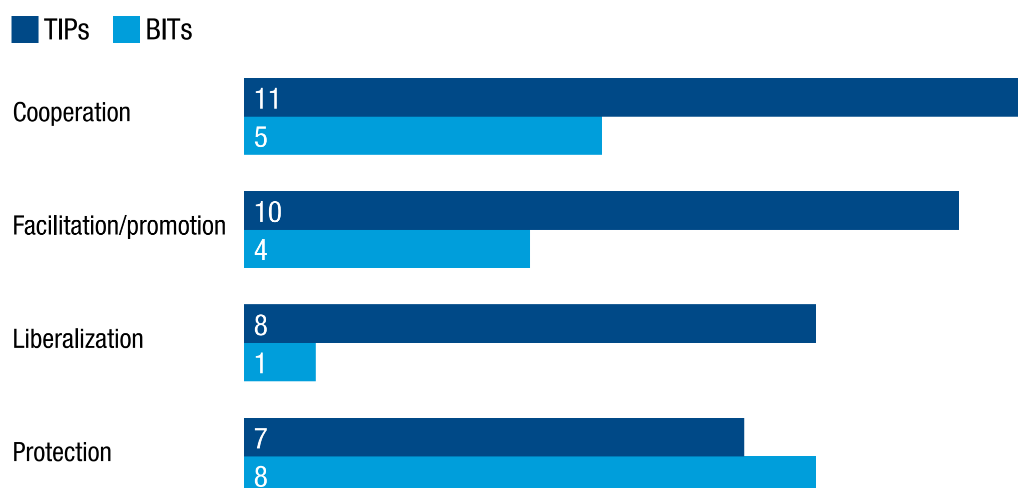
Source: UNCTAD, IIA Navigator database, accessed 25 March 2024.

Abbreviations: IIAs = international investment agreements.

Figure II.18

Content of investment agreements is becoming more diverse

(Number of agreements signed in 2023 by type of commitment)



Source: UNCTAD, IIA Navigator database, accessed 25 March 2024.

Notes: Based on 22 IIAs (14 TIPs and 8 BITs) signed and/or adopted in 2023 for which text or other public information on content is available. Cooperation commitments refer to the establishment of institutional frameworks to cooperate on investment activities (investment committee) and/or undertakings to conduct joint activities on investment in one or more economic sectors.

Abbreviations: BIT = bilateral investment treaty, IIA = international investment agreement, TIP = treaty with investment provisions.

Box II.2

AfCFTA Investment Protocol (2023)

The Investment Protocol to the AfCFTA, which involves 54 countries, is the first megaregional IIA covering the African continent in its entirety. It was adopted by the Heads of the State and Government during the Assembly of the African Union on 18–19 February 2023.

The Protocol builds on existing investment treaty reform objectives and best practices recognized by the African Union and the regional economic communities, as well as UNCTAD. UNCTAD's work on IIA reform is recognized in the preamble of the Protocol. The Protocol provides a balanced approach to international investment governance and contains the following elements:

- Proactive promotion and facilitation commitments for investment that fosters sustainable development
- Refined investment protection provisions that preserve the contracting parties' right and duty to regulate in the public interest and are extended to sustainable investments only
- A dedicated chapter on investment and sustainable development, with proactive commitments on climate action, health and pandemics, human capital development and technology transfer
- Enforceable investor obligations related to environmental and labour protection, human rights, the rights of local communities, transparent corporate governance, tax and non-interference in local governance
- Firm commitments on technical assistance and capacity-building for contracting parties, as well as support for implementation by the Pan-African Trade and Investment Agency established under the Protocol.

Upon entry into force, the Protocol will consolidate the IIA regime in Africa. Under its terms, 183 intra-African BITs will be replaced and regional economic organizations in Africa undertake to harmonize regional IIAs with the content of the Protocol.

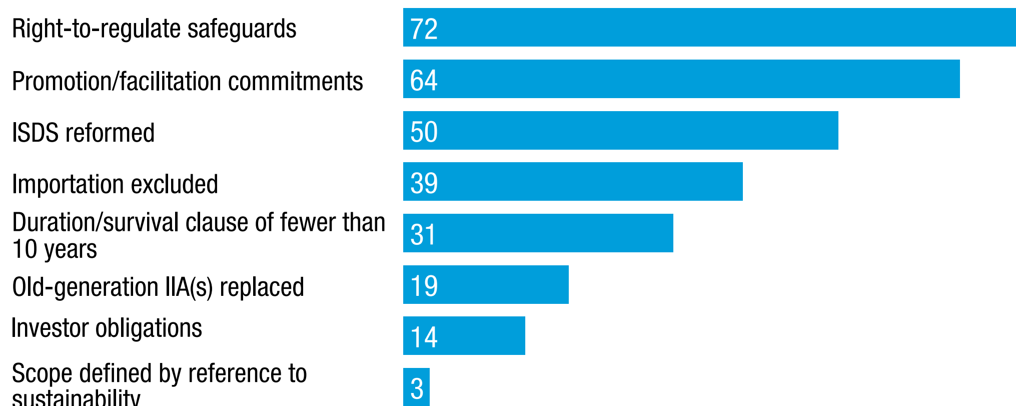
UNCTAD is a member of the task force that assisted the AfCFTA Secretariat in the negotiation of the Investment Protocol and continues to assist in the negotiation of the Investment Dispute Settlement Annex to it.

Source: UNCTAD.

Figure II.19

Recently signed investment agreements include reform features

Agreements signed between 2020 and 2023 with selected reform features
(Percentage)



Selected features of IIAs

Right-to-regulate safeguards. Reforms language of the majority of key substantive IIA provisions, as defined in the UNCTAD IIA Reform Accelerator, including those most often invoked in ISDS.[a]

Duration/survival clause of fewer than 10 years. Provides for initial duration of validity and survival clause of fewer than 10 years or omits them.

ISDS reformed. Contains procedural improvements, limits the access to ISDS for certain types of claims or omits ISDS altogether.

Old-generation IIA(s) replaced. Provides for the termination or suspension of at least one IIA upon entry into force.

Promotion/facilitation commitments. Includes commitments to transparency and/or the improvement of the regulatory environment, stakeholder engagement on investment policies or cooperation.

Investor obligations. Contains obligations applicable to investors, such as responsible business conduct, avoiding corruption, environmental management and the like.

Importation of elements from unreformed IIAs excluded. Excludes application of most-favoured-nation and non-derogation provisions to obligations in other IIAs.

Scope defined by reference to sustainability. The IIA scope of coverage is defined by reference to "sustainable development" and/or "sustainable investment".

Source: UNCTAD.

Note: Based on 36 IIAs concluded in 2020–2023 for which texts are available, not including agreements that lack investment protection provisions.

Abbreviations: IIA = international investment agreement, ISDS = investor–State dispute settlement.

[a] The IIAs counted contain reform language for five or more key substantive provisions, including at least a circumscribed fair and equitable treatment standard and a clarified indirect expropriation clause, or a general exceptions clause with other reformed clauses, in line with the UNCTAD IIA Reform Accelerator (UNCTAD, 2020a).

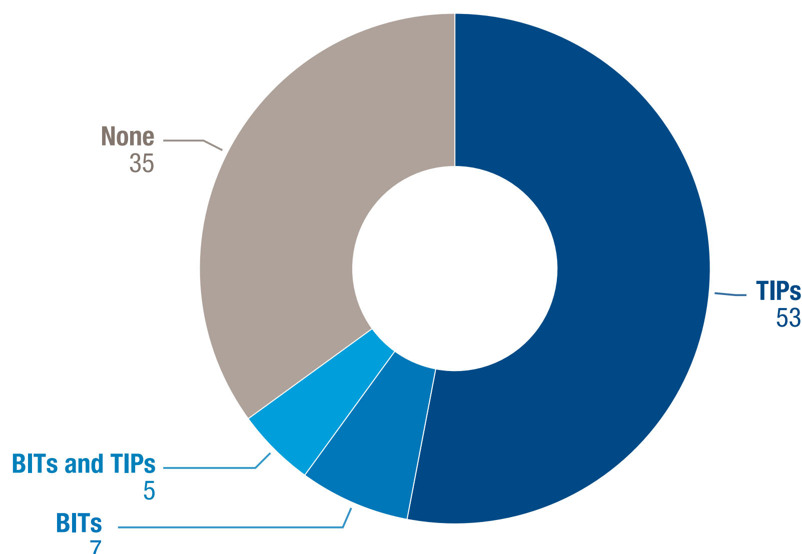
IIAs in force cover 65 per cent of global FDI stock. TIPs, which include regional and megaregional agreements and relate to a broad range of economic issues beyond investment disciplines, account for the largest share – 53 per cent. BITs, which typically include investment protection provisions only and apply bilaterally, cover about 7 per cent. The remaining 5 per cent are covered simultaneously by a TIP and a BIT (figure II.20). The coverage of TIPs has increased by at least 10 per cent in the past decade, following the growing relevance of regional investment policymaking.

Old-generation IIAs, which provide broad and unrefined provisions that often expose host countries to greater risk of ISDS, cover 49 per cent of the total global FDI stock. For 53 countries, more than 80 per cent of total FDI stock is covered by an old-generation IIA. The exposure to ISDS is overall higher for developing economies and LDCs. Old-generation IIAs cover 65

Figure II.20

Investment agreements in force cover 65 per cent of global stock of foreign direct investment

Share of stock covered, by type of IIA
(Percentage)



Sources: UNCTAD, IIA Navigator database, accessed 25 March 2024, and IMF Coordinated Direct Investment Survey database, accessed 19 March 2024.

Notes: FDI stocks estimated on the basis of information about 193 United Nations Member States' shares of world FDI inward stock for 2022. Does not include confidential and unspecified stock data. Analysis based on 2,429 IIAs in force (2,220 BITs and 209 TIPs) with substantive investment commitments. For TIPs that include a relevant regional economic integration organization, only the FDI stock of members for which the IIA is in force was counted. Excludes the Energy Charter Treaty (1994) in view of its sector-specific scope.

Abbreviations: BIT = bilateral investment treaty, FDI = foreign direct investment, IIA = international investment agreement, TIP = treaty with investment provisions.

per cent of developing countries' FDI stock. This is 16 per cent higher than the global average and more than 20 per cent higher than the share for developed economies. The difference is even higher for LDCs, for which old-generation treaties cover 71 per cent of FDI stock (figure II.21).

IIA terminations and replacements since 2012 have affected the IIA coverage of about 13 per cent of the total FDI stock.[8] Following terminations, 6 per cent of the stock is no longer covered; 4 per cent relates to developed economies and 2 per cent to developing economies. The remaining 7 per cent are now covered by a new-generation IIA. Barely any FDI stock of LDCs has been affected by terminations or replacements.

Taken together, these data suggest that to date IIA reform has had a limited effect on mitigating the risk of ISDS in developing countries and has largely left the FDI stock of LDCs subject to old-generation IIAs.

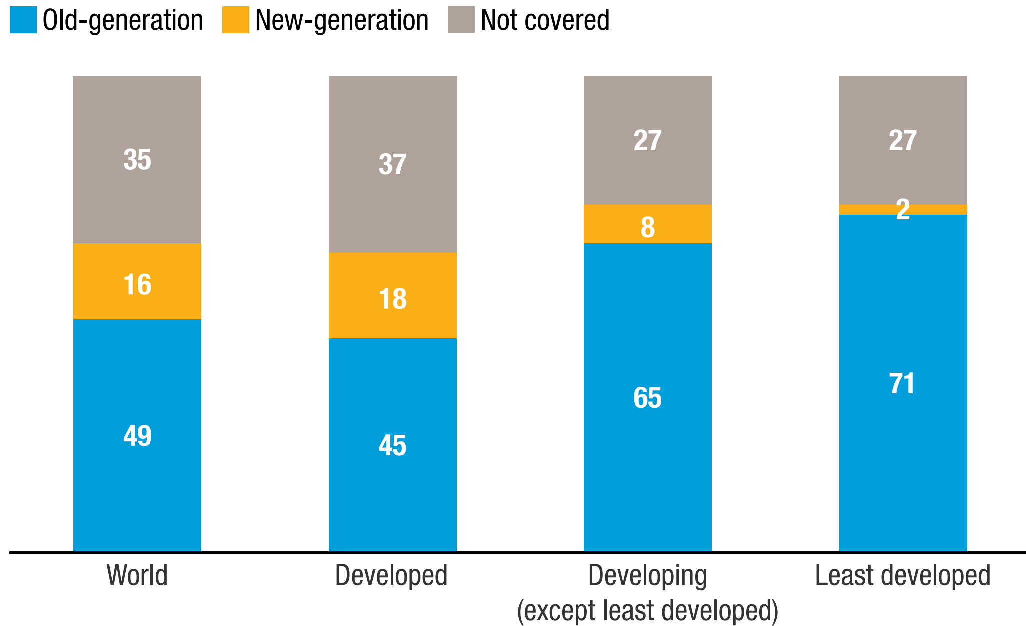
Old-generation IIAs have served as the basis for almost all ISDS cases to date (about 97 per cent), and developing countries have been respondents in the majority of them (about 62 per cent). Of these, at least 58 cases based on old-generation IIAs were initiated against LDCs. ISDS proceedings represent a significant financial risk for developing countries and

[8] Analysis based on 424 IIAs (415 BITs and 9 TIPs) terminated since 2012 (including IIAs that were terminated by mutual consent, unilaterally terminated, expired or replaced by a new treaty).

Figure II.21

Old-generation investment agreements cover the majority of foreign direct investment stock in developing and least developed countries

Stock covered, by economic grouping and generation of agreement
(Percentage)



Sources: UNCTAD, IIA Navigator database, accessed 25 March 2024, and IMF Coordinated Direct Investment Survey database, accessed 19 March 2024.

Notes: FDI stocks estimated on the basis of information about 193 United Nations Member States' shares of world FDI inward stock for 2022. Does not include confidential and unspecified stock data. Analysis based on 2,429 IIAs in force (2,220 BITs and 209 TIPs) with substantive investment commitments. For TIPs that include a relevant regional economic integration organization, only the FDI stock of members for which the IIA is in force was counted. Excludes the Energy Charter Treaty (1994) in view of its sector-specific scope. Where a new-generation IIA coexists with an old-generation IIA covering the same FDI stock without suspending its effect, the relevant FDI stock is considered covered by an old-generation IIA.

Abbreviations: BIT = bilateral investment treaty, FDI = foreign direct investment, IIA = international investment agreement, TIP = treaty with investment provisions.

LDCs, in particular. The average amount sought by investors in ISDS cases is $1.1 billion and the average amount awarded is $385 million. In at least eight ISDS cases developing countries were required to pay compensation of more than $1 billion. At the end of 2023, the amount that LDCs were required to pay totalled $595 million, with one case alone accounting for $270 million.

b. Other developments relating to investment rule-making

The withdrawals of France, Germany and Poland from the Energy Charter Treaty (ECT) (1994) became effective in 2023. At least three more countries have deposited notices to exit the ECT over concerns related to climate change, and the European Parliament voted in favour of the withdrawal of the European Union in April 2024.

The trend towards negotiating flexible international instruments aimed at channelling investment towards the green economy also continued. Partners concluded negotiations on the Clean Economy Agreement in the context of the Indo-Pacific Economic Framework for Prosperity.

The year witnessed the first outputs of the work of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III on ISDS reform. In July 2023 the UNCITRAL Commission adopted the Model Provisions and the Guidelines on Mediation for International Investment Disputes, and the Code of Conduct for Arbitrators in International Investment Dispute Resolution. In April 2024, Working Group III finalized the draft statute for the establishment of an advisory centre on investment disputes.

The text of the Investment Facilitation for Development Agreement was made public on 25 February 2024 by the ministers of 123 participating members of the World Trade Organization. The status of the text in relation to the Organization's architecture remains to be determined.

The UNCTAD World Investment Forum 2023 took place in Abu Dhabi on 16–20 October 2023 ahead of the twenty-eighth Conference of the Parties (COP28). At the Forum investment policymakers and experts discussed urgent reforms of the IIA regime in light of the climate crisis, resulting in the launch of the UNCTAD Multistakeholder Platform for IIA Reform (box II.3).

Work on diverse aspects of international investment governance continued in a number of international forums (table II.2). Notably, Brazil – which holds the Group of 20 Presidency in 2024 – identified sustainable development in IIAs as one of the key priorities for the Group of 20 Trade and Investment Working Group.

Box II.3
UNCTAD World Investment Forum 2023 – IIA track highlights

The events in the IIA track at the UNCTAD World Investment Forum 2023 brought together key actors in IIA reform:

High-level IIA conference 2023 (18 October 2023). Investment policymakers and experts from governments, international organizations, think tanks, academia and the private sector noted the challenges that the current IIA regime may pose to climate action, explored options for aligning IIAs with climate mitigation and adaptation goals, and called for the urgent reform of the stock of old-generation treaties. Based on requests by participants to identify ways to fast-track investment treaty reform for sustainable development and climate action, UNCTAD launched a Multi-Stakeholder Platform for IIA Reform.

International policy developments in investment facilitation (19 October 2023). The session united key actors in investment facilitation from Governments, development partners, private sector representatives and regional/international organizations, to analyse global trends and challenges in investment facilitation policies for sustainable development. Speakers welcomed UNCTAD's policy options for facilitating investment in sustainable development, part of the IIA Issues Note Investment Facilitation in IIAs: Trends and Policy Options (UNCTAD, 2023a).

Regional sessions (16–18 October 2023). Three sessions co-organized with key regional partner organizations complemented the UNCTAD World Investment Forum IIA track and highlighted the role that such organizations can play in shaping coherent international investment policies among their members:

- D-8 Organization for Economic Cooperation – UNCTAD Guiding Principles for Investment
- AfCFTA Investment Protocol: towards a new generation of investment policies in Africa
- Islamic Development Bank–UNCTAD Investment Policy Principles

Source: UNCTAD.

Notes: For more information on the UNCTAD World Investment Forum, see https://worldinvestmentforum.unctad.org/wif-events-programme?event=80. For information on the UNCTAD Multi-Stakeholder Platform for IIA Reform, see https://investmentpolicy.unctad.org/news/hub/1732/20231020-launch-of-multi-stakeholder-platform-for-investment-treaty-reforms.

Table II.2
Work relating to investment rule-making in international forums, 2023–2024

Organization/initiative	IIA-related coverage	Most recent outputs/events
Americas Partnership for Economic Prosperity	Financing/investment for sustainable infrastructure	East Room Declaration (November 2023)
Asia-Pacific Economic Cooperation	Sustainability considerations for investment policy	San Francisco principles on integrating inclusivity and sustainability into trade and investment policy (November 2023)
Draft legally binding instrument on the right to development	Right to regulate Interaction with the scope of IIAs	Draft instrument presented to Human Rights Council (September 2023)
Group of 20 Trade and Investment Working Group	Sustainable development in IIAs Investment facilitation in IIAs	Second meeting (April 2024) UNCTAD-OECD Report mapping of sustainable development and investment facilitation provisions in IIAs by Group of 20 members and invited countries (April 2024)
Investment Facilitation for Development, WTO	Investment facilitation	Joint Ministerial Declaration on the Investment Facilitation for Development Agreement by participating countries (February 2024)
OECD Work Programme on the Future of Investment Treaties	IIAs and climate change IIA reform	OECD Investment Treaty Conference (March 2024)
OHCHR Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment	ISDS Safe, clean, healthy and sustainable environment	Report on risks of ISDS for the right to a healthy environment (July 2023)
OIC Intergovernmental Experts Group on ISDS	ISDS, permanent mechanism OIC investment agreement	Second expert meeting (September 2023)
UNCITRAL Working Group III	ISDS reform	Model provisions and guidelines on mediation, and codes of conduct for arbitrators and judges adopted by the UNCITRAL Commission (July 2023) Draft statute of advisory center for ISDS finalized (April 2024)
UNCTAD	IIA reform for sustainable development Policy analysis, technical assistance, consensus building	First meeting of Multi-stakeholder Platform for IIA Reform (February 2024) Capacity-building and technical assistance on IIA reform provided for more than 90 countries
UNIDROIT and ICC Working Group	International investment contracts (codification)	Second working group meeting (March 2024)

Source: UNCTAD, based on various sources.

Abbreviations: ICC = International Chamber of Commerce, IIA = international investment agreement, ISDS = investor–State dispute settlement, OECD = Organisation for Economic Co-operation and Development, OHCHR = Office of the United Nations High Commissioner for Human Rights, OIC = Organisation of Islamic Cooperation, UNCITRAL = United Nations Commission on International Trade Law, UNIDROIT = International Institute for the Unification of Private Law, WTO = World Trade Organization.

2. Trends in investor–State dispute settlement

The total ISDS case count reached 1,332, with 60 new arbitrations initiated in 2023. About 70 per cent of them were brought against developing countries, including three LDCs. Investors in construction, manufacturing and extractives accounted for over half of the claims.

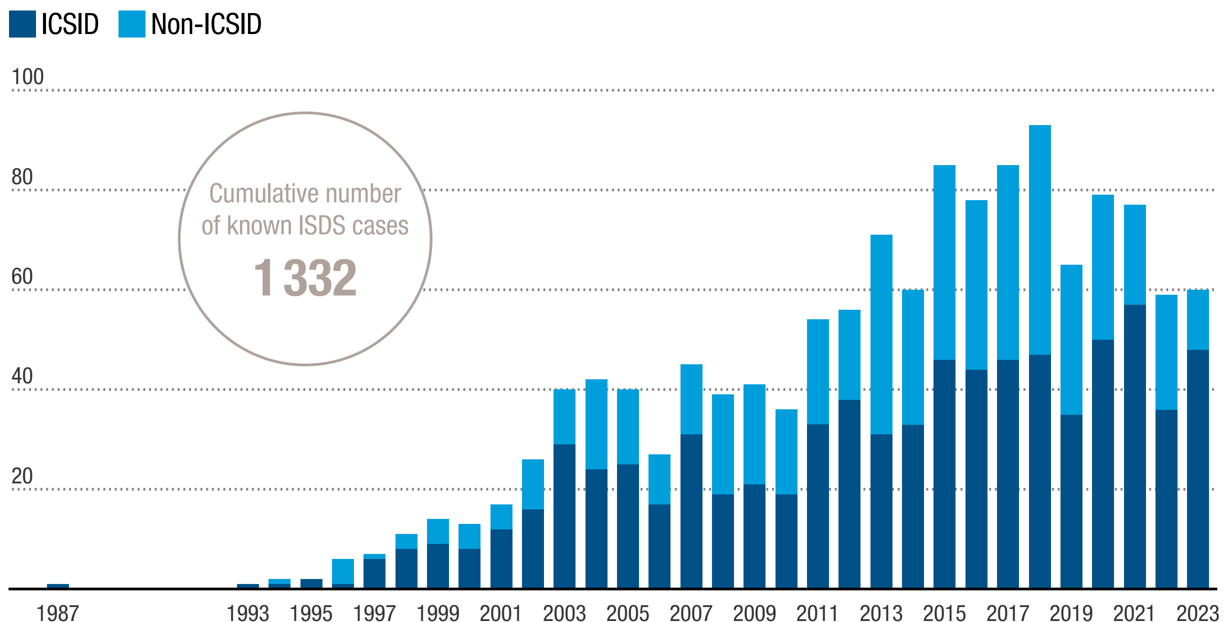
a. New cases initiated in 2023

In 2023, 60 known treaty-based ISDS cases were initiated – 48 cases at the International Centre for Settlement of Investment Disputes (ICSID) and 12 cases before other forums (figure II.22). As some arbitrations can be kept confidential, the actual number of arbitrations filed in 2023 (and previous years) is likely to be higher. In the past 10 years, the total number of ISDS cases has more than doubled. There were fewer than

Figure II.22

Investor–State dispute settlement cases surpassed 1,300 at the end of 2023

(Annual number of known treaty-based cases)



Source: UNCTAD, ISDS Navigator database, accessed 25 March 2024.

Notes: Information has been compiled from public sources, including specialized reporting services. UNCTAD statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signalled 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 match exactly case numbers reported in previous years.

Abbreviations: ICSID = International Centre for Settlement of Investment Disputes, ISDS = investor–State dispute settlement.

600 known ISDS cases at the end of 2013, against more than 1,300 at the end of 2023.

To date, 132 countries and one economic grouping are known to have been respondents to one or more ISDS claims. The new cases in 2023 were initiated against 37 countries and one economic grouping (the European Union). About 70 per cent of them were brought against developing countries, including LDCs (Myanmar, Senegal and the United Republic of Tanzania). Mexico was the most frequent respondent, with 10 new known cases. Honduras faced five cases, followed by Argentina and the Bolivarian Republic of Venezuela with three cases each. The largest share of claims was directed at countries in Latin America and the Caribbean, with about half of the 60 cases. In regional terms, between 1987 and 2023, respondent States in Europe and in Latin America and the Caribbean each accounted for about 30 per cent of the total 1,332 known ISDS cases.

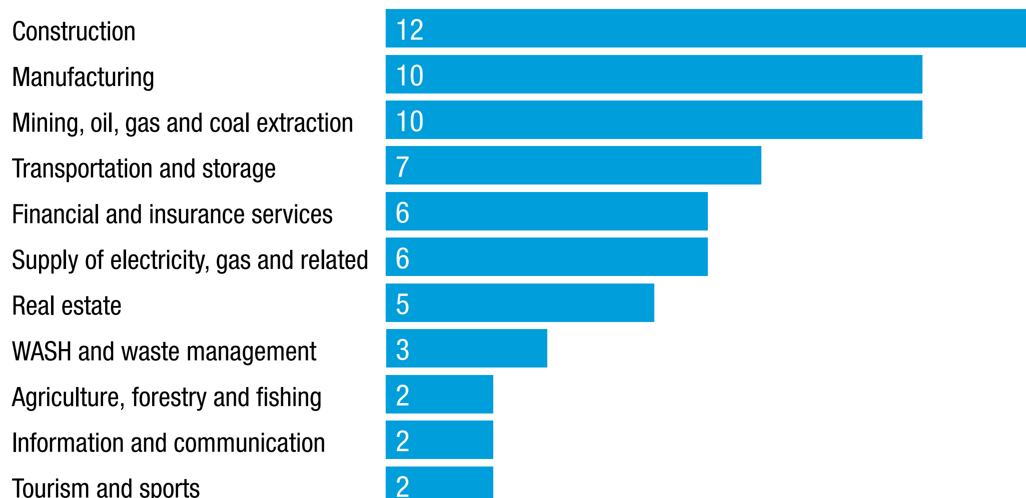
Developed-country claimants brought most – about 75 per cent – of the 60 known cases in 2023. The highest numbers of cases were brought by claimants from the United States (13), the United Kingdom (8) and Switzerland (5). Between 1987 and 2023, claimants invoking the IIAs of five countries – the United States, the Kingdom of the Netherlands, the United Kingdom, Germany and Spain – initiated about 45 per cent of the 1,332 known ISDS cases.

The ISDS cases filed in 2023 involved disputes related to several economic sectors (figure II.23). Construction, manufacturing and extractive industries accounted for over half of them, with 10 or more cases each. By the end of 2023, investors had filed a total of 235 fossil fuel-related cases,[9] making such activities

Figure II.23

Construction, manufacturing, and extraction activities account for over half of investor–State cases filed in 2023

(Number of known cases by sector)



Source: UNCTAD, ISDS Navigator database, accessed 25 March 2024.

Note: Some cases concerned multiple sectors.

Abbreviations: WASH = water, sanitation and hygiene.

[9] Fossil fuel-related cases include those related to mining of coal and lignite; extraction of crude petroleum and natural gas; power generation from coal, oil and gas; transportation and storage of fossil fuels; and manufacture of coke and refined petroleum products.

among those most frequently brought to the ISDS system. Construction and manufacturing activities, which commonly involve lengthy and asset-intensive projects, are typically prone to litigation risk.

About 70 per cent of investor–State arbitrations in 2023 were brought under BITs and TIPs signed in the 1990s or earlier. In combination, the North American Free Trade Agreement (NAFTA) (1992) and the Agreement between Canada, the United States and Mexico (USMCA) (2018) were the IIAs most frequently invoked in 2023. They gave rise to 11 cases based on so-called "legacy claims" under the NAFTA. Five cases were based on the ECT (1994), followed by the Central America–Dominican Republic Free Trade Agreement (FTA) (2004) with three cases and the Association of Southeast Asian Nations–Australia–New Zealand FTA (2009) with two cases. Between 1987 and 2023, about 20 per cent of the 1,332 known ISDS cases invoked either the ECT (162 cases) or the NAFTA (92 cases).

b. Outcomes of investor–State dispute settlement

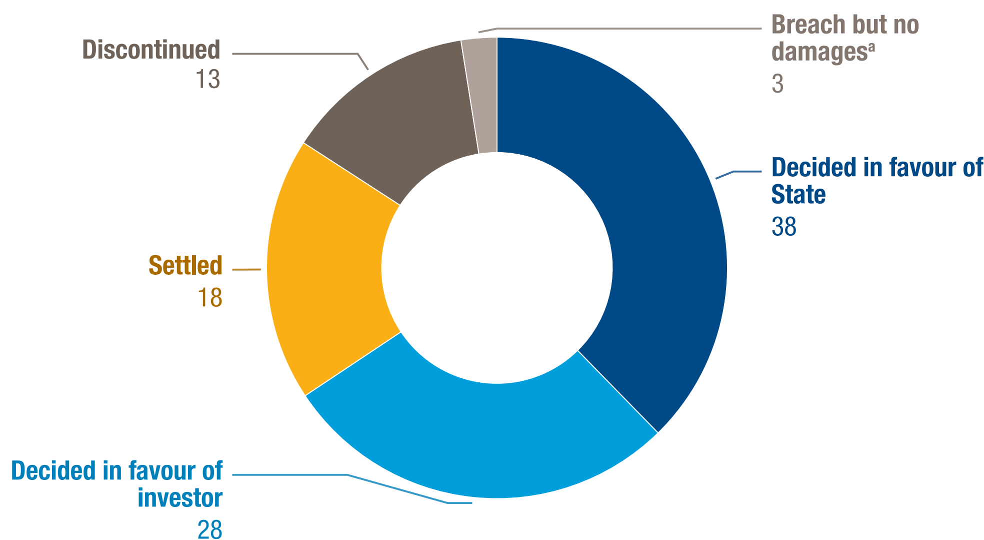
In 2023, ISDS tribunals rendered at least 49 known substantive decisions in investor–State disputes, 28 of which were in the public domain at the time of writing. Ten of the public decisions principally addressed jurisdictional and preliminary objections. In four of them, tribunals dismissed such objections (at least in part) and continued the arbitration proceedings; in six of them, tribunals upheld the objections and ceased the proceedings for lack of jurisdiction or admissibility. Another 18 public decisions were rendered on the merits, with 9 holding the State liable for IIA breaches and 9 dismissing all investor claims. In addition, six publicly available decisions in annulment proceedings at ICSID were rendered. In all of them, the ad hoc committees of ICSID rejected the applications for annulment.

By the end of 2023, at least 958 ISDS proceedings had been concluded, leading to different results (figure II.24).

Figure II.24

Outcomes of investor–State dispute settlement cases can differ greatly

Share of concluded cases, 1987–2023
(Percentage)



Source: UNCTAD, ISDS Navigator database, accessed 25 March 2024.

[a] Decided in favour of neither party (liability found but no damages awarded).

* * *

Newly concluded IIAs increasingly incorporate proactive commitments aimed at improving the investment climate in the contracting parties. They increasingly steer towards investment facilitation commitments (see chapter IV.C). There is growing interest also in establishing continuous cooperation mechanisms for investment activities, sometimes geared towards specific development objectives. The majority of investment protection elements in newly concluded IIAs also continued to include refinements, clarifications and flexibility mechanisms that aim to preserve countries' right to regulate in the public interest.

IIA reform continues to advance at a slow pace, accentuating the dichotomy in the IIA regime between newer and older treaties. Old-generation IIAs continue to dominate the regime as much in terms of number of IIAs in force as in coverage of FDI stock. They also continue to form the basis of most ISDS cases. Developing countries – and LDCs in particular – are the most disadvantaged by the slow pace of reform, as their exposure to the risks of ISDS is significantly higher than that of developed economies. In addition, the dichotomy is producing a progressively more complex IIA regime with overlapping and sometimes contradictory commitments, making it difficult for countries to navigate, especially developing ones and least developed ones.

UNCTAD's Multi-Stakeholder Platform for IIA Reform, established in 2023 as an outcome of UNCTAD's World Investment Forum, aims to fast-track IIA reform and underscores the importance of providing an inclusive forum that promotes the alignment of investment governance with sustainable development priorities. Since 2012, UNCTAD has played a leading role in facilitating IIA reform action by developing core policy guidance tools. UNCTAD will continue to work with all stakeholders to build the capacity of country negotiators and policymakers to ensure that the IIA regime works for – rather than impedes – sustainable development objectives.