

# INVESTMENT RELATED PROVISIONS

## IN

# REGIONAL TRADE AGREEMENTS<sup>1</sup>

by

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October 2003



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<sup>1</sup> Paper prepared for the project on Regional Integration and Poverty, EP/R03/013, funded by UK-DFID under the EC-PREP programme. The UK Department for International Development (DFID) supports policies, programmes and projects to promote international development. DFID provided funds for this study as part of that objective. We are grateful to Sheila Page for helpful suggestions and comments. The views and opinions expressed are those of the authors alone.

## Abstract

This paper discusses the expected effects of investment related provisions in regional trade agreements and assesses the way in which they have been implemented for a number of key regions: ASEAN (AFTA, or ASEAN Free Trade Area), NAFTA, MERCOSUR, CARICOM, ANDEAN, COMESA and SADC. Trade rules are present in all Regional Trade Agreements (RTAs). Regional trade liberalisation is likely to foster extra regional FDI, particularly in those sectors with high MFN tariffs and tight rules of origin, but is more ambiguous with regard to intra-regional FDI, as there is a trade-off between the importance of transport costs, firm level specific and plant level fixed costs. Regional investment rules, when offered in a package with other locational specific factors including basic economic fundamentals, should provide a more welcoming investment climate.

However, in reality there will be many specific factors that play a role when determining the effects of RTAs on FDI: Extent of regional tariff preferences (and other trade barriers); restrictiveness of rules of origin; differences with actual regional investment rules; initial situation, including the structure of investment and existing liberalisation; plant level and firm level fixed costs; existing economic factors.

We show that regions differ in two fundamental respects: 1) *over time* when one region can change or add investment related provisions; and 2) *across regions* when investment related provisions differ at one single point in time. Evidence shows that investment related provisions in key regions differ significantly, including differences in: extent of regional tariff preferences; restrictiveness of rules of origin; investment rules, including national treatment for pre and post establishment and presence of effective dispute settlement mechanisms; and regional co-ordination on investment. Other differences relate to the different type of membership: North-North, South-South, North-South, South-South-North.

The experience over the past three decades shows that regions can be subdivided into four categories with respect to investment provisions: 1) regions that do not have investment related provisions except for trade rules (most RTAs); 2) regions that impose a common policy toward investment (ANDEAN in the early 70s) that is more restrictive than individual member policies were; 3) regions that choose to develop a common approach gradually over time introducing provisions that stimulate regional investment co-operation and regional investment promotion and (begin to) grant national and MFN treatment (pre and post establishment) to foreign firms (ASEAN); and 4) regions that include comprehensive investment provisions from the beginning, including pre-establishment national treatment and effective investor-state dispute mechanisms (NAFTA).

Regions that desire to formulate new or change existing investment related provisions would be helped by an analysis of their effects. In understanding the effects of RTAs on FDI, particularly in developing countries, the existing variation in investment related provisions across regions and over time has not yet been fully exploited.

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## ACRONYMS

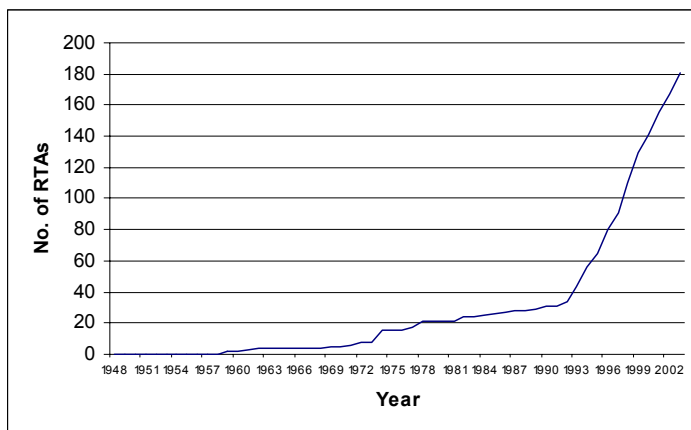
|             |  |
|-------------|--|
| ACP         | African, Caribbean and Pacific                             |
| ACS         | Association of Caribbean States                            |
| AFTA        | ASEAN Free Trade Agreement                                 |
| AGOA        | African Growth and Opportunity Act                         |
| AMU         | Arab Maghreb Union   |
| AICO Scheme | ASEAN Industrial Cooperation scheme                        |
| APEC        | Asia-Pacific Economic Cooperation                          |
| ASEAN       | Association of Southeast Asian Nations                     |
| AFTA        | ASEAN Free Trade Area                                      |
| BIT         | bilateral investment treaty                                |
| CAN         | Andean Community   |
| CARICOM     | Caribbean Community  |
| CBI         | Cross Border Initiative                                    |
| CET         | Common External Tariff                                     |
| COMESA      | Common Market for Eastern and Southern Africa              |
| CACM        | Central American Common Market                             |
| CSME        | Caricom Single Market and Economy                          |
| CEMAC       | Economic and Monetary Community of Central Africa          |
| CEPGL       | Economic Community of the Great Lakes Countries            |
| CTH         | change in tariff heading                                   |
| DC          | domestic content   |
| EAC         | East African Community                                     |
| EBA         | “Everything but Arms”                                      |
| ECCAS       | Economic Community of Central African States               |
| ECOWAS      | Economic Community of West African States                  |
| FDI         | Foreign Direct Investment                                  |
| FTA         | Free Trade Agreement                                       |
| GATS        | General Agreement on Trade in Services                     |
| GATT        | General Agreement on Tariffs and Trade                     |
| GDP         | Gross Domestic Product                                     |
| GSP         | Generalised System of Preferences                          |
| ICSID       | International Centre for Settlement of Investment Disputes |
| IMP         | internal market programme                                  |
| IOR-ARC     | Indian Ocean Rim Association for Regional Co-operation     |
| LAIA        | Latin American Integration Association                     |
| MC          | import content   |
| MERCOSUR    | Southern Common Market Agreement                           |
| MFN         | Most Favoured Nation                                       |
| MNE         | Multinational Enterprise                                   |
| MRU         | Mano River Union   |
| NAFTA       | North American Free Trade Agreement                        |
| NTB         | non tariff barrier   |
| OECS        | Organisation of Eastern Caribbean States                   |
| RoO         | Rules of Origin  |
| RTA         | Regional Trade Agreement                                   |
| SAARC       | South Asian Association for Regional Cooperation           |
| SACU        | Southern African Customs Union                             |
| SADC        | Southern African Development Community                     |

|          |   |
|----------|---|
| SICA     | Central American Integration System                   |
| SADCC    | Southern African Development Co-ordination Conference |
| TBT      | Technical barriers to trade                           |
| TRIMs    | Trade Trade-Related Investment Measures               |
| UEMOA    | West African Economic and Monetary Union              |
| UNCITRAL | United Nations Commission on International Trade Law  |
| UNCTAD   | United Nations Conference on Trade and Industry       |
| WTO      | World Trade Organization                              |

## 1 Introduction

There is a renewed interest in how regional trade agreements (RTAs) can foster foreign direct investment (FDI) to developing countries. Under WTO rules members can enter into a regional integration arrangement through which it grants more favourable conditions to its trade with other parties to that arrangement than to others, thereby departing from the guiding principle of non-discrimination, under specific conditions spelled out in three sets of rules: Paragraphs 4 to 10 of Article XXIV of GATT providing for the formation and operation of customs unions and free-trade areas covering trade in goods; the Enabling Clause which refers to preferential trade arrangements in trade in goods between developing country Members; and Article V of GATS which governs the conclusion of RTAs in the area of trade in services. Other non-generalised preferential schemes, for example non-reciprocal preferential agreements involving developing and developed countries (such as the EC-ACP Partnership Agreement), require a waiver from WTO rules. The number of RTAs notified to the WTO was 265 by May 2003, and the number of RTAs in force has increased especially since the early 1990s (see chart 1)

**Chart 1 The number of WTO notified RTAs in force**



Source: WTO

The coverage and depth of preferential treatment differs from one RTA to another. There is however a large number of RTAs that goes beyond tariff-cutting and provide for complex regulations on intra-regional trade in goods (standards, safeguard

provisions, customs administration, etc.) and preferential treatment for intra-regional trade in services. A select group of RTAs goes beyond traditional trade rules and provides rules on investment, competition, environment and labour.

Countries decide to form an RTA for various reasons. One reason might be to enhance economic development and co-operation through increased trade and investment. This can in turn affect poverty through various routes as we identify in a separate paper. The purpose of this paper is to examine how RTAs can affect investment, in particular listing investment related provisions that (aim to) promote intra and extra-regional FDI. The structure is as follows. Section 2 will discuss expected links between RTAs and FDI, focusing specifically on trade rules and investment rules but also examining other links more generally. Section 3 describes investment related provisions by key regions as well as by key provision. Section 4 concludes by discussing outstanding issues for empirical research.

## **2 Regional Trade Agreements and FDI: what are the links?**

There are various ways through which RTAs can influence FDI and vice versa. This section distinguishes amongst investment rules (2.1), trade rules (2.2) and other links (2.3) and identifies links (2.4) with arrangements and policies at other policy levels (multilateral and bilateral).

### *2.1 Investment rules*

Investment rules are rules governing cross-border investment in the region and usually consist of rules on treatment and protection of FDI contributing to the “investment climate”. Investment rules do exist in a handful of RTAs<sup>2</sup> although they are not as common as trade rules, particularly amongst the poorer developing countries. Some are voluntary (e.g. APEC voluntary principles) while others are obligatory with effective dispute settlement procedures. We discuss a number of investment provisions in regional treaties (scope, standard of treatment, performance

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<sup>2</sup> Investment rules also appear in bilateral trade arrangements (e.g. Singapore-Japan), but more often appear in bilateral investment treaties (see section 2.4).



requirement, expropriation and dispute settlement mechanisms) and their expected effects on the volume of FDI.

### *Scope*

The scope of investment treaties deals with the definition of investments and investors and to extent to which the treaty applies to member and non-members. Sometimes investment in general is included, while other agreements include FDI only.

Provisions in some RTAs apply also to non-member states when they invest in the region from another location in the region (e.g. performance requirements in NAFTA). The scope also can also be used to determine whether investment rules apply to listed sectors only (positive approach) or to all sectors in principles with listed exceptions (negative approach).

### *Standard of treatment*

While many RTAs would include fair and equitable treatment, more contentious are whether investment rules provide national treatment or MFN treatment to post-establishment operations or to pre-establishment issues. Most liberal are those RTAs that include national treatment to members with respect to pre-establishment, subject to exceptions, as investors would have the right to establish a subsidiary anywhere within the region, and would be treated the same as national investors. The fewer the restrictions on establishment, the easier it is to invest and so the more investment would be possible (though actual investment attraction depends on there being profitable economic opportunities). Such enhanced market access can be important and regional arrangement may include this and may thus be more liberal than is provided for in most multilateral and bilateral (except perhaps the US) investment treaties. When national treatment is applied to post-establishment it usually refers to issues such as (abolition of) performance requirements.

### *Performance requirements*

The more elaborate RTAs can include a section on performance requirements and the extent to which they cannot be applied to new and/or existing investment.

Performance requirements are requirements imposed on the operations of MNEs and traditionally include export and domestic content (local sourcing) rules related to foreign goods producers. However, they can include more inclusive requirements (e.g.

employment) or deal with the service sectors in addition to the goods sector (e.g. NAFTA).

Performance requirements affect investment in a number of ways. First, by imposing requirements it may enforce foreign investors to use inefficient inputs or inefficient production processes. If this is severe this can lower the volume (and profitability) of investment. Performance requirements would be more relevant for countries or regions that have built up a minimum supply capacity. Conversely, abolishing performance requirements is unlikely to *attract* FDI which was previously not interested in investing in countries whose economic fundamentals were not right, lacking a basic supply capacity. It may be difficult to identify the effects of performance requirements on locational decisions in practice. Few sectors are covered by performance requirements (see table 1). The automobile assembly sector is one sector that is often affected, and a sector where local content requirements can be effective because it depends on component parts. Sectors that are less dependent on inputs from outside the company would be affected less. Secondly, performance requirements may influence the type of investment, because performance requirements could affect quality of inputs used (and hence the profitability of investment).

#### *Expropriation and nationalisation*

Expropriation is a potential threat to interests of foreign investors if governments decide to nationalise subsidiaries of MNEs – though this seemed more likely to occur in the past in Latin America and Africa<sup>3</sup>. International law and regulations normally allow expropriation only when it is in the public interest, on a non-discriminatory basis and against adequate compensation. RTAs can contain such provisions that allow expropriation of property by the state on a non-discriminatory basis (national treatment and MFN). These provisions would add some comfort and diminish the non-commercial risks of an investment. Obviously, without other good reasons to invest, such provisions would not attract on its own, though it could potentially help to establish a favourable investment climate when offered as a package with other conditions.

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<sup>3</sup> Some cases take considerable time to resolve. For instance, in January 2003, Nestle settled an expropriation claim with the Ethiopian government dating back to the Ethiopian nationalisation programme of 1975.

### *Dispute settlements*

Investment rules, including those on expropriation, are likely to be more effective when backed by some dispute settlement mechanism. There are various procedures, ranging from state-to-state to (foreign) investor-state dispute settlement procedures. In the event of an investment dispute, the more advanced regions allow for a consultation process leading to a panel review either between states or between investors and states. In some cases there are regional courts of justice, and in many cases disputes can be reviewed in the host-country or some independent arbitrator (when countries are a member) such as the Convention of the Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL). Appendix B shows a list of 139 countries that have ratified the signing of ICSID. There is much debate about the ultimate effect of such dispute settlement mechanisms on development but it is likely that investors see some comfort in having them as they may reduce non-commercial risks. The presence of (access to) dispute settlement procedures may also form the basis for home countries offering investment guarantees against political risks in the context of bilateral treaties.

There is a heated discussion on how investment rules (bilateral, regional and multilateral) affect investment decisions. Generally a predictable investment climate can be in the interest of investors when they were previously disadvantaged. It is not clear whether this would lead to *additional* FDI or simply more comfort for the investor. It is however clear that surveys reveal that investors want a predictable investment climate (e.g. CBI position paper for WTO negotiations, EU survey of MNEs – EC, 2000), although not necessarily at the cost of other policy liberalisation (e.g. further trade liberalisation). The predictability of the investment climate may be enhanced when domestic policies are enshrined or locked into regional treaties. However, it remains unclear under what circumstances which investment rules would lead to additional FDI. Much will also depend on existing treatment. If treatment of existing investors in practice is already good or better than of domestic investors, new (regional) rules may add little to generating new investment or a better investment climate, other than offering a little more long-run security.

## 2.2 Trade rules

There are three types of regional trade rules that may affect investment: regional tariff preferences, rules of origin and non-tariff barriers (which normally do not include rules of origin). We discuss these with respect to the effects on intra and extra-regional FDI.

### *Regional tariff preferences*

The key market access negotiations within RTAs focus on tariff reduction, particularly to what degree parties to RTAs grant each other regional trade preferences. Tariff preferences can be set at a fixed level or a percentage deviation from most-favoured nation (MFN) tariffs. Unilateral and multilateral tariff reductions will erode the absolute level of regional trade preferences.

The elimination of intra-regional tariff preferences can affect trade vis-à-vis the level of sales by multinational subsidiaries depending on the importance of transport (including tariff) costs and plant-level and firm-level costs to set up multinational subsidiaries (Markusen and Venables, 1997, Brainard, 1997, Carr *et al.*, 1998). Hence, the type and motive of investment plays an important role and to reflect this, the analysis will need to distinguish between intra-regional and extra-regional FDI and between horizontal (market-seeking: subsidiaries selling similar products) and vertical (efficiency and natural resource seeking: subsidiaries exploiting efficiencies or wanting control over input markets) FDI.<sup>4</sup>

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<sup>4</sup> In the past decades, trade economists have begun to broaden the trade theory and the 'new trade theory' now embraces increasing returns, imperfect competition and product differentiation in addition to the traditional comparative advantage paradigm. Recently, multinationals have been incorporated and made endogenous. The first attempts were by Helpman (1984) who integrated vertical multinationals and Markusen (1984) who integrated horizontal multinationals into the trade theory. Vertical multinationals separate production geographically into different plants to intra-industry trade. Horizontal multinationals are multi-plant firms selling similar products in different locations. Markusen (1997) presents a unified approach to vertical and horizontal multinationals. Horizontal MNEs dominate if nations are similar in size and relative endowments and if transport costs are high. Vertical MNEs appear with headquarters in the skilled labour abundant country, provided that transport costs are high enough. National firms dominate if both trade costs are small and the home market is large enough: in this situation it makes sense to incur the fixed costs of setting up only one plant, from where to export. Within this framework it can be shown that trade and investment liberalisation are not substitutes and the two taken together may lead to a reversal in the direction of trade. Carr *et al.* (1998) provides a good empirical test of the framework, clearly showing the complexity and non-linearities affecting FDI and hence the relationship between trade and FDI.

Regional tariff preferences are likely to lower *horizontal* (tariff-jumping) intra-regional FDI because it may now become cheaper to serve the partner country by trade rather than to establish a subsidiary and incur plant-level costs more than once and firm-level costs only once. Of course when firm-level and plant-level fixed costs are zero, there would be no trade and no concentrated production facility or FDI – just national production. However, on the other hand, regional tariff preferences encourage *vertically-motivated* intra-regional FDI, because lower trade costs will provide incentives to establish international production networks and establish an efficiency seeking subsidiary in a partner country which can process imports for re-exports. An example includes the increase in US – owned “maquiladoras” in Mexico partly as a response to NAFTA, although domestic Mexican regulation also played a role.

Extra-regional FDI can also be affected by declining regional tariff preferences in different ways. First, by lowering tariffs amongst parties to the RTA, it may become profitable for an extra-regional investor to avail of an effectively larger market (horizontal market seeking FDI) from one or more locations in the region (export platforms). If individual countries of a region were previously served by trade, this may then raise inward FDI. However, if the member countries of a region were already served through sales of a multinational subsidiary, concentration of production may occur in one of a few countries in the region, with ambiguous effects for the volume of extra-regional FDI. The combination of lower internal tariffs and significant plant fixed costs would lead to a consolidation of several plants in several members of the region into one plant, which is being used by the parent to serve the region as a whole. This may also induce FDI inflows to the most cost-efficient location (usually nearest to the largest market), possibly at the cost of FDI to other members in the same region. This could be the case for market seeking multinationals. An example could be Unilever, which has traditionally invested in many developing countries including Bolivia, Argentina and Brazil. When confronted with lower trade (including tariffs) costs between Bolivia, Argentina and Brazil they may decide to rationalise production in fewer countries to exploit economies of scale or some other locational advantage. The effects of regional trade preferences for extra-regional vertical (or efficiency-seeking) FDI is likely to be small, though lower regional preferences may lower costs and raise efficiency in the vertically motivated subsidiary

when it uses inputs from more than one country in the region (e.g. possibility of regional enterprises in the ASEAN, ANDEAN or SAARC context).

There are various effects of regional tariff preferences on inward FDI. However, in the context of developing country regions, where most inward FDI is inter-regional, the market size argument would be the most important, and apart from other factors regional tariff preferences would tend to raise inward FDI. It must be noted however that the strength of this argument depends on the difference between tariffs applied regionally and tariffs applied to others (MFN). With large regional markets, but low tariff preferences the effects are likely to be low. Table 4 provides data on this for selected countries.

#### *Rules of origin*

Rules of origin constitute another trade rule that can affect location decisions. Rules of origin administer differentiated trade regimes, to ensure that goods that enter a country receive the correct import treatment. Proof that the imported product was produced in a party to the regional agreement would be sufficient to obtain preferential treatment as applied in the region. However, this may become complicated if products are only partly produced and processed in a member of the region and partly outside the region, and a method is used to determine where the product originates. Rules of origin provisions govern when such products can benefit from preferential treatment and when products will be treated as originating from outside the region.

There are three main methods that determine where a substantial transformation takes place (WTO official document WT/REG/W/45). First, the *change in tariff heading* (CTH) method origin is granted to that country where the processed good falls under a different tariff classification (e.g. harmonised system) than the imported good used for processing. Secondly, the *percentage criterion method* determines where a substantial transformation has taken place on the basis of a minimum percentage of the total value that must have been added in the exporting country (domestic content or DC) or a maximum percentage of value due to imports (import content or MC). Thirdly, the *technical test method* stipulates certain production or sourcing requirements in

processing operations. There are advantages and disadvantages for all three rules, which is why regions often decide to adopt more than one rule.

Rules of origin can include provisions for cumulation, which describe the conditions under which imported inputs can be regarded as domestic content in the exporting country. Some RTAs allow for bilateral cumulation, where inputs from all parties to an RTA are regarded as domestic content. Diagonal cumulation allows that inputs from non-parties are regarded as domestic under certain conditions. Full cumulation allows that all processing in the whole RTA area will be regarded as domestic. This would be more generous than bilateral cumulation when domestic content of the exporting country is low, but the regional content is high.

Other concepts discussed in more detail elsewhere include tolerance and absorption levels (see WTO official document WT/REG/W/45, and Estevadeordal and Suominen, 2003). The *tolerance* rule allows a certain percentage of inputs not originating in the exporting country to be used without affecting the origin of the final product. This can make it easier for products with non-originating inputs to qualify for preferences. The *absorption* rule allows parts or materials that under relevant rules of origin are regarded as originating can be treated domestic in any further processing operation. This means that inputs which were at one point non-originating are no longer treated as such.

The effects of rules of origin (RoO) on investment can vary depending on the type of investment as well as the interaction with regional tariff preferences. The RoO can encourage the use of intra-regional inputs diverting away from extra-regional inputs even if these were more efficient. However, a stricter and more costly RoO would stifle intra-regional trade favouring extra-regional imports thereby paying the MFN tariff. The higher the difference between MFN tariffs and regional tariff, the higher the incentive to comply with the RoO by importing regionally using good certificates. This has effects for intra and extra regional FDI. For instance, it may encourage extra-regional FDI by setting up subsidiaries in the region to satisfy the RoO, possibly diverting investment made outside the region towards the RTA. Regional rules of origin applied to Mexico (NAFTA) would require many maquiladoras, such as Japanese and South Korean electronics manufacturers, to switch away from Asian

sources of components and either need to find new suppliers in the US, Canada or Mexico, or encourage Asian suppliers to relocate to Mexico, creating a further extra regional inward FDI.

Again, we need to distinguish between market-seeking and efficiency-seeking FDI (see Dunning, 1993) and extra and intra-regional FDI. MNEs based outside the region are more inclined to set up a subsidiary in the region to serve the regional market, particularly when the difference MFN-regional tariffs is great, and when the RoO is strict. When the RoO is strict, the *extra-regional* investors need to set up all manufacturing and processing operations in one country in the region to serve that market when it wants to satisfy strict RoO (see NAFTA example). This would not be worth it if either the difference MFN-regional tariffs is low or when it is too costly / difficult to comply with strict RoO. Efficiency seeking extra-regional FDI would not be affected considerably, since such products produced in the RTA are likely to be (re-) exported to outside the region irrespective of RoO or regional tariff preferences in the RTA. Such re-exports to outside the region may often go to big developed country markets such as the EU, US and Japan, and for these exports preferential RoO are relevant (Cotonou, EBA, AGOA, GSP, etc.) not RTA RoO. On the other hand some big developed countries have begun to form RTAs with developing countries (e.g. EU with individual East European and African countries) including RoO, but in this case we speak of *intra-regional* FDI.

The effect on intra-regional FDI can be complex, and would also depend on the type of operations. For instance high-fixed costs, market-seeking operations would favour an establishment in one of the countries when tariffs are low as opposed to establishments in every member of the RTA. This is because the region can be served more cheaply through exports from the single establishment in the region thereby realising economies of scale. Low-fixed costs operations could be expected to set up more efficiency seeking establishments in other members of the RTA when intra-regional tariffs are decreasing since it becomes cheaper to re-export regionally produced products. There is likely to be more intra-regional FDI in countries with few manufacturing capacities when RoOs are looser, e.g. allowing for diagonal or full cumulation so that others including non-members can supply the country that attract



intra-regional FDI, than when RoO are stricter, when operations can use inputs only from one partner country.

Strict RoO can distort investment decisions when there is no CET and MFN rates vary considerably, as in the case of NAFTA. For instance, strict RoO could prevent some extra-regional imports (or intra-regional production) into Mexico for processing and re-export to the US market, leaving investors to choose the US even though this may be an inefficient production location. A lower MFN tariff in the US compared to Mexico would only reinforce this trend. Another distortion can arise when using RoO provisions such as minimum domestic content, which can be easier satisfied when production costs are high (Estevadeordal and Suominen, 2003).

#### *Non tariff barriers*

There are non-tariff barrier to trade that restrict trade ranging from administrative requirements to customs control procedures, rules of origin and labour and environmental standards and these can have effects on investment. Technical barriers to trade (TBT) and sanitary and phyto-sanitary (SPS) measures can also affect trade. For instance, Barrell and Te Velde (2002) show that the EU began the Single Market Programme in 1986 with the removal of technical barriers to trade and the harmonisation of standards, which has affected trade in varying degrees. Thus this can potentially also affect investment.

A non-tariff barrier, though not normally included as “NTBs”, includes the use of anti-dumping which is consistent with WTO provisions. Not only developed countries, but increasingly also developing countries use these provisions. Well known are the voluntary export restraints and (threats of) using anti-dumping by the EU that motivated the Japanese to set up operations inside the EU. Barrell and Pain (1997) found that after controlling for relative labour costs and market size, Japanese investment flows to EC countries over 1980-91 were significantly influenced by anti-dumping activities taken in the EC.

#### *Summary*

Table 1 provides a summary of possible links between trade rules and FDI. On balance it appears that RTAs should lead to increased extra-regional FDI, but more

ambiguous results for intra-regional FDI. An important reason for the ambiguity of the effects of trade rules is that MNEs are motivated by exploiting firm-specific assets (e.g. firm specific fixed costs) and hence wants to enjoy economies of scale and scope, in addition jumping trade barriers.

**Table 1 Summary of possible links between trade rules and FDI**

|                   |   | <i>Extra-regional FDI inflows</i> |                           |                               |                        |
|-------------------|---|-----------------------------------|---------------------------|-------------------------------|------------------------|
|                   |   | <i>Market seeking</i>             | <i>Efficiency seeking</i> |                               |                        |
| <i>RoO loose</i>  | <i>Low intra/extra tariff difference</i>  | negligible                        | negligible                |                               |                        |
|                   | <i>High intra/extra tariff difference</i> | +                                 | negligible                |                               |                        |
| <i>RoO strict</i> | <i>Low intra/extra tariff difference</i>  | negligible                        | negligible                |                               |                        |
|                   | <i>High intra/extra tariff difference</i> | ++ (2)                            | + (1)                     |                               |                        |
|                   |   | <i>Intra-regional FDI flows</i>   |                           |                               |                        |
|                   |   | <i>Market seeking</i>             |                           | <i>Efficiency seeking (3)</i> |                        |
|                   |   | <i>High fixed costs</i>           | <i>Low fixed costs</i>    | <i>High fixed costs</i>       | <i>Low fixed costs</i> |
| <i>RoO loose</i>  | <i>Lower intra regional tariffs</i>       | - (4)                             | ?                         | ? (5)                         | ++                     |
| <i>RoO strict</i> | <i>Lower intra regional tariffs</i>       | - (4)                             | ?                         | ? (5)                         | +                      |

- (1) It may be easier for investors to locate an efficiency seeking plant in one country of the region : cheaper imports processed for exports. This effect is more positive the more countries in a region supply the plant.  
(2) Possibly Japanese in Mexico to serve US market; the more stricter are ROO the higher the share of the production process in the market  
(3) Relevant especially for mixed developed and developing regions  
(4) Concentration of investment in one country: more trade and fewer individual plants  
(5) Depends on trade-off between lower tariffs/transport costs and fixed costs

These include straightforward predictions as to how trade rules in RTAs affect FDI and compare well with the general literature on FDI and integration in developed countries, though some refinement is usually needed.

For example, both Blomstrom and Kokko (1997) and Dunning (1997a) acknowledge that the effects of regional integration (trade rules) and FDI further depends on pre-existing rules in the region and the extent to which regional rules will actually change such rules. Countries and industries that are already integrated prior to regional integration due to geographical and historical reasons can expect to see more limited effects than other countries and sectors. A stronger actual change to the investment climate, i.e. whether national policies are changed dramatically and locked into a

regional framework, will reinforce these effects. On the other hand, this could also raise the risks of policy reversal and instable regions.

Dunning (1997a) offers four hypotheses related to the impact of the internal market programme (IMP) in the EU on EU inward FDI. First, the IMP will have a positive impact on intra-EC trade and an ambivalent effect on intra-EC FDI. Extra-EC defensive FDI could increase depending on the external tariff and efficiency seeking FDI may increase due to the competitive enhancing effects of integration, with possible investment diversion away from several investment locations towards the most suitable export platforms for the region. The IMP may diminish the importance of market size and growth and increase the importance of country specific strategic assets or location factors. Second, the IMP will have an ambivalent effect on the geographical distribution of FDI. There are, however, suggestions that economic integration will lead to a more concentrated geographical distribution of economic activity. Markusen (1995) argues that when countries become similar in size and wealthier, MNEs (reaping economies of scale) will come to dominate exports provided that transport costs are sufficiently high. The FDI/trade ratio will be higher in developed than in developing regions. Third, depending on both country and sector specific factors, the IMP will have an ambivalent effect on the ownership of production in the EC. MNEs are likely to dominate sectors where there are significant firm level economies relative to plant level economies and intra-firm co-ordination costs. Fourth, the consequences of the IMP will be sector specific and FDI will concentrate in those sectors that have characteristics conducive to MNEs, e.g. FDI intensive services, including banking and insurance and trade enhancing services.

When analysing hypotheses and empirical findings regarding the effects of the formation of the Internal Market Programme (IMP) in Europe, Dunning (1997b) makes several observations. First, it is difficult to imagine how globalisation could have had the consequences it has in Europe if the IMP had not come about. Second, the main dynamic impact of the FDI is through the effects on other determinants of FDI such as market size, income levels, structure of activity and agglomeration economies. IMP as an independent variable has raised extra and intra (less than extra) regional FDI not as much as other variables have increased FDI. Thirdly, the effects of the IMP are industry specific, with extra-EC FDI increasing more in FDI sensitive

sector. Fourth, there was limited evidence that economic activity has become geographically concentrated as a result of the IMP, although high value-added activities remained clustered and lower value activities became more dispersed. Finally, there is complementarity between trade and FDI.

### *2.3 Other links between RTAs and FDI*

There are various other links between RTAs and FDI. Provisions other than the trade and investment rules include free movement of people (CARICOM), and free transfers of profits which can all facilitate the establishment of intra-regional FDI. Many other provisions are region-specific and cannot be easily categorised.

For instance, some regions have co-operation schemes which sometimes aim to establish regional enterprises by promoting joint ventures. The ASEAN region seems to be one of the most advanced in this area. The ASEAN Industrial Cooperation scheme (AICO Scheme) seeks to promote joint manufacturing industrial activities between ASEAN-based companies. More than 100 projects have been selected for special tax and tariff incentives. The initiation of these schemes may also help to foster the regional integration process as opposed to being the result of regional integration.

Some argue that the effects of RTAs on FDI are not so much about trade and investment rules, but about the increased predictability of the investment climate by locking-in general reforms (regulation, competition policies, property rights, contract enforcement, guaranteed access to members' markets and stable trade policies) in a wider context. The fact that national policies are "locked" in regional treaties should give investors additional security that policy reversals are less likely, reducing non-commercial risk. In practice this argument would depend on how strong the region is vis-à-vis individual members in practice. The argument is also related to signalling, that signing an RTA signals an intention which can be regarded as favourable to investors.

Many argue that important effect of RTAs on FDI are dynamic, with competition creating a more efficient industry and growth, which in turn can affect FDI. Neary

(2001) includes dynamic effects in a theoretical model of describing MNEs. First, there is the tariff-jumping motive as discussed before: FDI is favoured over exporting the higher the external tariff and the lower the fixed costs of a new plant. Second, the export platform motive could affect FDI as lower intra-regional tariffs would favour a single plant in the region. Finally, lower intra-regional tariffs would lead to increased competition from stronger domestic firms and hence fewer FDI. On the other hand, a more efficient private sector can also raise efficiency seeking investment by becoming efficient regional suppliers as well as raise strategic asset seeking investment.

Blomstrom and Kokko (1997) also argue that regional integration leads to efficiency gains and higher growth, and thus further FDI. FDI can actually be such a catalyst through spillovers in terms of technology transfer and other linkages with local firms. There can thus be long-lasting effects on growth and productivity as opposed to a one-off effect based on a more efficient allocation of resources.

While regional integration can lead to more extra regional investment for the region as a whole, this may not lead to more FDI in each individual member. As discussed briefly before, the extent to which polarisation or uneven distribution takes place depends on the level of external MFN tariffs, strictness of RoO, market size and agglomeration effects in individual member countries. If polarisation takes place this could lead to conflict of interest amongst member states in maintaining a region and facilitating regional efforts to address investment. While increased intra-regional FDI could be expected to enhance the integration process – and e.g. African regions tend to trade and invest less with each other than is the case for more developed regions<sup>5</sup> - competition for FDI between member states can do the opposite. The attempt to reduce such competition is thought to be one of the reasons why Mercosur has begun further talks on investment issues (Chudnovsky and Lopez, 2003). UNECA's annual report on regional integration shows that there is an expectation that cross-border

<sup>5</sup> Developed countries invest more intra-regionally as the following table indicates.

Table: Intra-regional FDI as per cent of total FDI

|      | EU (outward) | NAFTA (outward) | ASEAN (outward) | ASEAN (inward) | SAARC (inward) |
|------|--------------|-----------------|-----------------|----------------|----------------|
| 1986 | 36           | 30              |                 |                |                |
| 1997 | 49           | 21              |                 | 12             |                |
| 1999 | 46           | 18              | 15              | 6 (2001)       | 1              |

Source: IPS (2000), ASEAN secretariat, UNCTAD, Rugman and Brain (2002)

investment and trade could lead to closer integration. If regional integration leads to further FDI with equal benefits, this could start a virtuous circle. If, however, FDI benefits member states unequally this may actually put the region in jeopardy.

Despite competition amongst RTA member states for the same FDI, which Oman (2000) argues has increased in recent years, it is possible to think of co-operation when competition has become too fierce or costly, or when joint investment promotion may bring benefits shared across the region. ASEAN has organised ministerial-level joint investment promotion activities to major developed country markets, with the aim to convey a strong regional image. The ASEAN secretariat has also begun various activities in the area of investment facilitation, by providing information through portals, databases, publications and statistics. It can thus be said that regions do much more to try to promote investment than design and implement trade and investment rules. They can put in place the regional infrastructures (legal, institutional etc.) to deal with investment issues at a regional level.

Apart from trade and investment rules and regional institutions, regions can also decide to harmonise fiscal and monetary policies. For instance the Euro area (within the EU), the UEMOA and SACU (within SADC) have common currencies. This should reduce intra-regional exchange rate variability and cross-border transaction costs, which are amongst the factors contributing to investment. Because the EU and SADC are incomplete currency areas, there should be implications for which parts of the region are influenced.

#### *2.4 Relation to other international policies on investment*

Regional policies are not the only international policies governing FDI. We begin with several agreements at WTO level and then focus on bilateral treaties.

##### *Investment at the WTO*

Existing GATT/WTO agreements related to investment under the WTO include Trade Related Investment Measures (TRIMs) and the General Agreement on Trade in Services (GATS). Under the 1995 TRIMs agreement countries cannot impose certain performance requirements on the operations of MNEs (or all firms), including local

content and export performance requirements. Many governments have used local content requirements in the past with the aim to promote backward integration and localisation of value-added. The TRIMs Agreement gave transition periods to developed countries (two years), developing countries (five years) and least-developed countries (seven years).

Countries had to notify the existence of any remaining TRIMs under Article 5.1 of the Agreement. Many local content requirements can be found in the automobile industry but also in other industries. At least eight countries have requested and obtained an extension to the transition period until December 2003 (some had requested a longer period). A review of the agreement is scheduled.

**Table 2 Local content requirements: notifications to WTO and extensions**

|   |   |
|---|---|
| Local content in automobile industry  | Argentina, Chile, Ecuador, Indonesia, Mexico, Philippines, South Africa, Thailand, Uruguay, Venezuela   |
| Other local content   | Barbados (pork processing), Costa Rica (general), Cuba (various), Cyprus (cheese and groundnuts), Dominican Republic (general), Egypt (general), India (consumer goods), Indonesia (boilers, soyabean and fresh milk products), Malaysia (general), Nigeria (general), Pakistan (general), Peru (fat and milk products), Philippines (coconut), Poland (cash registers), Romania (general), South Africa (telecommunications, tea and coffee), Thailand (various), Uganda (general) |
| Extensions of transition period under TRIMs Article 5.2 – until December 2003 | Argentina, Colombia, Malaysia, Mexico, Pakistan, Philippines, Thailand, Romania   |

UNCTAD (2001) and WTO

While TRIMs deal with FDI in goods, the GATS deals with FDI in services (mode 3, commercial presence). GATS is based on a positive list approach. Countries can decide which service sectors to commit. Once a sector is committed, horizontal (all sector) market access and national treatment principles apply, unless otherwise notified. Hence a country can decide what service sectors to open up for FDI and on what terms. There appear to be no restrictions on the use of local content requirements under GATS, although they should in principle be consistent with the national treatment principle. Unlike TRIMs, the basic principles in GATS specify that it is not

allowed to require employment by nationality – unless notified. In practice many countries notify employment restrictions by nationality.

The Doha Development Round which began in 2001 includes work on investment, but the negotiations became unsettled in Cancún 2003 and a breakthrough in this area does not seem imminent, particularly since the EC dropped investment as one of the Singapore issues to be discussed in the Doha Round. The aim of the negotiations was to provide a transparent framework in which investment can take place recognising the needs of developing and least-developed countries for enhanced support in technical assistance and capacity building in this area. However, there was no explicit consensus with between 75 and 100 countries against starting negotiations (although it is not clear whether this is because countries are against any agreement *per se*, against an agreement *now* because of lack of negotiating capacity, or because it is used for obtaining bargaining power in the *single* undertaking of the WTO). Leaving the reasons for not agreeing aside, it was not clear what differences current WTO investment proposals would have made to existing regulations and current practices, including regional regulations.

#### *Bilateral Investment Treaties*

There is quite a complex web of more than 2100 bilateral investment treaties (BITs) amongst countries. Most developed countries, the main investor countries, have already signed many individual BITs with developing countries, with the main developed countries approaching 100 BITs. The contents can vary quite a lot, with the US BITs often including market access issues, while European countries (the EC and individual member states share competencies in the area of investment) usually focus on post-establishment treatment of investment. BITs amongst developing countries are now also increasing rapidly.

It is thus important to realise that investment provisions in RTAs would not be the only or perhaps main international rules on investment. In addition, many developing countries already have a longstanding practice of good treatment towards FDI, e.g. in the form of sectoral codes, and opening up to more sectors. In this regard, Botswana, Lesotho, China and Brazil have all attracted FDI, some for a long time, despite any or just a handful of BITs, indicating that either good practice (particularly in Botswana)



can already be sufficient. To understand any impact of RTAs on intra- and extra-regional investment, it is important to assess whether investment provisions in RTAs would have implications for existing (international) regulations in addition to its impact on the volume of FDI.<sup>6</sup>

### 2.5 Formalising the effects of RTA on FDI

The effects of investment related provisions in regions can be treated more formally. Extending the review by Dunning (1997b) there are basically two ways in which this can be done. First, we can take a standard FDI model with standard explanatory variables such as costs, market size, risk, etc. and include an additional variable measuring the degree of implementation of the investment provisions. In this way we can isolate a separate RTA (provision) effect

$$FDI_{ijt} = f(FDI_{ijt-1}, HOME_{ijt}, HOST_{ijt}, OTHER_{ijt}, RTA_{kjt})$$

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<sup>6</sup> This paper does of course not suggest that investment related provisions in regional, bilateral and multilateral agreements are the only factors causing FDI. In fact, there are of course other factors that are much more important for FDI in developing countries. First, the general potential for viable projects, on the demand side (growth and size of market) and supply side (skills, infrastructure, financial and technological development). Secondly, the domestic regulatory framework within which investment can take place affects investment decisions (e.g. protection of property rights). And thirdly, specific factors can affect particular projects (availability of project finance, technical assistance, provision of specific information etc.). A review of the literature can guide us on determinants of FDI, of which RI can be one, but this is not the place to review these (see e.g. Te Velde 2003). It may however be useful to spell out two types of empirical specifications common in the literature on FDI, simply to show that regional integration can be included as one of many explanatory variables of FDI. First, the gravity model explaining bilateral FDI stocks. Gravity models have recently been based on theoretical foundations (e.g. Harrigan, 2001) and perform well in explaining bilateral trade. Recent advances in understanding locational decisions, in particular the knowledge-capital model have led to the use of gravity models in determining FDI (Carr *et al.* 2001; Levy *et al.*, 2002). Gorg and Greenaway (2002) apply the gravity model to bilateral UK FDI stocks in Central and Eastern European countries. Greenaway and Milner (2002) argue that gravity models are particularly useful because they include details on home countries. The gravity model is as follows

$$(1) \quad FDI_{ijt} = f(GDP_{it}, GDP_{jt}, SKILL_{it}, SKILL_{jt}, COST_{jt}, DIST_{ij}, OTH_{ijt}, RI_{ijt})$$

where  $i$  is the home country,  $j$  is the host country,  $t$  is time.  $FDI$  is the log of the real stock (level) of FDI from country  $i$  in country  $j$ .  $GDP$  is real GDP,  $SKILL$  is a measure of human capital,  $COST$  is a measure of investment costs (see e.g. Carr *et al.*, 2001 and Blonigen *et al.*, 2002),  $DIST$  is a measure of distance,  $OTH$  includes other variables that have been found important (e.g. shared language or population). The variable  $RI_{ijt}$  denotes the presence of certain investment related provisions in RTAs applied by country  $j$  to country  $i$  at time  $t$ . A second approach is broadly in line with Pain (1997) who apply the methodology to UK FDI in Europe and the US

$$(2) \quad FDI_{ijt} = f(FDI_{ijt-1}, HOME_{ijt}, HOST_{ijt}, OTHER_{ijt})$$

with, as explained in the previous footnote,  $HOST$  country factors can include amongst others market size, relative labour costs, human capital, indicators for natural resource availability and privatisation efforts and risk measures.  $OTHER$  include such variables as distance or shared language.  $HOME$  country factors from country  $i$  provided in country  $j$ . Pain (1997) uses home country factors such as the relative stock of patents. Regional Integration variables would just be one of many variables. Similarly, we discussed the link from FDI to regional integration elsewhere in the paper, but there are of course many factors that drive integration processes, including public policies, business interactions and others such as cross-border civil society (unions and others).

where FDI is the real stock of FDI,  $i$  is the home country,  $j$  is the host country,  $t$  time. *HOST* country factors can include amongst others market size, relative labour costs, human capital, indicators for natural resource availability and privatisation efforts and risk measures. *HOME* country factors from country  $i$  provided in country  $j$ . *OTHER* include such variables as distance or shared language. *RTA* denote measures of (the sum of) investment related provisions  $k$  in an RTA applicable in host country  $j$  at time  $t$ . Rules that are expected to raise FDI (extra, and/or intra regional FDI) would show in the regression with a significant and positive regression coefficient.

A second way to assess the effects of investment related provisions in an RTA on FDI is by considering the impact of provisions on individual determinants of FDI (host market size, regional market size, efficiency or costs, risk, etc.) in addition to an effect independent from the other determinants. For instance, the following simple equation tries to account for this

$$FDI_{ijt} = f(FDI_{ijt-1}, Y_{jt}, RY_{jt}, RELCOST_{jt}, RISK_{jt}, OTHER_{ijt}, RTA_{kjt})$$

where *RELCOST* is a measure of relative investment costs such as relative unit labour costs, *RISK* is a measure of risk factors, *Y* is the market size of the host economy, and *RY* is the “regional market size” that countries of a region by lower intra-regional tariffs to the members of the region. Investment related provisions in RTAs can potentially affect (sign of provision above the variable) most of these explanatory variables, see panel below.

Dunning (1997b) argues that the main effects of RTAs work through the explanatory variables and are dynamic. We can control for the regional market size effect, by including it as an explanatory variable in the regression. However, this is not as straightforward for the other effects on explanatory variables, so the variable RTA in the above equations will pick up such effects.

Panel Investment related provisions and explanatory variables of FDI

| <b>Investment provision</b> | <b>Relationship with determinant of FDI</b>   | <b>Relationship explanatory variable and FDI</b>                     |
|-----------------------------|---|--|
| Tariffs                     | $Y = f(\bar{T}, OTHER)$ , as lower tariffs, $T$ , (regionally or MFN) foster growth   | More growth, more FDI  |
| Tariffs, Rules of Origin    | $RY = f(\sum_{members=l}^{+} Tpref_l Y_l, RoO)^{+}$ , as larger regional preferences through lower intra-regional tariffs provide for a “larger” or more accessible regional market; similarly, the stricter the rules of origin the more important is the regional market. | A larger regional market, may lead to more (extra-regional) FDI      |
| Tariffs                     | $RELCOST = f(T, OTHER)^{+}$ , as lower tariffs (regionally or MFN) foster competition and more efficiency and this lower costs relative to outside the region   | More efficiency leads to more FDI in the longer-term                 |
| Investment provisions       | $RISK = f(\bar{RTA}inv, OTHER)$ , as more investment provisions safeguarding the interest of investors vis-à-vis governments would mean lower (political) risks   | Lower risk fosters more FDI when the economic fundamentals are right |
| All RTA provisions          | $RTA$ measures all other aspects, e.g. a signalling or locking-in effect  |  |

### 3 An Overview of Investment Related Provisions in Key Regions

This section discusses what provisions have been implemented in the context of RTAs. While all RTAs have implemented or are planning to implement at least some rules that can affect investment, we will focus on those regions that 1) are relatively large in terms of market size or number of members and 2) have gone some way in implementing investment provisions (section 3.1). For these regions, we will discuss investment provisions and trade provisions by main region (section 3.2) and provision (3.3).

#### 3.1 What are the key regions?

Appendix A provides a list of all developing country regions notified to the WTO before May 2003, with a list of members, including when the regions was established or when members joined. We have narrowed down all regions notified under XXIV of GATT to developing country regions (African, Asian and Latin American), or joint developing and developed country regions. For instance, the many RTAs that the EU

has negotiated with Eastern and Central European countries are not included, but those with North African countries are. The resulting list is still quite extensive.

Note too that regions are overlapping, i.e. that one country can be in more than one region, leading some to argue that the web of regional groupings is becoming a spaghetti bowl. For two example countries which we will follow more closely elsewhere, Bolivia is part of LAIA and ANDEAN (and FTAA in the future) and also features in GSP systems from e.g. the EU and the US, while Tanzania is member of EAC and SADC and is part of others such as GSP systems and the Cotonou Agreement.

We narrowed down the list of regions further by selecting those regions which 1) are relatively large in terms of market size or number of members and 2) have gone some way in implementing investment provisions. This leaves us with the following regions: ASEAN (AFTA, or ASEAN Free Trade Area), NAFTA, MERCOSUR, CARICOM, ANDEAN, COMESA and SADC. We do not include APEC because investment provisions are explicitly non-binding, or Cotonou because it is not an RTA (its investment provisions are also essentially voluntary) but gained a waiver at the WTO and is discussed in further detail in Te Velde and Bilal (2003). We have not included FTAA (Free Trade Agreement of the America) as this is due to finish at the beginning of 2005. The resulting list contains mainly South-South regions, though NAFTA is an example of a North-South region. In a different part we will look at differences between North-South and South-South regions at a basic level.

### *3.2 Description by region*

For each region we discuss investment rules, trade rules and others significant initiatives. We discuss investment rules in more detail, while we deal with trade rules more quickly because information on this is available in a number of secondary sources. We have not addressed information on TBT/SPS or anti-dumping, though this would be possible in a more elaborate study, so the discussion on trade rules will simply report MFN tariffs, tariffs applicable regionally and the nature of RoO. For a detailed empirical analysis, we may need to collect more information on TBT etc.

### *NAFTA*

The North American Free Trade Agreement (NAFTA), negotiated by the United States, Canada and Mexico, came into force in 1994. It represented the first north-south regional integration agreement of its kind in the Western hemisphere. NAFTA has taken significant strides in the area of regional economic cooperation. In particular, it encompasses one of the most comprehensive frameworks of regional investment provisions.

The investment provisions for NAFTA are laid out in Chapter 11 of the Agreement. NAFTA assumes a broader definition of investment than is usually applied to investment provisions. These rules are applicable to investors and investment of investors of a NAFTA state but some also extend to non-NAFTA investors with investments in one NAFTA country who decide to expand their operations into other NAFTA countries. This is, however, predicated on the condition that the investors have "substantial business activities in the territory of the Party" where they were originally established. Although NAFTA's investment provisions are applicable to all sectors in principle, each country has identified key sectors that are exempted from the agreement. Mexico excludes its petroleum sector, and all state owned sectors. Canada excludes cultural industries, health and social service and aboriginal affairs. The United States excludes health and social services in addition to all maritime activities being highly restrictive.

Chapter 11 grants national treatment for the establishment (market access), acquisition, expansion, management, conduct, operation and sale or other disposition of investments. This is complemented and strengthened by the provision of Most Favored Nation (MFN) treatment. In addition to this, it prohibits restrictions on ownership rules and the use of performance requirements on all investments by its members. The latter covers a broader range of performance requirements which go beyond those prohibited by the World Trade Organization TRIMs Agreement and includes trade balancing, technology transfer and 'exclusive supplier' requirements. Finally, Chapter 11 guarantees investors free transfer of funds across borders and protection from expropriation and nationalization.

NAFTA also established a comprehensive dispute settlement mechanism for both state-state disputes and investor-state disputes. With respect to the latter, it represented one of the first regional agreements to encompass a distinct mechanism for the arbitration of state-investor disputes. Both the mechanism for state-state disputes and that for investor-state disputes have been used a number of times. It also provides access to international arbitration bodies through the ICSID and UNCITRAL.

The first decade saw 9 investor-state cases against Canada, 9 against the US and 10 against Mexico. Of these Canada lost two cases and awarded \$27 million Cdn and Mexico lost also 2 awarding \$18.2 million, the US has lost no cases so far. Some cases have been settled out of court, dismissed or are still pending. Measures challenged include environmental protection, industrial policy, softwood lumber, property development and others and relate mostly to articles on national and MFN treatment.

There have also been important developments in the trade regime in the region. Most merchandise were liberalised between 1994 and 1998. Intra-regional trade faces average applied tariffs of between 0-2%. In contrast, applied MFN tariff rates averaged 16.5% (2001) for Mexico; 5.5% (2000) for the United States and 7.7% (1998) for Canada. Rules of origin exist and are based on a value content criterion that allows a 50-60% regional value content.

#### *Mercosur*

The Southern Common Market (Mercosur) was established in 1991 by the Treaty of Asuncion. It is comprised of Argentina, Brazil, Uruguay and Paraguay. Since its inception, Mercosur has achieved important developments in both regional trade and investment co-operation.

The investment provisions created for Mercosur members were established under the Colonia Protocol for the Promotion and Protection of Investment in 1994. It grants national treatment for the establishment, acquisition, expansion, management, operation and disposition of investment to Mercosur members. This is complemented and strengthened by the provision of MFN treatment. The Colonia Protocol also

guarantees Mercosur investors free transfer of funds across borders and protection against expropriation and nationalization. Although the protocol prohibits the use of performance requirements, Argentina and Brazil have reserved the right to maintain performance requirements in the automobile sector. A number of sectors were temporarily exempted from the wider agreements. These include border real estate, energy sectors, mineral extraction and exploitation sectors and telecommunications.

A less extensive range of provisions were established for non-Mercosur investors under the Buenos Aires Protocol in 1994. In principle, it grants MFN treatment to non-members. However, the application of MFN treatment is left to the discretion of each Mercosur country. In addition to this, it guarantees investors free transfer of funds across borders.

The Brasilia Protocol for the Settlement of Disputes in 1991 established the initial framework which was then expanded by the Ouro Preto Protocol in 1994. This provides a dispute settlement mechanism for both state-state disputes and investor-state disputes in addition to access to a number of international arbitration bodies.

Mercosur has taken important steps in enhancing regional trade integration. The implementation of the Common External Tariff in 1995, has facilitated the gradual harmonization of the trade regime in the region. Full implementation of the Common External Tariff is expected by 2006. Applied average MFN rates in 2001 were 12.7 for Argentina, 14.6 Brazil and 13.8 for Uruguay, and averaged 13.2 for Paraguay in 2000. With respect to intra-regional trade, a gradual phase out of intra-regional tariffs has taken place since 1991. As early as 1995, 85% of intra-regional trade was duty free in 1995. Currently, most intra-regional trade is duty free with the exception of capital goods, informatics and telecommunications products. Rules of origin exits and are based on a value content criteria that allows a 40% import content and 60% domestic/regional value content.

#### *Caricom*

The Caribbean Community and Common Market was established in 1973. The original members were Antigua & Barbuda, Barbados, Belize, Dominica, Granada, Guyana, Jamaica, Montserrat, St Kitts & St Nevis, St Lucia, St Vincent & the

Grenadines and Trinidad and Tobago. Bahamas entered Caricom in 1983 but opted not to become a member of the common market. Suriname became the fourteenth member of Caricom in 1995, followed by Haiti in 2002.

Since its inception, Caricom has made greater progress in the area of trade co-operation than investment co-operation. The Eighth Heads of Government Meeting in 1987, however, signaled one of the most comprehensive attempts to promote greater economic integration in the region. Significantly, plans were made to replace the Common Market with the Caricom Single Market and Economy (CSME). Preparations for the establishment of the CSME included the negotiation of nine Protocols which effectively amended the Treaty of Chaguaramas. Amongst these, the Protocols relating to investment and the free movement of people across borders have been most relevant for facilitating investment co-operation.

Few investment provisions were included in the Treaty of Chaguaramas which established Caricom in 1973. The 1980s and 1990s however witnessed the introduction of more investment provisions. Some initial provisions were laid out in the Principles and Guidelines on Foreign Investment approved by the Caricom Heads of State of Government Conference in 1982. These were later developed and consolidated by Protocol II in 1997. However, some members have yet to enact protocol II.

Although Caricom's protocol II does not include a national treatment provisions per se, it does establish that members shall not introduce in their territories any new restrictions relating to the right of establishment of nationals of other members states except as otherwise provided in the agreement. It allows each country to give preferential treatment to the investments of its nationals. It stipulates that regional agreements on foreign investment should accord preferential treatment to investors in the following order: nationals of the host Caricom country, nationals of other Caricom countries, nationals of the source country and finally other countries. In terms of performance requirements, the Principles and Guidelines on Foreign Investment permitted the use of performance requirements. Although no further provisions were defined in Protocol II on the subject, Caricom does conform to the World Trade



Organization's TRIMs. Protocol II establishes provisions for the free transfer of funds across borders and protection from expropriation and nationalization. It also creates a dispute settlement mechanism for state-state disputes, and under certain circumstances investment-state arbitration. In addition, it provides access to international arbitration through the ICSID.

Caricom has however achieved important development in its regional trade regime. A common external tariff, ranging from 20-35%, has been in place since 1991. The common external tariff is being implemented through four stages of tariff reductions. There is currently a wide variation in the level of implementation obtained by different members. Intra-regional trade is duty free. The few exceptions include some agricultural produce and highly revenue sensitive sectors such as alcoholic beverages, tobacco and oil products.

#### *Andean Community*

The origins of the Andean Community date from 1969, and the signing of the Andean Pact (Cartagena Agreement). The original members included Bolivia, Chile, Colombia, Ecuador, and Peru. Venezuela joined in 1973 and Chile left the Pact in 1976. The Andean Group was established in 1988. Its members are Bolivia, Colombia, Ecuador, Peru and Venezuela. Peru suspended its membership in 1992 but resumed it in 1997. The Andean Group became the Andean Community in 1997 following the adoption of the Protocol of Trujillo. Over the past decade and a half, Andean has achieved a greater level of regional trade co-operation than it has investment co-operation, although the reverse seemed to apply back in the 70s.

Investment has been on the agenda from the start. The first regional approach to investment dates back to 1970 and established a system of common treatment of foreign investment. Decision 24 of the Andean Commission aimed to create international legal obligations (Commission of the Cartagena Agreement, "Common Regime of Treatment of Foreign Capital and of Trademarks, Patents, Licenses and Royalties") with respect to investment. This decision created several new restrictions on investment, including a disinvestment scheme for foreign investors to become semi-nationally-owned companies after some time, a limitation on the repatriation of profits, a reservation of certain sectors for domestic enterprises, an investment

screening mechanism setting high standards of entry for foreign investors and the establishment of a sub-regional office on industrial property and transfer of technology. The decision was silent on matters of expropriation. Chile withdrew from the Cartagena Agreement partly because of the controversial and tight restrictions on investment. Other member states also began to distance themselves from the regional treaty (which was mandatory), and by 1987, Decision 220 allowed each member state greater autonomy in setting investment policy as well as granting greater freedom to investors (e.g. lengthening the time period for companies to become semi-public). Decisions 24 and 220 were replaced by Decision 291 in 1991.

The main investment provisions currently applicable to investment were defined under Decisions 291 and Decisions 292 in 1991. The former is applicable to both members and non-members. Its provisions are however subject to national stipulation on the subject. This effectively abandons any common policy on investment. Andean grants national treatment to investors, but Decision 291 stipulates that national treatment can be regulated according to the national laws of each country. It also guarantees the free transfer of funds (and profits) across borders and protection against expropriation and nationalization. With respect to performance requirements, it only establishes provisions for technological contracts and technical assistance. Finally, it provides a disputes settlement mechanism for state-state disputes through the Andean Court of Justice and access to an international arbitration body through the ICSID.

Decision 292 allows for the formation of Andean Multinational Enterprises. The establishment of such enterprises is however predicated on the condition that capital contributions by national investors of two or more member countries must make up more than 60% of the capital of the enterprise. Among the privileges granted to such enterprises are national treatment with respect to government procurements, export incentives and taxation, the right to participate in economic sectors reserved for national companies and the right to open branches in any member country, and free transfer of funds related to investment. Other institutions that seek to facilitate investment include the Andean Development Corporation which raises funds to provide to a range of financial services and the Andean Business Advisory Council.

Andean has made huge advancements in liberalising the trade regime in the region. The Andean Free Trade Area was formed in February 1993, when Bolivia, Colombia, Ecuador, and Venezuela finished eliminating their customs tariffs and opened their markets to each other. Intra-regional trade is currently duty free with all of the products in its tariff universe deregulated. Since Peru became a member in 1997 it has been gradually deregulating its trade with its Andean partners. Thus far, it has advanced more than 90% in this undertaking. The Andean Customs Union has been in operation since 1995, when the Common External Tariff (CET) approved by Colombia, Ecuador and Venezuela at the basic levels of 5, 10, 15 and 20 percent came into effect. The Customs Union is however incomplete. Bolivia enjoys preferential treatment and only applies levels of 5 and 10 percent, whilst Peru did not sign the agreement. Average applied MFN rates were 9.1% for Bolivia, 12.2% for Colombia and 12.4% for Venezuela in 2001. It averaged 11.2% for Ecuador in 2000 and 13.4% for Peru in 1998. Rules of origin exist and are based on a value content criterion that allows a 50% import content.

#### *COMESA*

The Common Market for Eastern and Southern Africa (COMESA) was established in 1994 to replace the Preferential Trade Area for Eastern and Southern Africa which had been in existence since 1981. Its members include Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles (may leave SADC), Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

COMESA currently grants few investment provisions. The Treaty of COMESA provides fair and equitable treatment to COMESA investors. It also guarantees the free transfer of funds across borders and protection from expropriation and nationalisation. In addition, it provides a settlement dispute mechanism for state-state disputes and access to an international arbitration body through the ICSID. Although the Treaty only encompasses the most basic of investment provisions, recent plans to develop a more comprehensive regional investment framework through a Common Investment Area, are indicative of COMESA's desire to enhance regional economic co-operation.

COMESA has however made some significant achievements in terms of trade liberalization. A free-trade area (FTA) was established in November 2000. Nine countries are currently part of the FTA. Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe eliminated their tariffs on COMESA originating products. Burundi, Comoros Eritrea, Rwanda and Uganda have obtained a rate of tariff reduction between 80-90 %. The rest have yet to make decisive steps to enter the FTA. A Customs Union is expected to come into effect in November 2004, with a common external tariff (CET) comprising four rates: 0, 5, 15, and 30 per cent. Rules of origin exists and are based on a value content criterion that allows a 60% import content and 35% domestic/regional value content.

#### *SADC*

The Southern African Development Community (SADC), formerly known as the Southern African Development Co-ordination Conference (SADCC), was established in 1992. Its member states are Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. The membership has remained the same with the exception of South Africa, which was not a member under SADCC.

There are currently very few investment provisions guaranteed by SADC. However plans to establish more comprehensive provisions under the Protocol on Finance and Investment indicate an increasing awareness of the need for greater regional investment co-operation. Although the most basic of investment provisions are lacking, SADC does provide a disputes settlement mechanism for state-state disputes and access to international arbitration through the ICSID.

There has only recently been some progress towards greater trade liberalisation. The SADC Trade Protocol commenced operation in January 2001. A number of countries have begun to implement their commitments under this agreement and grant duty-free access, on a reciprocal basis, to imports of category A products (mostly capital goods and equipment) from other members that have also adopted the Protocol. These include Malawi, Mauritius and Zambia. Contrastively, those members that are also members of SACU, such as South Africa, Botswana and Lesotho apply SACU's

common external tariff. Rules of origin exist and are based on a value content criterion that allows 70-35% import content.

#### *ASEAN*

The Association of South East Asian Nations (ASEAN) was established in 1967. The original members were Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam later joined in 1984, followed by Vietnam in 1995 and Laos and Myanmar in 1997. Cambodia became the tenth member of ASEAN, acceding to all agreements in 1998. Since its inception, ASEAN has made significant developments in the attainments of greater regional trade and investment cooperation.

The first major attempt to enhance regional investment cooperation was the 1987 ASEAN Agreement on the Promotion and Protection of Investment. The provisions established under this agreement were improved under the 1996 Protocol to Amend the 1987 Agreement. These achievements were further developed and consolidated with the signing of the Framework Agreement on the ASEAN Investment Area in 1998 (AIA). The AIA endeavours to establish a regional investment area incorporating all ten members. It thus represents a significant step towards greater regional investment cooperation. Other programmes that have been developed to facilitate investment in the region include the ASEAN Industrial Cooperation scheme (AICO Scheme) which seeks to promote joint manufacturing industrial activities between ASEAN-based companies.

The Agreement on the Promotion and Protection of Investment guaranteed ASEAN investors free transfer of funds across borders and protection from expropriation and nationalisation. It also established a dispute settlement mechanism for state-state disputes and access to a number of international arbitration bodies, most notably the International Centre for the Settlement of Investment Disputes (ICSID) and the United Nations Commission on International Trade Law (UNCITRAL). ASEAN's dispute settlement mechanism has been effective with at least one case put forward for arbitration.

The AIA enhanced this framework with the establishment of a more comprehensive range of provision. It grants national treatment for the establishment, acquisition,

expansion, management, operation, and disposition of investment to ASEAN members immediately. Sectors exempted either under the Exclusion List or Sensitive List are to be progressively liberalised by 2010, later reduced to 2003. National treatment has also been extended to non-ASEAN investors by 2020, later shortened to 2010. In addition, most favoured nation treatment was also granted to ASEAN investors. Finally, laws restricting foreign shareholders in national companies have been deregulated. A short term measure has been implemented which suspended laws regulating equity joint ventures between foreign and local enterprises and 100% foreign equity. ASEAN has also launched a series of joint outward investment promotion events to promote investment opportunities in the region and has various other activities to promote investment co-operation, including high-level meetings for relevant ministers to discuss investment related issues.

There have also been important developments in the trade regime in the region. Although a Common External Tariff does not exist, the signing of the ASEAN Free Trade Area (AFTA) in 1992 has witnessed significant steps towards regional trade liberalization. Intra-regional tariffs have been gradually reduced from the 1992 average of 12% to less than 5% now. AFTA was expected to reduce tariffs to between 0 - 5% for all trade between member nations by 2008. This was brought forward to 2002 for the six original founding members. The Common Effective Preferential Tariff scheme is the main trade instrument of AFTA, which covers on average 90% of the tariff lines of all ASEAN member nations. The intraregional tariff rates range from 7% (Cambodia) to 0% (Singapore). Rules of origin exist and are based on a value content criterion that allows a 60% import content.

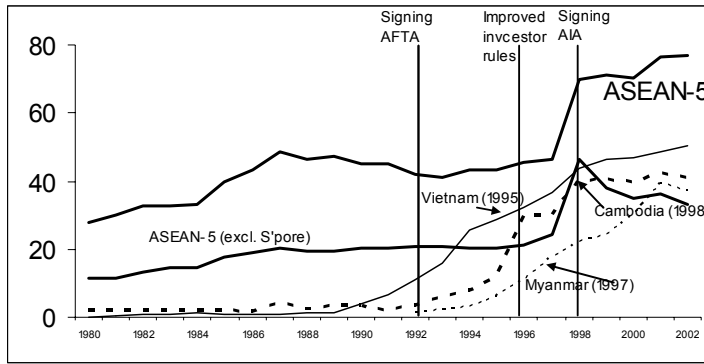
The above description of regions can serve many purposes. One option, which we will pursue in a different paper in more detail for several regions, is to plot inward FDI<sup>7</sup> and note when countries became member of an RTA and when certain provisions became effective. Chart 2 provides an example for ASEAN. It is quite important to realise that investment provisions in regions can change. While NAFTA have included a lot of investment provisions from the start, ANDEAN and ASEAN have

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<sup>7</sup> This is done a percent of GDP, because we are interested in whether ASEAN attracts more FDI given its market size (and hence a recession combined with lower FDI inflows would not necessarily change the FDI to GDP ratio).

sought to change and increase investment provisions over time and SADC and COMESA are only just starting to include investment provisions.

**Chart 2 FDI into ASEAN (Inward FDI stock as per cent of GDP)**



Indeed, the experience over the past three decades shows that regions can be subdivided into four categories with respect to investment provisions: 1) Regions that do not have investment related provisions except for trade rules; 2) Regions that impose a common policy toward investment (ANDEAN in the early 70s) more restrictive than initial individual member policies; 3) Regions that choose to develop a common approach gradually over time introducing provisions that stimulate regional investment co-operation and regional investment promotion and (beginning to) grant national and MFN treatment (pre and post establishment) to foreign firms (ASEAN); and 4) regions that include comprehensive investment provisions from the start, including pre-establishment national treatment and effective investor-state dispute mechanisms (NAFTA).

### 3.3 Description by provision

We now discuss investment related provisions by provision for the key regions identified above. The aim is to find variation in key provisions and quantify these, and this provides a cross-section element to investment provisions in regions. This can help to prepare an index of integration relevant for investment. We discuss investment rules, trade rules and others. Table 5 provides a summary.

*Scope and coverage*

Even though RTAs are normally preferential agreements for its members, in some cases the provisions are wider and apply to non-members. Under certain conditions, this is the case in NAFTA and MERCOSUR and planned for in ASEAN / AFTA (AIA). Other regions are more discriminatory in favour of intra-regional FDI such as CARICOM.

*National treatment and MFN*

Some regions are now offering national treatment to regional investors pre and post establishments, e.g. in NAFTA and recently in ASEAN. However, for others free movement of capital remains an aspiration (e.g. COMESA).

*Performance requirements, transfer of funds and expropriation*

Some regions are quite strict on performance requirements and would not allow any (NAFTA), while other regions maintain the possibility contain a list of preferences and requirements applied to existing investment (CARICOM) though not new investment.

*Dispute settlements mechanisms*

While most regions have some state-state dispute settlement mechanisms, few have effective investor-state dispute mechanisms. NAFTA is the best example of an effective investor-state dispute mechanism, while ASEAN has also had at least one dispute – allegedly between a Singaporean investor and Myanmar - referred to arbitration under the ASEAN Investment Agreement. But less is known about the effectiveness of the investor-state provision in MERCOSUR or state-state provisions in SADC and COMESA.



**Table 3 Summary of WTO Survey of Rules of Origin; selected regions**

**A. General Criteria of the Rules of Origin**

| RTAs     | Criterion |            |                | Tolerance Rule          |   |
|----------|-----------|------------|----------------|-------------------------|---|
|          | CTH       | Percentage | Technical test | Limitation (% of value) | Exceptions                                      |
| NAFTA    | √         | √          | √              | 7%                      | Textiles: 7% Agricultural, few industrial prod. |
| ASEAN    |           | √          | √              | No                      |   |
| CARICOM  | √         |            |                |                         |   |
| COMESA   | √         | √          |                | No                      |   |
| MERCOSUR | √         | √          |                | No                      |   |
| SADC     | √         | √          | √              | 10%                     | Textiles and others                             |
| ANDEAN   |           | √          |                |                         |   |

**B. Rules of Origin based on the Percentage Criterion**

| RTAs     | General criterion and Limitations |                  |                | Basis for calculation |          |          |            |
|----------|-----------------------------------|------------------|----------------|-----------------------|----------|----------|------------|
|          | Import content                    | Domestic content | Value of parts | c.i.f.                | f.o.b.   | Ex-works | Cost prod. |
| NAFTA    |                                   | √<br>60%-50%     |                |                       | √<br>60% |          | √<br>50%   |
| ASEAN    | √ 60%                             |                  |                |                       | √        |          |            |
| CARICOM  | n.av.                             |                  |                |                       |          |          |            |
| COMESA   | √ 60%                             | √ 35%            |                | √                     |          |          |            |
| MERCOSUR | √ 40%                             | √ 60%            |                |                       | √        |          |            |
| ANDEAN   | √ 50%                             |                  |                |                       | √        |          |            |
| SADC     | √ 70-35%                          |                  |                |                       |          | √        |            |

**C. Exceptions to the General Criteria of the Rules of Origin**

| RTAs     | Criterion for exceptions |  |                | Sector-specific                     |
|----------|--------------------------|--|----------------|-------------------------------------|
|          | CTH                      | Percentage                             | Technical Test |                                     |
| NAFTA    |                          | √                                      |                | Yes (auto)                          |
| ASEAN    |                          |  | √              | Yes (textiles)                      |
| CARICOM  | n.av.                    |  |                |                                     |
| COMESA   |                          | √ (DC, 25%)                            |                |                                     |
| MERCOSUR |                          | √ (DC, 33%-60% for certain automotive) | √              | Yes (dairy, chemicals, steel, auto) |

**D. Drawback provisions**

| RTAs     | Allow for drawback | No-drawback |                                | Drawback not mentioned |
|----------|--------------------|-------------|--------------------------------|------------------------|
|          |                    | Rule        | Derogation                     |                        |
| NAFTA    |                    | √           | 2 y. (Canada, US), 7 y. (Mex.) |                        |
| ASEAN    | √                  |             |                                |                        |
| CARICOM  | √                  |             |                                |                        |
| COMESA   | √                  |             |                                |                        |
| MERCOSUR | √                  | √           |                                |                        |

Sources: WTO (2002), Estevadeordal and Suominen (2003)

### *Rules of origin*

Several publications have highlighted RoO as affecting locational decisions (Estevadeordal and Suominen, 2003). The rules of origin differ amongst regions, and the table below contains a summary on the basis of existing surveys of rules of origin in RTAs. While it very difficult to calculate overall restrictiveness as much is sector, chapter, heading or product specific, it is possible to have some simple ordering of RoOs in RTAs by following chart 3 in Estevadeordal and Suominen (2003) documenting the mean restrictiveness. Note that certain sectors have stricter rules of origin than others: for instance, the textiles and clothing sector faces higher than average restrictiveness in NAFTA, SADC and the Pan-Euro system.

We can also use a simple measure using the percentage criterion for maximum import value or domestic content (panel B). On the latter measure NAFTA and MERCOSUR have stricter RoO than the other regions.

### *Tariff structures*

An important element for extra-regional investors is how intra-regional tariffs compare with MFN tariffs, because it determines the “market size effect” of an RTA. It depends on the regional preferences and the level of initial tariffs. In some cases regional preferences are set at a fixed percentage of MFN tariffs, or at a certain level fixed below the MFN (which may have to be revised if and when the MFN is revised), while in other regions there is a schedule for the phase-out of intra-regional tariffs altogether.

As table 4 shows, there are quite big variations in preferences granted as a percent of the total import prices. For the regions shown they are low for SAARC because it grants very low regional preferences, low for AFTA because it already has low tariffs but high for the Latin American regions, partly because their intra-regional tariffs are very low, of course with exception on some products.

### *Others*

No region is the same. The regions under discussion have designed various schemes to foster regional enterprises (ANDEAN), investment co-operation and promotion (ASEAN), and movement of people in CARICOM. These are likely to affect mainly intra-regional FDI.

### *Conclusions*

The above review by provision shows that there is wide variation across regions. On the basis of the above information it is possible to design some basic integration index with respect to investment related provisions (trade rules and investment rules) which varies across regions. This is shown at the bottom of the table. It basically reflects whether trade rules or investment rules in regions can be expected to increase FDI. Because regions have implemented different provisions, the expected effects on FDI would be different, indicated by a different index. For example, granting pre-establishment national treatment is one if the reason why the investment rule index scores high for NAFTA. On the other hand, there seems to be only limited progress in the implementation of the SADC trade protocol so that is why the trade rule index scores low for SADC. It is possible to design different indices weighing individual rules differently and we will experiment with these in more detail in a forthcoming empirical part. Note too that this integration index is cross-section and it is possible to design integration indices that vary over time – e.g. to reflect changes in investment provisions in ASEAN or ANDEAN. The main conclusion is that apart from changing over time regions can also be very different depending on which provisions it has implemented. This has clear implications for the expected effects of regions on extra and regional FDI.

**Table 4 MFN tariffs and regional preferential rates.**

|                             | <i>Average applied<br/>MFN</i> | <i>Average applied<br/>regional</i> | <i>Absolute preferential<br/>tariff reduction (as<br/>percent of price)</i> |
|-----------------------------|--------------------------------|-------------------------------------|---|
| <b>SAPTA (1996) / SAARC</b> |                                |                                     |   |
| Bangladesh                  | 17.5                           | 15.8                                | 1.4   |
| India                       | 33.5                           | 24.1                                | 7.0   |
| Nepal                       | 20.7                           | 18.1                                | 2.2   |
| Pakistan                    | 21.7                           | 19                                  | 2.2   |
| Sri Lanka                   | 21.9                           | 15.3                                | 5.4   |
| South Asia                  | 26.4                           | 20.3                                | 4.8   |
| <b>AFTA (2001) / ASEAN</b>  |                                |                                     |   |
| Brunei                      | 2.6                            | 1.0                                 | 1.6   |
| Indonesia                   | 7.2 (2002)                     | 4.4                                 | 2.6   |
| Laos                        |                                | 5.0                                 |   |
| Malaysia                    | 7.3                            | 2.4                                 | 4.6   |
| Myanmar                     | 5.6 (1996)                     | 3.3                                 | 2.2   |
| Philippines                 | 7.3                            | 4.8                                 | 2.3   |
| Singapore                   | 0                              | 0                                   | 0.0   |
| Thailand                    | 16.8 (1999)                    | 7.4                                 | 8.0   |
| Vietnam                     | 16.0                           | 3.0                                 | 11.2  |
| ASEAN-region                |                                | 3.5                                 |   |
| <b>MERCOSUR (2001)</b>      |                                |                                     |   |
| Argentina                   | 12.7                           | 0.4 (1996)                          | 10.9  |
| Brazil                      | 14.6                           | 0.0 (1996)                          | 12.7  |
| Paraguay                    | 13.2 (2000)                    | 0.8 (1996)                          | 11.0  |
| Uruguay                     | 13.8                           | 0.9 (1996)                          | 11.3  |
| <b>NAFTA</b>                |                                |                                     |   |
| Canada                      | 7.7                            | 1                                   | 6.2   |
| Mexico                      | 16.5                           | 1                                   | 13.3  |
| US                          | 5.5                            | 1                                   | 4.3   |
| <b>ANDEAN (2001) / CAN</b>  |                                |                                     |   |
| Bolivia                     | 9.6                            | 0                                   | 8.8   |
| Colombia                    | 11.6                           | 0                                   | 10.4  |
| Ecuador                     | 11.2                           | 0                                   | 10.1  |
| Peru                        | 11.6                           | 0                                   | 10.4  |
| <b>Venezuela</b>            | 11.9                           | 0                                   | 10.6  |

*Sources:* WTO, IPS (2000), own calculations.

Table 5 Summary table of investment related provisions in RTAs.

|  | NAFTA                           | MERCOSUR                                   | CARICOM                      | ANDEAN                           | ASEAN                          | SADC   | COMESA                                 |
|--|---------------------------------|--|------------------------------|----------------------------------|--------------------------------|--|--|
| <b>INVESTMENT RULES</b>  |                                 |  |                              |                                  |                                |  |  |
| What year did investment provisions come into force at regional level                              | 1994                            | 1994                                       | 1982 & 1997                  | 1991                             | 1987 & 1998                    | Few provisions   | 1994                                   |
| <b>1 Scope and coverage</b>  |                                 |  |                              |                                  |                                |  |  |
| a Applicable to non-parties (when or when not)   | Yes                             | Yes  | No                           | Yes                              | AIA National Treatment         |  | No                                     |
| b Positive or negative list approach   | Negative                        | Colonia – Negative Buenos Aires - positive | Positive                     | Positive                         | 1987 – positive AIA-negative   |  | Positive                               |
| c Main exceptions (safeguards, sectors etc.)   |                                 |  |                              |                                  |                                |  |  |
| <b>2 National Treatment</b>  |                                 |  |                              |                                  |                                |  |  |
| a Pre-establishment (all sectors?)   | Yes                             | Yes  | No                           | Not specified                    | Yes                            | No   | No                                     |
| b Are there restrictions on ownership rules? (e.g. min equity share)                               | Yes                             | No   | No                           | No                               | Yes                            | No   | No                                     |
| c Operations by MNEs in the country  | Yes                             | Yes  | No                           | Not specified                    | Yes                            | No   | No                                     |
| <b>3 Most Favoured Nation and fair and equitable treatment</b>                                     |                                 |  |                              |                                  |                                |  |  |
| a granted to parties   | Yes                             | Yes  | No                           | No                               | Yes                            | No   | Yes – fair & equitable                 |
| b non-parties  | Yes                             | Yes  | No                           | No                               | No                             | No   | No                                     |
| <b>4 Performance requirements</b>  |                                 |  |                              |                                  |                                |  |  |
| a Are they banned for new and existing investment?   | Yes                             | Yes  | No                           | Yes                              | No                             | No   | No                                     |
| b Do they go beyond TRIMs?   | Yes                             | Yes  |                              | No                               |                                |  |  |
| <b>5 Transfers of funds</b>  |                                 |  |                              |                                  |                                |  |  |
| a Are transfer of funds across borders allowed   | Yes                             | Yes  | Yes                          | Yes                              | Yes                            | No   | Yes                                    |
| <b>6 Do provisions with respect to expropriation exist (nationalisation ,etc.)</b>                 |                                 |  |                              |                                  |                                |  |  |
| Yes  | Yes                             | Yes  | Yes                          | Yes                              | Yes                            | No   | Yes                                    |
| <b>7 Settlement of Disputes</b>  |                                 |  |                              |                                  |                                |  |  |
| a State-to-state   | Yes                             | Yes  | Yes                          | Yes                              | Yes                            | Yes  | Yes                                    |
| b Investor-state   | Yes                             | Yes  | Yes under certain conditions | No                               | Yes                            | No   | No                                     |
| c Access to International Dispute Settlement (ICSID, UNCITRAL)                                     |                                 |  |                              |                                  |                                |  |  |
| Yes  | Yes                             | Yes  | Yes                          | Yes                              | Yes                            | Yes  | Yes                                    |
| <b>TRADE RULES</b>   |                                 |  |                              |                                  |                                |  |  |
| <b>9 Rules of Origin</b>   |                                 |  |                              |                                  |                                |  |  |
| a Do rules of origin exist   | Yes                             | Yes  | Yes                          | Yes                              | Yes                            | Yes  | Yes                                    |
| b Value Content Criterion: Domestic/Regional Value Content (RVC)                                   | RVC 50-60%                      | MC40% RVC60%                               | N/A                          | MC: 50%                          | MC: 60%                        | MC: 70-35%   | MC:60% RVC:35%                         |
| c Are there roll-up arrangements?  | Yes                             | Yes  | -                            |                                  | Yes                            | Yes  | Yes                                    |
| d Are drawback allowed?  | No                              | Yes  | -                            |                                  |                                |  | Not after 10 years                     |
| e Mean/median value of restrictiveness   | 4                               | 3  |                              |                                  | 4                              | 4  | 3                                      |
| <b>10 Tariff structures</b>  |                                 |  |                              |                                  |                                |  |  |
| a Does a Common External Tariff exist.   | No MFN varies from 5.5% - 16.5% | Yes since 1995                             | Yes since 1991               | Yes since 1993                   | No                             | No   | No. Plans for CET                      |
| b Level of intra-regional tariffs and plans  | 0-2%                            | Duty free                                  | Duty free                    | Duty free                        | 0-7%                           | Mixture of duty free and SACU CET                                  | Different levels of tariff elimination |
| c Exceptions   |                                 |  |                              |                                  |                                |  |  |
| Yes  | Yes                             | Yes  | Free movement of people      | Andean Multinational Enterprises | Andean development Cooperation | Asean Industrial Co-operation Regional Investment Promotion Events | Asean Investment Portals               |
| <b>11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)</b> |                                 |  |                              |                                  |                                |  |  |
| Investment relevant integration index (1= no; 2=middle;3=integrated) INV                           | 3                               | 2  | 2                            | 2                                | 2/3                            | 1  | 1                                      |
| Investment relevant integration index (1= no; 2=middle;3=integrated) TRADE                         | 2                               | 3  | 3                            | 2                                | 1                              | 1  | 1                                      |

Sources: tables in appendix C. Note that cells represent a likely outcome, but will in reality depend on specific circumstances.

#### 4 Implications for Future Empirical Work

This paper has discussed the expected effects of investment related provisions in RTA and has assessed the way in which they have been implemented for a number of key regions. Important in all RTAs are trade rules. Trade liberalisation is likely to foster extra regional FDI, particularly in those sectors with high MFN tariffs (e.g. car components in Mercosur) and tight rules of origin, but is more ambiguous with regard to intra-regional FDI, as there is a trade-off between the importance of transport costs, firm level specific and plant level fixed costs. Investment rules when offered in package of other locational specific factors including basic fundamentals should provide a more welcoming investment climate. However, in reality there will be many specific factors that play a role when determining the effects of RTAs on FDI:

- Extent of regional tariff preferences (and other trade barriers)
- Restrictiveness of rules of origin
- Differences with actual regional investment rules
- Initial situation, including the structure of investment and existing liberalisation
- Plant level and firm level fixed costs
- Existing economic factors

We have shown that regions differ in two fundamental respects:

- *Over time* when one region can change or add investment related provisions
- *Across regions* when investment related provisions differ at one single point in time

Evidence shows that investment related provisions in key regions differ significantly, including differences in

- Extent of regional tariff preferences
- Restrictiveness of Rules of Origin
- Investment rules, including national treatment for pre and post establishment and presence of effective dispute settlement mechanisms
- Regional co-ordination on investment
- Type of membership: North-North, South-South, North-South, South-South-North.

Regions that desire to formulate new or change existing investment related provisions would be helped by an analysis of their effects. In understanding the effects of RTAs on FDI, particularly in developing countries, the existing variation in investment related provisions across regions and over time has not yet been fully exploited. Existing empirical evidence has recently begun to address the links between RTAs and FDI (we will provide a more precise overview elsewhere). Levy *et al* (2002) address the issue of regional integration and FDI at a basic level, using dummies for regions applying the analysis to the OECD databases thus excluding many developing countries. The market size effect is used but it is not a true market potential function as allowance for RoO and regional preferences have not been made. The research has been used for background in IDB (2002). Other researchers have examined individual regions; Waldkirch (2003) and Monge-Naranjo (2002) for NAFTA, Chudnovsky and Lopez (2001) for MERCOSUR. UNCTAD (2003) includes a useful overview of several regions but does not provide new empirical research.

There are also researchers who have examined provisions in RTA but have not made the empirical link with FDI . For instance, Wilkie (1998) discusses investment provisions in one region: NAFTA. Page (2000) provides a good overview of 13 regions dealing with a number of provisions in general terms.

The conclusion for empirical research is clear. Investment related provisions in regions differ over time and across regions, can potentially affect FDI, but the effects have never been fully tested, particularly for developing countries not covered in the OECD database on bilateral FDI stocks. There has also been hardly any consideration to differences by sector, or dynamic effects over time. The time is ripe to examine these issues.

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### **Mercosur:**

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Buenos Aires Protocol (1994)

### **CARICOM**

Treaty of Chaguaramas (1973)

Agreement for the Establishment of a Regime for Caricom Enterprises (1987)

Protocol Amending the Treaty Establishing the Caribbean Community (Protocol II: Establishment, Services, Capital) (1997)

Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single market and Economy (2001)

### **Andean Community**

Decision 291 of the Commission of the Cartagena Agreement: Common Code for the Treatment of Foreign Capital and on Trademarks, Patents, Licenses and Royalties (1991)

Decision 292 of the Commission of the Cartagena Agreement: Uniform Code on the Andean Multinational Enterprises (1991)

#### **ASEAN**

ASEAN Agreement for the Protection and Promotion of Investment (1987)

Revised Basic Agreement on ASEAN Industrial Joint Ventures (1987)

Framework Agreement on the ASEAN Investment Area (1998)

Protocol to Amend the Framework Agreement on the ASEAN Investment Area (2001)

#### **SADC**

Treaty establishing Southern African Development Community (1992)

#### **COMESA**

The COMESA Treaty (1994)

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ANDEAN. [www.comunidadandina.org](http://www.comunidadandina.org)

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COMESA. [www.comesa.org](http://www.comesa.org).

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Foreign Trade Information Systems. [www.sice.org](http://www.sice.org)

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OECD. [www.oecd.org](http://www.oecd.org)

SADC. [www.sadc.int](http://www.sadc.int)

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## APPENDICES

### APPENDIX A

### Regional groups.

#### **Asia Pacific Economic Co-operation Forum 1989**

Australia  
Brunei Darussalam  
Canada  
Chile (entered November 1994)  
China (entered November 1991)  
Hong Kong (entered November 1991)  
Indonesia  
Japan  
Korea  
Malaysia  
Mexico (entered November 1993)  
New Zealand  
Papua New Guinea (entered November 1993)  
Peru (entered November 1998)  
Philippines  
Russia (entered November 1998)  
Singapore  
Chinese Taipei (entered November 1991)  
Thailand  
United States  
Vietnam (entered November 1998)

#### **Association of South East Asian Nations 08/08/1967**

Brunei Darussalam entered 8/1/1984)  
Cambodia (entered 30/4/1999)  
Indonesia  
Malaysia  
Myanmar (entered 23/7/1997)  
Laos (entered 23/7/1997)  
Philippines  
Singapore  
Thailand  
Vietnam (entered 28/7/1995)

#### **Bangkok Agreement 17/06/1976**

Bangladesh  
China (formally became a member in 2000)  
India  
Republic of Korea  
Laos  
Sri Lanka

#### **Economic Cooperation Organisation 1985,**

Afghanistan (entered 1992)  
Azerbaijan (entered 1992)  
Iran  
Kazakhstan (entered 1992)  
Kyrgyz Republic (entered 1992)  
Pakistan  
Tajikistan (entered 1992)  
Turkey  
Turkmenistan (entered 1992)  
Uzbekistan (entered 1992)

**Indian Ocean Rim Association for Regional Co-operation 1997 (March)**

Australia  
Bangladesh  
India  
Indonesia  
Iran  
Kenya  
Madagascar  
Malaysia  
Mauritius  
Mozambique  
Oman  
Seychelles  
Singapore  
South Africa  
Sri Lanka  
Tanzania  
Thailand  
United Arab Emirates  
Yemen

**South Asian Association for Regional Cooperation 08/12/1985**

Bangladesh  
Bhutan  
India  
Maldives  
Nepal  
Pakistan  
Sri Lanka

**ACS Association of Caribbean States 24/07/1994**

Antigua & Barbuda  
Bahamas  
Barbados  
Belize  
Colombia  
Costa Rica  
Cuba  
Dominica  
Dominican Republic  
El Salvador  
Granada  
Guatemala  
Guyana  
Haiti  
Honduras  
Jamaica  
Mexico  
Nicaragua  
Panama  
St Kitts & Nevis  
St Lucia  
St Vincent & the Grenadines  
Surinam  
Trinidad & Tobago  
Venezuela

**CACM Central American Common Market 12/10/1961**

Costa Rica  
El Salvador  
Guatemala  
Honduras  
Nicaragua

**CAN Andean Community 25/05/1988**

Bolivia  
Colombia  
Ecuador  
Peru  
Venezuela

**CARICOM Caribbean Community and Common Market 01/08/1973**

Antigua & Barbuda  
Bahamas (entered 4/7/1983 - not a member of the common market)  
Barbados  
Belize  
Dominica  
Granada  
Guyana  
Haiti (entered July 2002)  
Jamaica  
Montserrat  
St. Kitts & St Nevis  
St Lucia  
St Vincent & the Grenadines  
Surinam  
Trinidad & Tobago

**G3 Group of Three 1995**

Colombia  
Mexico  
Venezuela

**LAIA Latin American Integration Association 18/03/1981**

Argentina  
Bolivia  
Brazil  
Chile  
Colombia  
Cuba (entered 6/11/1998)  
Ecuador  
Mexico  
Paraguay  
Peru  
Uruguay  
Venezuela

**MERCOSUR Southern Common Market 29/11/1991**

Argentina  
Brazil  
Paraguay  
Uruguay

**NAFTA North American Free Trade Agreement 01/01/1994**

Canada  
Mexico  
United States

**OECS Organisation of Eastern Caribbean States 18/06/1981**

Antigua & Barbuda  
Dominica  
Grenada  
Montserrat  
St Kitts & Nevis  
St Lucia  
St Vincent & the Grenadines

**SICA Central American Integration System 1993 (February)**

Belize  
Costa Rica  
El Salvador  
Guatemala  
Honduras  
Nicaragua  
Panama

**AMU Arab Maghreb Union 17/02/1989**

Algeria  
Libya  
Mauritania  
Morocco  
Tunisia

**CBI Cross Border Initiative 1993 (August)**

Burundi  
Comoros  
Kenya  
Madagascar  
Malawi  
Mauritius  
Namibia  
Rwanda  
Seychelles  
Swaziland  
Tanzania  
Uganda  
Zambia  
Zimbabwe

**CEMAC Economic and Monetary Community of Central Africa 24/06/1999**

Cameroon  
Central African Republic  
Chad  
Congo  
Equatorial Guinea  
Gabon

**CEPGL Economic Community of the Great Lakes Countries 20/09/1976**

Burundi  
Democratic Republic of Congo  
Rwanda

**COMESA Common Market for Eastern and Southern Africa 08/12/1994**

Angola  
Burundi  
Comoros  
Democratic Republic of Congo  
Djibouti  
Egypt  
Eritrea  
Ethiopia  
Kenya  
Madagascar  
Malawi  
Mauritius  
Namibia  
Rwanda  
Seychelles  
Sudan  
Swaziland  
Uganda  
Zambia  
Zimbabwe

**EAC East African Community 07/07/2000**

Kenya  
Tanzania  
Uganda

**ECCAS Economic Community of Central African States 18/10/1983**

Angola (entered in 1999)  
Burundi  
Cameroon  
Central African Republic  
Chad  
Democratic Republic of Congo  
Republic of Congo  
Equatorial Guinea  
Sao Tome & Principe

**ECOWAS Economic Community of West African States 28/05/1975**

Benin  
Burkina-Faso  
Cape Verde  
Cote d'Ivoire  
Gambia  
Ghana  
Guinea  
Guinea-Bissau  
Liberia  
Mali  
Mauritania  
Niger  
Nigeria  
Senegal  
Sierra Leone  
Togo



**IOR-ARC Indian Ocean Rim Association for Regional Co-operation 1997 (March)**

Australia  
Bangladesh  
India  
Indonesia  
Iran  
Kenya  
Madagascar  
Malaysia  
Mauritius  
Mozambique  
Oman  
Seychelles  
Singapore  
South Africa  
Sri Lanka  
Tanzania  
Thailand  
United Arab Emirates  
Yemen

**MRU Mano River Union 03/10/1973**

Guinea ( entered 25/10/1980)  
Liberia  
Sierra Leone

**SACU Southern African Customs Union 01/03/1970**

Botswana  
Lesotho  
Namibia  
South Africa  
Swaziland

**SADC Southern African Development Community 17/08/1992**

Angola  
Botswana  
Democratic Republic of Congo  
Lesotho  
Malawi  
Mauritius  
Mozambique  
Seychelles (may leave SADC)  
South Africa  
Swaziland  
Tanzania  
Zambia  
Zimbabwe

**TRIPARTITE Tripartite Agreement 01/04/1968**

Egypt  
India  
Yugoslavia

**UEMOA West African Economic and Monetary Union 01/08/1994**

Benin  
Burkina Faso  
Cote d'Ivoire  
Guinea Bissau (entered 2/5/1997)  
Mali  
Niger  
Senegal  
Togo

**Other regions involving developing countries**

EC – Chile 2003

EC - South Africa Free Trade Agreement 01/01/2000

EC - Morocco Free Trade Agreement 01/03/2000

EC - Mexico Free Trade Agreement 01/07/2000

EC - Mexico Services Agreement 01/03/2001

EC - Tunisia Free Trade Agreement 01/03/1998

EC - Egypt Free Trade Agreement 01/07/1977

EC- Algeria Free Trade Agreement 01/07/1976

Cotonou Agreement Signed 23/6/2000 EU - ACP group of countries

US-Vietnam Free Trade Agreement 10/12/2000

US-Singapore Free Trade Agreement Signed 5/6/2003

US-Chile Free Trade Agreement Signed 6/6/2003

## APPENDIX B

## ICSID membership

| State                            | Signature     | Deposit of Ratification | Entry into Force of Convention |
|----------------------------------|---------------|-------------------------|--------------------------------|
|                                  |               |                         |                                |
| <b>Afghanistan</b>               | Sep. 30, 1966 | June 25, 1968           | July 25, 1968                  |
| <b>Albania</b>                   | Oct. 15, 1991 | Oct. 15, 1991           | Nov. 14, 1991                  |
| <b>Algeria</b>                   | Apr. 17, 1995 | Feb. 21, 1996           | Mar. 22, 1996                  |
| <b>Argentina</b>                 | May 21, 1991  | Oct. 19, 1994           | Nov. 18, 1994                  |
| <b>Armenia</b>                   | Sep. 16, 1992 | Sep. 16, 1992           | Oct. 16, 1992                  |
| <b>Australia</b>                 | Mar. 24, 1975 | May 2, 1991             | June 1, 1991                   |
| <b>Austria</b>                   | May 17, 1966  | May 25, 1971            | June 24, 1971                  |
| <b>Azerbaïjan</b>                | Sep. 18, 1992 | Sep. 18, 1992           | Oct. 18, 1992                  |
| <b>Bahamas</b>                   | Oct. 19, 1995 | Oct. 19, 1995           | Nov. 18, 1995                  |
| <b>Bahrain</b>                   | Sep. 22, 1995 | Feb. 14, 1996           | Mar. 15, 1996                  |
| <b>Bangladesh</b>                | Nov. 20, 1979 | Mar. 27, 1980           | Apr. 26, 1980                  |
| <b>Barbados</b>                  | May 13, 1981  | Nov. 1, 1983            | Dec. 1, 1983                   |
| <b>Belarus</b>                   | July 10, 1992 | July 10, 1992           | Aug. 9, 1992                   |
| <b>Belgium</b>                   | Dec. 15, 1965 | Aug. 27, 1970           | Sep. 26, 1970                  |
| <b>Belize</b>                    | Dec. 19, 1986 |                         |                                |
| <b>Benin</b>                     | Sep. 10, 1965 | Sep. 6, 1966            | Oct. 14, 1966                  |
| <b>Bolivia</b>                   | May 3, 1991   | June 23, 1995           | July 23, 1995                  |
| <b>Bosnia and Herzegovina</b>    | Apr. 25, 1997 | May 14, 1997            | June 13, 1997                  |
| <b>Botswana</b>                  | Jan. 15, 1970 | Jan. 15, 1970           | Feb. 14, 1970                  |
| <b>Brunei Darussalam</b>         | Sep. 16, 2002 | Sep. 16, 2002           | Oct. 16, 2002                  |
| <b>Bulgaria</b>                  | Mar. 21, 2000 | Apr. 13, 2001           | May 13, 2001                   |
| <b>Burkina Faso</b>              | Sep. 16, 1965 | Aug. 29, 1966           | Oct. 14, 1966                  |
| <b>Burundi</b>                   | Feb. 17, 1967 | Nov. 5, 1969            | Dec. 5, 1969                   |
| <b>Cambodia</b>                  | Nov. 5, 1993  |                         |                                |
| <b>Cameroon</b>                  | Sep. 23, 1965 | Jan. 3, 1967            | Feb. 2, 1967                   |
| <b>Central African Republic</b>  | Aug. 26, 1965 | Feb. 23, 1966           | Oct. 14, 1966                  |
| <b>Chad</b>                      | May 12, 1966  | Aug. 29, 1966           | Oct. 14, 1966                  |
| <b>Chile</b>                     | Jan. 25, 1991 | Sep. 24, 1991           | Oct. 24, 1991                  |
| <b>China</b>                     | Feb. 9, 1990  | Jan. 7, 1993            | Feb. 6, 1993                   |
| <b>Colombia</b>                  | May 18, 1993  | July 15, 1997           | Aug. 14, 1997                  |
| <b>Comoros</b>                   | Sep. 26, 1978 | Nov. 7, 1978            | Dec. 7, 1978                   |
| <b>Congo</b>                     | Dec. 27, 1965 | June 23, 1966           | Oct. 14, 1966                  |
| <b>Congo, Democratic Rep. of</b> | Oct. 29, 1968 | Apr. 29, 1970           | May 29, 1970                   |
| <b>Costa Rica</b>                | Sep. 29, 1981 | Apr. 27, 1993           | May 27, 1993                   |
| <b>Côte d'Ivoire</b>             | June 30, 1965 | Feb. 16, 1966           | Oct. 14, 1966                  |
| <b>Croatia</b>                   | June 16, 1997 | Sep. 22, 1998           | Oct. 22, 1998                  |
| <b>Cyprus</b>                    | Mar. 9, 1966  | Nov. 25, 1966           | Dec. 25, 1966                  |
| <b>Czech Republic</b>            | Mar. 23, 1993 | Mar. 23, 1993           | Apr. 22, 1993                  |
| <b>Dominican Republic</b>        | Mar. 20, 2000 |                         |                                |
| <b>Denmark</b>                   | Oct. 11, 1965 | Apr. 24, 1968           | May 24, 1968                   |
| <b>Ecuador</b>                   | Jan. 15, 1986 | Jan. 15, 1986           | Feb. 14, 1986                  |
| <b>Egypt, Arab Rep. of</b>       | Feb. 11, 1972 | May 3, 1972             | June 2, 1972                   |
| <b>El Salvador</b>               | June 9, 1982  | Mar. 6, 1984            | Apr. 5, 1984                   |
| <b>Estonia</b>                   | June 23, 1992 | June 23, 1992           | Jul. 23, 1992                  |
| <b>Ethiopia</b>                  | Sep. 21, 1965 |                         |                                |
| <b>Fiji</b>                      | July 1, 1977  | Aug. 11, 1977           | Sep. 10, 1977                  |
| <b>Finland</b>                   | July 14, 1967 | Jan. 9, 1969            | Feb. 8, 1969                   |
| <b>France</b>                    | Dec. 22, 1965 | Aug. 21, 1967           | Sep. 20, 1967                  |
| <b>Gabon</b>                     | Sep. 21, 1965 | Apr. 4, 1966            | Oct. 14, 1966                  |
| <b>Gambia, The</b>               | Oct. 1, 1974  | Dec. 27, 1974           | Jan. 26, 1975                  |
| <b>Georgia</b>                   | Aug. 7, 1992  | Aug. 7, 1992            | Sep. 6, 1992                   |
| <b>Germany</b>                   | Jan. 27, 1966 | Apr. 18, 1969           | May 18, 1969                   |
| <b>Ghana</b>                     | Nov. 26, 1965 | July 13, 1966           | Oct. 14, 1966                  |
| <b>Greece</b>                    | Mar. 16, 1966 | Apr. 21, 1969           | May 21, 1969                   |
| <b>Grenada</b>                   | May 24, 1991  | May 24, 1991            | June 23, 1991                  |
| <b>Guatemala</b>                 | Nov. 9, 1995  | Jan. 21, 2003           | Feb. 20, 2003                  |
| <b>Guinea</b>                    | Aug. 27, 1968 | Nov. 4, 1968            | Dec. 4, 1968                   |
| <b>Guinea-Bissau</b>             | Sep. 4, 1991  |                         |                                |
| <b>Guyana</b>                    | July 3, 1969  | July 11, 1969           | Aug. 10, 1969                  |
| <b>Haiti</b>                     | Jan. 30, 1985 |                         |                                |

|   |               |               |               |
|---|---------------|---------------|---------------|
|   |               |               |               |
| <b>Honduras</b>                           | May 28, 1986  | Feb. 14, 1989 | Mar. 16, 1989 |
| <b>Hungary</b>                            | Oct. 1, 1986  | Feb. 4, 1987  | Mar. 6, 1987  |
| <b>Iceland</b>                            | July 25, 1966 | July 25, 1966 | Oct. 14, 1966 |
| <b>Indonesia</b>                          | Feb. 16, 1968 | Sep. 28, 1968 | Oct. 28, 1968 |
| <b>Ireland</b>                            | Aug. 30, 1966 | Apr. 7, 1981  | May 7, 1981   |
| <b>Israel</b>                             | June 16, 1980 | June 22, 1983 | July 22, 1983 |
| <b>Italy</b>                              | Nov. 18, 1965 | Mar. 29, 1971 | Apr. 28, 1971 |
| <b>Jamaica</b>                            | June 23, 1965 | Sep. 9, 1966  | Oct. 14, 1966 |
| <b>Japan</b>                              | Sep. 23, 1965 | Aug. 17, 1967 | Sep. 16, 1967 |
| <b>Jordan</b>                             | July 14, 1972 | Oct. 30, 1972 | Nov. 29, 1972 |
| <b>Kazakhstan</b>                         | July 23, 1992 | Sep. 21, 2000 | Oct. 21, 2000 |
| <b>Kenya</b>                              | May 24, 1966  | Jan. 3, 1967  | Feb. 2, 1967  |
| Kyrgyz, Rep. of                           | June 9, 1995  |               |               |
| <b>Korea, Rep. of</b>                     | Apr. 18, 1966 | Feb. 21, 1967 | Mar. 23, 1967 |
| <b>Kuwait</b>                             | Feb. 9, 1978  | Feb. 2, 1979  | Mar. 4, 1979  |
| <b>Latvia</b>                             | Aug. 8, 1997  | Aug. 8, 1997  | Sep. 7, 1997  |
| <b>Lebanon</b>                            | Mar. 26, 2003 | Mar. 26, 2003 | Apr. 25, 2003 |
| <b>Lesotho</b>                            | Sep. 19, 1968 | July 8, 1969  | Aug. 7, 1969  |
| <b>Liberia</b>                            | Sep. 3, 1965  | June 16, 1970 | July 16, 1970 |
| <b>Lithuania</b>                          | July 6, 1992  | July 6, 1992  | Aug. 5, 1992  |
| <b>Luxembourg</b>                         | Sep. 28, 1965 | July 30, 1970 | Aug. 29, 1970 |
| <b>Macedonia, former Yugoslav Rep. of</b> | Sep. 16, 1998 | Oct. 27, 1998 | Nov. 26, 1998 |
| <b>Madagascar</b>                         | June 1, 1966  | Sep. 6, 1966  | Oct. 14, 1966 |
| <b>Malawi</b>                             | June 9, 1966  | Aug. 23, 1966 | Oct. 14, 1966 |
| <b>Malaysia</b>                           | Oct. 22, 1965 | Aug. 8, 1966  | Oct. 14, 1966 |
| <b>Mali</b>                               | Apr. 9, 1976  | Jan. 3, 1978  | Feb. 2, 1978  |
| Malta                                     | Apr. 24, 2002 |               |               |
| <b>Mauritania</b>                         | July 30, 1965 | Jan. 11, 1966 | Oct. 14, 1966 |
| <b>Mauritius</b>                          | June 2, 1969  | June 2, 1969  | July 2, 1969  |
| <b>Micronesia</b>                         | June 24, 1993 | June 24, 1993 | July 24, 1993 |
| Moldova                                   | Aug. 12, 1992 |               |               |
| <b>Mongolia</b>                           | June 14, 1991 | June 14, 1991 | July 14, 1991 |
| <b>Morocco</b>                            | Oct. 11, 1965 | May 11, 1967  | June 10, 1967 |
| <b>Mozambique</b>                         | Apr. 4, 1995  | June 7, 1995  | July 7, 1995  |
| Namibia                                   | Oct. 26, 1998 |               |               |
| <b>Nepal</b>                              | Sep. 28, 1965 | Jan. 7, 1969  | Feb. 6, 1969  |
| <b>Netherlands</b>                        | May 25, 1966  | Sep. 14, 1966 | Oct. 14, 1966 |
| <b>New Zealand</b>                        | Sep. 2, 1970  | Apr. 2, 1980  | May 2, 1980   |
| <b>Nicaragua</b>                          | Feb. 4, 1994  | Mar. 20, 1995 | Apr. 19, 1995 |
| <b>Niger</b>                              | Aug. 23, 1965 | Nov. 14, 1966 | Dec. 14, 1966 |
| <b>Nigeria</b>                            | July 13, 1965 | Aug. 23, 1965 | Oct. 14, 1966 |
| <b>Norway</b>                             | June 24, 1966 | Aug. 16, 1967 | Sep. 15, 1967 |
| <b>Oman</b>                               | May 5, 1995   | July 24, 1995 | Aug. 23, 1995 |
| <b>Pakistan</b>                           | July 6, 1965  | Sep. 15, 1966 | Oct. 15, 1966 |
| <b>Panama</b>                             | Nov. 22, 1995 | Apr. 8, 1996  | May 8, 1996   |
| <b>Papua New Guinea</b>                   | Oct. 20, 1978 | Oct. 20, 1978 | Nov. 19, 1978 |
| <b>Paraguay</b>                           | July 27, 1981 | Jan. 7, 1983  | Feb. 6, 1983  |
| <b>Peru</b>                               | Sep. 4, 1991  | Aug. 9, 1993  | Sep. 8, 1993  |
| <b>Philippines</b>                        | Sep. 26, 1978 | Nov. 17, 1978 | Dec. 17, 1978 |
| <b>Portugal</b>                           | Aug. 4, 1983  | July 2, 1984  | Aug. 1, 1984  |
| <b>Romania</b>                            | Sep. 6, 1974  | Sep. 12, 1975 | Oct. 12, 1975 |
| Russian Federation                        | June 16, 1992 |               |               |
| <b>Rwanda</b>                             | Apr. 21, 1978 | Oct. 15, 1979 | Nov. 14, 1979 |
| <b>Saint Vincent and the Grenadines</b>   | Aug. 7, 2001  | Dec. 16, 2002 | Jan. 15, 2003 |
| <b>Samoa</b>                              | Feb. 3, 1978  | Apr. 25, 1978 | May 25, 1978  |
| Sao Tome and Principe                     | Oct. 1, 1999  |               |               |
| <b>Saudi Arabia</b>                       | Sep. 28, 1979 | May 8, 1980   | June 7, 1980  |
| <b>Senegal</b>                            | Sep. 26, 1966 | Apr. 21, 1967 | May 21, 1967  |
| Serbia and Montenegro                     | July 31, 2002 |               |               |
| <b>Seychelles</b>                         | Feb. 16, 1978 | Mar. 20, 1978 | Apr. 19, 1978 |
| <b>Sierra Leone</b>                       | Sep. 27, 1965 | Aug. 2, 1966  | Oct. 14, 1966 |
| <b>Singapore</b>                          | Feb. 2, 1968  | Oct. 14, 1968 | Nov. 13, 1968 |
| <b>Slovak Republic</b>                    | Sep. 27, 1993 | May 27, 1994  | June 26, 1994 |
| <b>Slovenia</b>                           | Mar. 7, 1994  | Mar. 7, 1994  | Apr. 6, 1994  |

|   |               |               |                |
|---|---------------|---------------|----------------|
| <b>Solomon Islands</b>                                      | Nov. 12, 1979 | Sep. 8, 1981  | Oct. 8, 1981   |
| <b>Somalia</b>  | Sep. 27, 1965 | Feb. 29, 1968 | Mar. 30, 1968  |
| <b>Spain</b>  | Mar. 21, 1994 | Aug. 18, 1994 | Sept. 17, 1994 |
| <b>Sri Lanka</b>  | Aug. 30, 1967 | Oct. 12, 1967 | Nov. 11, 1967  |
| <b>St. Kitts &amp; Nevis</b>                                | Oct. 14, 1994 | Aug. 4, 1995  | Sep. 3, 1995   |
| <b>St. Lucia</b>  | June 4, 1984  | June 4, 1984  | July 4, 1984   |
| <b>Sudan</b>  | Mar. 15, 1967 | Apr. 9, 1973  | May 9, 1973    |
| <b>Swaziland</b>  | Nov. 3, 1970  | June 14, 1971 | July 14, 1971  |
| <b>Sweden</b>   | Sep. 25, 1965 | Dec. 29, 1966 | Jan. 28, 1967  |
| <b>Switzerland</b>  | Sep. 22, 1967 | May 15, 1968  | June 14, 1968  |
| <b>Tanzania</b>   | Jan. 10, 1992 | May 18, 1992  | June 17, 1992  |
| <b>Thailand</b>   | Dec. 6, 1985  |               |                |
| <b>Timor-Leste</b>  | July 23, 2002 | July 23, 2002 | Aug. 22, 2002  |
| <b>Togo</b>   | Jan. 24, 1966 | Aug. 11, 1967 | Sep. 10, 1967  |
| <b>Tonga</b>  | May 1, 1989   | Mar. 21, 1990 | Apr. 20, 1990  |
| <b>Trinidad and Tobago</b>                                  | Oct. 5, 1966  | Jan. 3, 1967  | Feb. 2, 1967   |
| <b>Tunisia</b>  | May 5, 1965   | June 22, 1966 | Oct. 14, 1966  |
| <b>Turkey</b>   | June 24, 1987 | Mar. 3, 1989  | Apr. 2, 1989   |
| <b>Turkmenistan</b>   | Sep. 26, 1992 | Sep. 26, 1992 | Oct. 26, 1992  |
| <b>Uganda</b>   | June 7, 1966  | June 7, 1966  | Oct. 14, 1966  |
| <b>Ukraine</b>  | Apr. 3, 1998  | June 7, 2000  | July 7, 2000   |
| <b>United Arab Emirates</b>                                 | Dec. 23, 1981 | Dec. 23, 1981 | Jan. 22, 1982  |
| <b>United Kingdom of Great Britain and Northern Ireland</b> | May 26, 1965  | Dec. 19, 1966 | Jan. 18, 1967  |
| <b>United States of America</b>                             | Aug. 27, 1965 | June 10, 1966 | Oct. 14, 1966  |
| <b>Uruguay</b>  | May 28, 1992  | Aug. 9, 2000  | Sep. 8, 2000   |
| <b>Uzbekistan</b>   | Mar. 17, 1994 | July 26, 1995 | Aug. 25, 1995  |
| <b>Venezuela</b>  | Aug. 18, 1993 | May 2, 1995   | June 1, 1995   |
| <b>Yemen, Republic of</b>                                   | Oct. 28, 1997 |               |                |
| <b>Zambia</b>   | June 17, 1970 | June 17, 1970 | July 17, 1970  |
| <b>Zimbabwe</b>   | Mar. 25, 1991 | May 20, 1994  | June 19, 1994  |

Source: [www.worldbank.org](http://www.worldbank.org)

## APPENDIX C

### Investment related provisions in key regions

#### NAFTA

|   |   |   |
|---|---|---|
| <b>Members</b> (late membership between parentheses)            | Canada<br>Mexico<br>United States   | Established 1/1/1994  |
| <b>INVESTMENT RULES</b>   |   |   |
| What year did investment provisions come into force (variable?) | 01/01/1994  |   |
| <b>1 Scope and coverage</b>                                     | Investors of a NAFTA state and investment of investors of a NAFTA state   | Article 1101  |
| a Applicable to non-parties (when or when not)                  | Non-NAFTA investors with investments in one NAFTA country are assured the benefits of Chapter 11 if they decide to expand their operations into the other NAFTA countries as long as they have "substantial business activities in the territory of the Party" where they were originally established. Particular disciplines re: performance requirements and environmental measures apply to all investment (inc domestic investment and investment from non-NAFTA parties) | Article 1106 (Performance requirements) Article 1114 (Environmental measures) |
| b Positive or negative list approach                            | negative list   |   |
| c Main exceptions (safeguards, sectors etc.)                    |   |   |
| Mexico  | Excludes: petroleum sector; electricity; nuclear power and treatment of other radio-active materials; telecommunications and media - all state owned sectors. Health and social services. Control of air and maritime ports.  | Annex III, Chapter 11   |
| Canada  | Excludes: Cultural Industries; health and social services; aboriginal affairs; large scale water exports  | Article 2106/ Annex 2106  |
| United States   | Excludes: health and social services. All maritime activities are highly restrictive.   |   |

|  |   |  |
|--|---|--|
| <b>2 National Treatment</b>  | Yes with respect to the establishment, acquisition, expansion, management, conduct, operation and sale  | Article 1102   |
| a Pre-establishment (all sectors?)                                   | Yes - covers all sectors unless exempted. Exemptions: Canada: Aboriginal affairs, some communications sectors, social services, some transportation. Mexico: Media, some communications and transport, energy and social services. US: Communications, social services, some media and transportation.            |  |
| b Are there restrictions on ownership rules? (e.g. min equity share) | Yes - No Party may impose a requirement that a minimum level of equity in an enterprise be held by its nationals, other than nominal qualifying shares for directors etc or require an investor of another Party, by reason of its nationality, to sell or dispose of an investment in the territory of the party |  |
| c Operations by MNEs in the country                                  | Yes   |  |
| <b>3 Most Favoured Nation and fair and equitable treatment</b>       | Yes   | Article 1103/ Article 1104   |
| a granted to parties   | Yes - No less favourable treatment than that granted to non-parties and that provided by international law.:  | Exceptions: Article 1113   |
| non-parties  | Yes - Applies to 'third party' investors and their investments.   |  |
| <b>4 Performance requirements</b>                                    | Yes - Outright prohibition on the use of certain performance requirements by NAFTA states. Exceptions: environmental standards; standards for employee training are permitted; no ban on requirements for R&D   | Article 1106 Article 1106.2 & 1114 (Environmental Standards) Article 1106.4 (Employee training/ R&D) |
|  | NB. Applies to requirements placed on any investment (inc non-NAFTA)  | Article 1106   |
| a Are they banned for new and existing investment?                   | Yes   |  |
| b Do they go beyond TRIMs?   | Yes - no party may impose the following requirements: export requirements; minimum domestic content; domestic sourcing requirements; trade balancing; technology transfer; 'exclusive supplier' requirements  |  |
| <b>5 Transfers of funds</b>  |   |  |
| a Are transfer of funds across borders allowed                       | Yes - all transfers relating to an investment can be made freely without delay.   | Article 1109   |

|   |  |                             |
|---|--|-----------------------------|
| <b>6 Do provisions with respect to expropriation exist (nationalisation, etc.)</b>                                    | Yes - no party may directly or indirectly nationalise/expropriate an investment of an investor of another party in its territory. Except: for public purposes; on a non-discriminatory basis; in accordance with due process of law and fair and equitable treatment; on payment of compensation | Article 1110                |
| <br>  |  |                             |
| <b>7 Settlement of Disputes</b>   |  | Article 1115                |
| a State-to-state  | Yes  | Chapter 20                  |
| b Investor-state  | Yes  | Article 1116 - Article 1120 |
| c Access to International Dispute Settlement (ICSID, UNCITRAL)  | Yes - Arbitration under World Bank ICSID/ UNCITRAL. A Tribunal is established that is empowered to order interim measures to protect the rights of disputing investor  |                             |
| <br>  |  |                             |
| <b>8 Provisions for incentives and subsidies</b>  |  |                             |
| <br>  |  |                             |
| <b>TRADE RULES</b>  |  |                             |
| <br>  |  |                             |
| <b>9 Rules of Origin</b>  |  |                             |
| a Do rules of origin exist  | Yes  |                             |
| b Value Content Criterion: Domestic/Regional Value Content (RVC)  | RVC: 60-50%  |                             |
| c Are there roll-up arrangements?   | Yes except automotive  |                             |
| d Are drawback allowed?   | No after 7 years for Mexico  |                             |
| e Mean/median value of restrictiveness  | 4  |                             |
| <br>  |  |                             |
| <b>10 Tariff structures</b>   |  |                             |
| a Does a Common External Tariff exist. If so what is it and will it be? If not, give indication of country dispersion | No.<br>Applied MFN was 16.5 in 2001 for Mexico; 5.5 in 2000 in US; ad valorem MFN is 7.7 in Canada in 1998   |                             |
| b Level of intra-regional tariffs and plans   | Most merchandise liberalised between 1994 and 1998; Intra-regional trade face 0-2% average applied tariffs   |                             |
| c Exceptions  | High applied MFN for food, animal, footwear textile and clothing products in Mexico, Canada and US and textile and clothing in US and Canada; expected phase out of sensitive products until 2019 of motor vehicles, maize, milk and beans   |                             |
| <br>  |  |                             |
| <b>11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)</b>                    |  |                             |



## MERCOSUR

**Members** (late membership between parentheses)

Established 29/11/1991

Argentina  
Brazil  
Paraguay  
Uruguay

## **INVESTMENT RULES**

What year did investment provisions come into force (variable?)  
The Colonia Protocol for the Promotion and Protection of Investments in Mercosur was approved by the Decision No. 11/93 of the Common Market Council of January 17, 1994. The Buenos Aires Protocol for the Promotion and Protection of Investments in Mercosur from Non-Member Countries was approved by Decision No. 11/94 August 5, 1994.

### **1 Scope and coverage**

Any natural person who is a national of, permanently resides, or is domiciled in a Contracting Party in accordance with its laws. The Protocol does not apply to investments made in the territory of one Contracting Party by natural persons who are nationals of the other Contracting Party if they, by the date the investment is made, permanently reside or are domiciled in the host country, unless it is proved that the investment was admitted from abroad. Any legal person constituted under the laws and regulations of a Contracting Party, and having its seat in the territory of said Party; and, any legal person constituted under the laws of the host country but effectively controlled, directly or indirectly, by a natural or legal person as defined above.

Article 1 (2) Colonia Protocol

a Applicable to non-parties (when or when not)

Yes - The Buenos Aires Protocol creates provisions for Non-parties with respect to MFN and transfer of funds

(Article 2(C)(3) of the Buenos Aires Protocol).

b Positive or negative list approach

Colonia Protocol: negative. Buenos Aires Protocol: Positive

c Main exceptions (safeguards, sectors etc.)

A number of transitory exceptions were agreed

Argentina

Border real estate; air transportation; shipbuilding; nuclear power generation; uranium mining; insurance and fisheries

|  |   |                                 |
|--|---|---------------------------------|
| Brazil   | Exploration and exploitation of minerals; hydroelectric power; health care, telecommunications; rural property; banking and insurance services; construction and shipping   |                                 |
| Paraguay   | Real property in the frontier zones; communication/media; air land or maritime transportation; electricity; water and telephones; exploitation of hydrocarbons and strategic minerals; importation and refining petroleum products and postal service                       |                                 |
| Uruguay  | Electricity; hydrocarbons; petrochemicals and plastic industries; nuclear energy; strategic mineral extraction and exploitation; financial industries; rail transportation; telecommunications; radio and television and journalism   |                                 |
| <b>2 National Treatment</b>  | Yes - Parties must accord to investment of investors of member parties treatment which is no less favourable than accorded to investment of its own investors or investors of third states  | Article 3 Protocol of Colonia   |
| a Pre-establishment (all sectors?)                                   | Yes   |                                 |
| b Are there restrictions on ownership rules? (e.g. min equity share) | No  |                                 |
| c Operations by MNEs in the country                                  | Yes   |                                 |
| <b>3 Most Favoured Nation and fair and equitable treatment</b>       | Yes   | Article 3 Protocol of Colonia   |
| a granted to parties   | Yes   | Article 3 Colonia Protocol      |
| non-parties  | Yes - But the application of MFN treatment is left to the discretion of each Mercosur country: Each Member Party <b>may</b> accord to investments of investors of third States treatment no less favourable than that accorded to investments of investors of other States. | Article 2 Buenos Aires Protocol |
| <b>4 Performance requirements</b>                                    | Yes - Brazil and Argentina have reserved the right to maintain performance requirements in the automobile sector  | Article 3 Protocol of Colonia   |
| a Are they banned for new and existing investment?                   | Yes - No party shall impose performance requirements as a condition for establishment, expansion or maintenance of investments  |                                 |

b Do they go beyond TRIMs?

Yes

## 5 Transfers of funds

a Are transfer of funds across borders allowed

Yes - Free transfer of investment and returns

Article 5 Protocol of Colonia;  
Article 2E of Protocol of  
Buenos Aires

**6 Do provisions with respect to expropriation exist (nationalisation ,etc.)**

Yes - Except on public interest grounds; on a non-discriminatory basis with respect to due process and prompt and fair compensation

Article 4 Protocol of Colonia

Initially established under Brasilia Protocol for the Settlement of Disputes in 1991 (in force as of 1993) were expanded by the Ouro Preto Protocol in 1994

## 7 Settlement of Disputes

a State-to-state

Yes - Disputes between states will be settled according to the terms and conditions set out in the protocol of Brasilia

Colonia Protocol Article 8

b Investor-state

Yes - In the first instance amicable negotiations. If the dispute is not settled in six months, an investor may seek resolution via national legal means, international arbitration or by a system of permanent dispute settlements that will be established under the framework of the Treaty of Asuncion

Colonia Protocol Article 9

c Access to International Dispute Settlement (ICSID, UNCITRAL)

Yes - Investor may choose CIADI or United Nations system for the settlement of disputes

## 8 Provisions for incentives and subsidies

### TRADE RULES

## 9 Rules of Origin

a Do rules of origin exist

Yes

b Value Content Criterion: Domestic/Regional Value Content (RVC) or Import Content (MC)

MC:40% RVC: 60%

c Are there roll-up arrangements?

Yes except automotive

d Are drawback allowed?

Yes except automotive imports from Argentina and Brazil

e Mean/median value of restrictiveness 3 (Based on MERC-Bol/Chi)

#### 10 Tariff structures

a Does a Common External Tariff exist. If so what is and will be average? If not, give indication of country dispersion

Yes since 1995; full implementation by 2006.

b Level of intra-regional tariffs and plans

Phase out of intra-regional tariffs has proceeded since 1991 (85% of intra-regional trade became duty free in 1995)

Intra-regional trade is duty free

c Main exceptions

General: Capital goods, informatics and telecommunications products

Argentina: Automobiles, sugar and footwear have high CET or MFN (up to 30%)

#### 11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)

##### CARICOM

**Members** (late membership between parentheses)

Antigua & Barbuda

Established 1/8/1973

Bahamas (entered 4/7/1983 - not a member of the common market)

The Single Market and  
Economy was launched  
1/1/1991

Barbados

Belize

Dominica

Granada

Guyana

Haiti (entered July 2002)

Jamaica

Montserrat

St. Kitts & St Nevis

St Lucia

St Vincent & the Grenadines

Surinam (1995)  
Trinidad & Tobago

## INVESTMENT RULES

What year did investment provisions come into force (variable?)  
Treaty of Chaguaramas establishing the Caribbean Community and the Caribbean Common Market, July 4, 1973. Protocol II which concerns the right of establishment, provisions for services and the movement of capital was signed in 1997. Not all members have enacted Protocol II. Some provisions were laid out in the Principles and Guidelines on Foreign Investment approved by the Caricom Heads of States of Government Conference 1982.

### 1 Scope and coverage

a Applicable to non-parties (when or when not)

No

b Positive or negative list approach

positive

c Main exceptions (safeguards, sectors etc.)

In general foreign investment shall not be allowed in a sector/activity where there is need to; protect small entrepreneurs; insulate areas of the economy where investment is already adequate and where the effect of new overseas investment would be to drive out present investment; avoid threats to national security; create economic opportunities for nationals and nationally-controlled enterprises which need protection from more efficient foreign enterprises until, in the long run, they can develop the necessary entrepreneurial managerial and technological; capabilities to adequately service the sector/activity; curtail increased investment in service activities, thus giving preference to the goods-producing sector.

### 2 National Treatment

No - recognises preferential treatment with regards to investments of its nationals. However it does establish that members shall not introduce in their territories any new restrictions relating to the right of establishment of nationals of other member states except as otherwise provided in the agreement.

Treaty of Chaguaramas,  
Caribbean Common Market  
Annex Article 35 .1; Protocol  
II

a Pre-establishment (all sectors?)

b Are there restrictions on ownership rules? (e.g. min equity share)

No

c Operations by MNEs in the country

**3 Most Favoured Nation and fair and equitable treatment**

No - Cooperation agreements on foreign investments shall tend to accord preferential treatment to the following groups of entities, ranked as follows: 1 nationals of the host Caricom country, 2 nationals of other Caricom member countries, 3 Nationals of the sources countries - both developed and developing, 4 Other Countries

Head of Government Conference

a granted to parties

non-parties

**4 Performance requirements**

No - All foreign investments shall be required to meet performance criteria on a case by case basis as determined by Caricom host governments. Five criteria that will be required to be met; removal or reduction of restrictions under licensing agreements on production for both national and extra -regional markets; employment priority to be given first to nations of the host country, second to Carcim nationals and nationals of source country; and policies instituted to ensure that nations of the host country receive the necessary training and achieve the required experience to equip them top assume senior management positions; the use, where appropriate of local and regional; raw materials, other mineral inputs and services; the provision of externally generated financial resources to meet a reasonable proportion of long term and working capital needs of foreign enterprises; where there are joint venture enterprises, 'fade out, arrangements over time to enable ultimate local or regional control

Heads of Government Conference 1982.

However Caricom does conform to WTO TRIMs

a Are they banned for new and existing investment?

No

b Do they go beyond TRIMs?

**5 Transfers of funds**

a Are transfer of funds across borders allowed

Yes

Revised Treaty of Chaguaramas establishing the Caribbean community including the Caribbean Single Market and Economy, Article 40

|   |   |                               |
|---|---|-------------------------------|
| <b>6 Do provisions with respect to expropriation exist (nationalisation ,etc.)</b>                                    | Yes   |                               |
| <b>7 Settlement of Disputes</b>   | Yes   | Chapter 9, Revised Treaty     |
| a State-to-state  | Yes   |                               |
| b Investor-state  | Under certain circumstances - persons of a contracting party, with the special leave of the court, may be allowed to appear as parties in proceedings   | Article 222, Revised Treaty   |
| c Access to International Dispute Settlement (ICSID, UNCITRAL)  | Yes - most members have acceded to ICSID  |                               |
| <b>8 Provisions for incentives and subsidies</b>  | No  |                               |
| <b>9 Rules of Origin</b>  |   |                               |
| a Do rules or origin exist  | Yes   |                               |
| b Value Content Criterion: Domestic/Regional Value Content (RVC)  | N/A   |                               |
| c Are there roll-up arrangements?   | Not mentioned   |                               |
| d Are drawback allowed?   | possibly??  |                               |
| e Mean/median value of restrictiveness  |   |                               |
| <b>10 Tariff structures</b>   |   |                               |
| a Does a Common External Tariff exist. If so what is it and will it be? If not, give indication of country dispersion | Yes since 1991. CET rates range from 20-35%. 4 stage schedule of CET tariff reductions, starting in 1993. The final Phase 4 of full implementation, with a tariff ceiling of 20% for non-exempt industrial goods and 40% for non-exempt agricultural goods was to be reached by 1998. |                               |
| b Level of intra-regional tariffs and plans   | Intra-regional trade is duty free   |                               |
| c Exceptions  | Agricultural; highly revenue sensitive sectors, mainly alcoholic beverages, tobacco, oil products, jewelry, electrical appliances and motor vehicles.; some electrical appliances   |                               |
| <b>11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)</b>                    | Free movement of people   | Article 45/46, Revised Treaty |

## ANDEAN

|  |   |   |
|--|---|---|
| <b>Members</b> (late membership between parentheses) | Bolivia<br>Colombia<br><br>Ecuador<br>Peru<br>Venezuela | 25/05/1988<br><br>Andean Group became the Andean Community in 1997 with the adoption of the Trujillo protocol |
|--|---|---|

## INVESTMENT RULES

What year did investment provisions come into force (variable?)  
Decision 291 established the obligations regarding foreign investment. Made in March 1991. Decision 292 deals with Andean Multinational Enterprises  
Its provisions generally yield to national stipulation on the subject

### 1 Scope and coverage

a Applicable to non-parties (when or when not)

yes

b Positive or negative list approach

positive

c Main exceptions (safeguards, sectors etc.)

Reserved sectors according to national law

### 2 National Treatment

Yes but... foreign investors shall have the same rights and obligations as those to which national investors are subject, except as provided for in the national legislation of each Member Country.

Decision 291 Article 2

Decision 292 grants national treatment to Andean MNCs. National treatment with respect to government procurements, export incentives and taxation, the right to participate in economic sectors reserved for national companies and the right to open branches in any member country, and free transfer of funds related to investment.

a Pre-establishment (all sectors?)

Not specified



b Are there restrictions on ownership rules? (e.g. min equity share)

No

c Operations by MNEs in the country

Not specified

**3 Most Favoured Nation and fair and equitable treatment**

No

a granted to parties

non-parties

**4 Performance requirements**

Yes but only establishes particular provisions for the performance of contracts for the license of technology, technical assistance, technical services, and other technological contracts under the national laws of each Member

Decision 291 Article 14

a Are they banned for new and existing investment?

b Do they go beyond TRIMs?

**5 Transfers of funds**

a Are transfer of funds across borders allowed

Yes

Decision 291 Article 4 & 5

**6 Do provisions with respect to expropriation exist (nationalisation ,etc.)**

Yes

**7 Settlement of Disputes**

a State-to-state

Yes through the Andean Court of Justice

b Investor-state

No

c Access to International Dispute Settlement (ICSID, UNCITRAL)

Yes - ICSID

**8 Provisions for incentives and subsidies**

### 9 Rules of Origin

|   |         |
|---|---------|
| a Do rules or origin exist  | Yes     |
| b Value Content Criterion: Domestic/Regional Value Content (RVC) or Import Content (MC) | MC: 50% |
| c Are there roll-up arrangements?   | ??      |
| d Are drawback allowed?   | ??      |
| e Mean/median value of restrictiveness  | ??      |

### 10 Tariff structures

|   |  |
|---|--|
| a Does a Common External Tariff exist. If so what is it and will it be? If not, give indication of country dispersion | Yes since 1993. The resulting Customs Union is incomplete - the CET ( with rates of 0, 5, 10, 15 and 20 per cent) is applied only to Colombia, Ecuador and Venezuela. Bolivia has been exempted from implementing it and maintains its flat national tariff. |
| b Level of intra-regional tariffs and plans   | Intra-regional trade is duty free  |
| c Exceptions  |  |

### 11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)

Decision 292 provides for the formation of Andean Multinational Enterprises  
Andean Development Corporation  
Andean Business Advisory Council

## ASEAN

### Members (late membership between parentheses)

Brunei Darussalam entered 8/1/1984)  
Cambodia (entered 30/4/1999)  
Indonesia  
Malaysia  
Myanmar (entered 23/7/1997)  
Laos (entered 23/7/1997)  
Philippines  
Singapore  
Thailand  
Vietnam (entered 28/7/1995)

08/08/1967  
Sean Free Trade Area was  
set up in 1992

### INVESTMENT RULES

What year did investment provisions come into force (variable?)

Agreement for the Protection and Promotion of Investment, 1987. The Framework agreement on the Asean Investment Area (AIA) was signed on 7 October 1998

This Agreement shall apply only to investments brought into, derived from or directly connected with investments brought into the territory of any Contracting Party by nationals or companies of any other Contracting Party and which are specifically approved in writing and registered by the host country and upon such conditions as it deems fit for the purposes of this Agreement.

#### 1 Scope and coverage

AIA

a Applicable to non-parties (when or when not)

Yes - with respect to national treatment in AIA

b Positive or negative list approach

1987 Agreement: positive. AIA: negative (Temporary Exclusion List & Sensitive List)

c Main exceptions (safeguards, sectors etc.)

Temporary Exclusion List and Sensitive List

#### 2 National Treatment

Yes - To Asean members immediately and to non-Asean investors by 2020. national treatment to the admission, establishment, acquisition, expansion, management, operation, and disposition of investment

Article 7 AIA

|  |  |                 |
|--|--|-----------------|
| a Pre-establishment (all sectors?)                                   | Yes - subject to temporary exclusion list and sensitive list   |                 |
|  | As of 1 January 2003, the Temporary Exclusion Lists (TEL) for the manufacturing sector of Brunei Darussalam, Indonesia, Myanmar, Philippines, and Thailand have been phased out thereby broadening the scope of economic activities where ASEAN investors are given national treatment. Malaysia and Singapore have no temporary exclusion list.   |                 |
| b Are there restrictions on ownership rules? (e.g. min equity share) | Yes - as a short term measure: a suspension of laws regulating equity joint venture between foreign and local enterprises and 100% foreign equity is allowed. Laws restricting foreign shareholders in national companies are also deregulated. However, since the 100% foreign equity and other special privileges granted in the short-term measures are not set as permanent measures, they are subject to change and may alter in the future or be extended depending on later circumstances. Currently, Brunei Darussalam, Indonesia, Laos, Malaysia allows 100% foreign equity ownership in certain sectors. |                 |
| c Operations by MNEs in the country                                  | Yes  |                 |
| <b>3 Most Favoured Nation and fair and equitable treatment</b>       | Yes  |                 |
| a granted to parties   | Yes  |                 |
| non-parties  | No - however it does not exclude non-ASEAN investors who have formed a company in a member country, and they may be entitled to "ASEAN investor" status  | Article 8 & 9   |
| <b>4 Performance requirements</b>                                    | No   |                 |
| a Are they banned for new and existing investment?                   |  |                 |
| b Do they go beyond TRIMs?   |  |                 |
| <b>5 Transfers of funds</b>  |  |                 |
| a Are transfer of funds across borders allowed                       | Yes  | Article 7, 1987 |

|   |   |                  |
|---|---|------------------|
| <b>6 Do provisions with respect to expropriation exist (nationalisation ,etc.)</b>                                    | Investments of nationals or companies of any Contracting Party shall not be subject to expropriation nationalisation or any measure equivalent thereto (in the article referred to as "expropriation"), except for public use, or public purpose, or in the public interest, and-under due process of law, on a non-discriminatory basis and upon payment of adequate compensation                            | Article 6, 1987  |
| <b>7 Settlement of Disputes</b>   |   |                  |
| a State-to-state  | Yes - Any dispute between and among, the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably between the parties to the dispute. Such settlement shall be reported to the ASEAN Economic Ministers (AEM). If such a dispute cannot thus be settled it shall be submitted to the AEM for resolution.                             | Article 9, 1987  |
| b Investor-state  | Yes   | Article 10, 1987 |
| c Access to International Dispute Settlement (ICSID, UNCITRAL)  | The dispute may be brought before the International Centre for Settlement of Investment Disputes (IGSID), the United Nations Commission on International Trade Law (UNCITRAL), the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN, whichever body the parties to the dispute mutually agree to appoint for the purposes of Conducting the arbitration. |                  |
| <b>8 Provisions for incentives and subsidies</b>  | No  |                  |
| <b>9 Rules of Origin</b>  |   |                  |
| a Do rules of origin exist  | Yes   |                  |
| b Value Content Criterion: Domestic/Regional Value Content (RVC) or Import Content (MC)                               | MC: 60%   |                  |
| c Are there roll-up arrangements?   | Not mentioned   |                  |
| d Are drawback allowed?   | Yes   |                  |
| e Mean/median value of restrictiveness  | 4   |                  |
| <b>10 Tariff structures</b>   |   |                  |
| a Does a Common External Tariff exist. If so what is it and will it be? If not, give indication of country dispersion | No. Afta was expected to reduce tariffs to between 0 - 5% for all trade between member nations by 2008. Common Effective Preferential Tariff scheme covers on average 90% of the tariff lines of all Asean members nations.   |                  |
| b Level of intra-regional tariffs and plans (2003)  | Brunei Darussalam: 0.92   |                  |

Cambodia: 7.96  
Indonesia: 3.70  
Laos: 5.66  
Malaysia: 3.19  
Myanmar: 2.05  
Philippines: 3.79  
Singapore: 0  
Thailand: 4.63  
Vietnam: 2.02

c Exceptions

Sectors included in the Exclusion List and Sensitive List

**11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)**

Asean Industrial Co-operation (AICO Scheme)

Regional Investment Promotion Events

ASEAN Investment Portal - gateway linking ASEAN to the world by providing a comprehensive coverage of up-to-date business and investment information on the region

**COMESA**

**Members** (late membership between parentheses)

08/12/1994

- Angola
- Burundi
- Comoros
- Democratic Republic of Congo
- Djibouti
- Egypt
- Eritrea
- Ethiopia
- Kenya
- Madagascar
- Malawi
- Mauritius
- Namibia
- Rwanda
- Seychelles (may leave SADC)
- Sudan
- Swaziland
- Uganda
- Zambia
- Zimbabwe

**INVESTMENT RULES**

What year did investment provisions come into force (variable?)

Comesa Treaty 1994

**1 Scope and coverage**

a Applicable to non-parties (when or when not)

No

|  |  |               |
|--|--|---------------|
| b Positive or negative list approach   | positive   |               |
| c Main exceptions (safeguards, sectors etc.)                                       |  |               |
| <b>2 National Treatment</b>  | No   |               |
| a Pre-establishment (all sectors?)   |  |               |
| b Are there restrictions on ownership rules? (e.g. min equity share)               |  |               |
| c Operations by MNEs in the country  |  |               |
| <b>3 Most Favoured Nation and fair and equitable treatment</b>                     | fair and equitable treatment to private investors  | Article 159.1 |
| a granted to parties   |  |               |
| non-parties  |  |               |
| <b>4 Performance requirements</b>  | No   |               |
| a Are they banned for new and existing investment?                                 |  |               |
| b Do they go beyond TRIMs?   |  |               |
| <b>5 Transfers of funds</b>  |  |               |
| a Are transfer of funds across borders allowed                                     | Yes  | Article 159.5 |
| <b>6 Do provisions with respect to expropriation exist (nationalisation ,etc.)</b> | Yes -subject to the accepted principle of public interest, refrain from nationalising or expropriating private investment and in the event private investment is nationalised or expropriated, pay adequate compensation | Article 159.3 |
| <b>7 Settlement of Disputes</b>  | Yes - Court of Justice for arbitration between member states and legal and natural persons   |               |



|  |  |
|--|--|
| a State-to-state   | Yes                                      |
| b Investor-state   | No                                       |
| c Access to International Dispute Settlement (ICSID, UNCITRAL) | Yes - most members have acceded to ICSID |

**8 Provisions for incentives and subsidies**

**TRADE RULES**

**9 Rules of Origin**

|   |                    |
|---|--------------------|
| a Do rules of origin exist  | Yes                |
| b Value Content Criterion: Domestic/Regional Value Content (RVC) or Import Content (MC) | MC: 60% RVC35%     |
| c Are there roll-up arrangements?   | Yes                |
| d Are drawback allowed?   | Not after 10 years |
| e Mean/median value of restrictiveness  | 3                  |

**10 Tariff structures**

|   |   |
|---|---|
| a Does a Common External Tariff exist. If so what is it and will it be? If not, give indication of country dispersion | No. Its free-trade area (FTA) was set up on 1 November 2000; nine of its member countries were able to respect this deadline , whereas Burundi has been given a waiver to allow it to apply a 60 per cent reduction of its MFN tariffs on exports from COMESA. The customs union should come into effect on 1 November 2004, with a common external tariff (CET) comprising four rates: 0, 5, 15, and 30 per cent |
|---|---|

The tariff reduction schedule was as follows: 60% by 1993; 70% by 1994; 80% by 1996; 90% by 1998 and 100% by 2000

Nine member States - Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe have eliminated their tariffs on COMESA originating products, in accordance with the tariff reduction schedule which was adopted in 1992 for the gradual removal of tariffs to intra-COMESA trade.

|   |  |
|---|--|
| b Level of intra-regional tariffs and plans | Angola: rate of tariff reduction is 0 ?? |
|---|--|

Burundi: Under the reform process launched in January 2003, Burundi has introduced a new preferential tariff for COMESA member countries, providing for a standard reduction of 80 per cent of all MFN rates in force since 1 January 2003. As from January 2004, all products from COMESA countries are due to be granted duty-free entry into Burundi.

Comoros: 80% tariff reduction

DR Congo: zero

Eritrea: 80% tariff reduction

Ethiopia: 10%

Rwanda: 90% tariff reduction

Uganda: 80% tariff reduction

Swaziland - CET for SACU. Has undertaken to seek the concurrence of SACU to join the FTA in 2004.

Namibia - apply CET SACU

Seychelles??

c Exceptions

Some sub-sectors of agriculture

**11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)**

SADC

Southern African  
Development Coordination  
Conference was established  
in 01/03/1970. It was replaced  
by SADC on 17/7/1992

**Members** (late membership between  
parentheses)

Angola  
Botswana  
Democratic Republic of Congo  
Lesotho  
Malawi  
Mauritius  
Mozambique  
Seychelles  
South Africa  
Swaziland  
Tanzania  
Zambia  
Zimbabwe

## INVESTMENT RULES

What year did investment provisions come into  
force (variable?)

Few investment provisions. Though plans to establish more comprehensive investment provisions under the  
Protocol on finance and investment

### 1 Scope and coverage

a Applicable to non-parties (when or when not)

b Positive or negative list approach

c Main exceptions (safeguards, sectors etc.)

### 2 National Treatment

No

a Pre-establishment (all sectors?)

b Are there restrictions on ownership rules? (e.g. min equity share)

c Operations by MNEs in the country

**3 Most Favoured Nation and fair and equitable treatment**

No

a granted to parties

non-parties

**4 Performance requirements**

No

a Are they banned for new and existing investment?

b Do they go beyond TRIMs?

**5 Transfers of funds**

No

a Are transfer of funds across borders allowed

**6 Do provisions with respect to expropriation exist (nationalisation ,etc.)**

No

**7 Settlement of Disputes**

Tribunal to settle disputes between state and community, between natural and legal persons and community

Article 17-19, protocol on Tribunal and the rules of procedure thereof

a State-to-state

Yes

b Investor-state

No

c Access to International Dispute Settlement (ICSID, UNCITRAL)

Yes

**8 Provisions for incentives and subsidies** No

## TRADE RULES

### 9 Rules of Origin

a Do rules of origin exist Yes  
b Value Content Criterion: Domestic/Regional Value Content (RVC) or Import Content (MC) MC: 70-35%  
c Are there roll-up arrangements? Yes  
d Are drawback allowed? Not mentioned  
e Mean/median value of restrictiveness 4

### 10 Tariff structures

a Does a Common External Tariff exist. If so what is it and will it be? If not, give indication of country dispersion

No

Botswana applies the CET for SACU area

Lesotho applies the CET for SACU

Malawi: Under the SADC Trade Protocol, which commenced operation from January 2001, Malawi has begun to implement its commitments, and grants duty-free access, on a reciprocal basis, to imports of category A products (mostly capital goods and equipment) from other members that have also adopted the Protocol.

Mauritius: Under the SADC Trade Protocol, Mauritius grants duty-free access, on a reciprocal basis, to imports of category A products (mostly capital goods and equipment) from the other members that have already deposited their implementation instruments (

b Level of intra-regional tariffs and plans

c Exceptions

Namibia: applies CET for SACU

Swaziland: CET for SACU

Zambia: From 30 April 2001, Zambia began to implement its commitments under the SADC Trade Protocol and to grant duty-free access, on a reciprocal basis, to imports of Category A products from SADC members that have also deposited their implementation instruments

**11 Other relevant provisions (regional enterprise schemes, regional investment funds, etc.)**