

## Chapter 8

# Investment Promotion and Technical Assistance

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## 8.1 Investment promotion

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As noted in the review of the empirical literature,<sup>1</sup> evidence of the impact of IIAs on increasing investment flows into party states is weak. It may seem surprising, therefore, that a recent study by UNCTAD found that only a small minority of existing IIAs contain specific investment promotion provisions.<sup>2</sup> Agreements addressing the promotion of investment do so in a variety of ways, including committing parties to some of the categories of measures listed in Box 8.1. In general terms, investment promotion efforts involve some combination of measures to: (i) improve the host state's regulatory framework by making it more transparent and efficient, and less burdensome for investors; and (ii) facilitate investment by means such as incentives, information dissemination and the activities of investment promotion agencies.<sup>3</sup>

### Box 8.1 Categories of investment promotion measures

- Improve the overall policy framework for investment in the host state, possibly with the support of technical assistance from the home state;
- Provide financial or fiscal incentives from either the home or host state to investors, including investment guarantees and insurance;

(Continued)

1 See Section 2.2 (Links between signing IIAs and attracting increased foreign investment) and the review of empirical studies in Appendix 1.

2 UNCTAD (2008), *Investment Promotion Provisions in International Investment Agreements*, UNCTAD, Geneva, UNCTAD/ITE/IIT/2007/7.

3 On the effectiveness of investment promotion activities see T Harding and B Javorcik (2012), 'Roll Out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows', 72 *Columbia FDI Perspectives*.

(Continued)

- Give preferential market access to the host state market for goods and services that investors want to import;
- Reduce host state barriers to investment;
- Create an investment promotion agency in the host state;
- Commit to discrete investment promotion activities in the home state or the host state, such as workshops or fairs on investment opportunities, or the creation of information points either jointly or separately by the party states;
- Require the exchange of information between party states on:
  - Host state investment rules and opportunities,
  - The host state's legal regime, macroeconomic policies and characteristics, sectoral conditions and other factors related to the broad political and socio-economic context for investment,
  - Foreign investment promotion programmes in the home state;
- Promote linkages between foreign investors from the home state and domestic businesses in the host state;
- Encourage transfer of technology from investors of the home state to investors of the host state;
- Create an institutional framework for co-operation on investment promotion;
- Commit the investor's home state to provide the host state with technical assistance with the implementation of investment promotion programmes in the host state.<sup>4</sup>

### 8.1.1 IIA practice

Investment promotion provisions may require actions to be taken by investors' home states to promote investment in host states, but they most often contemplate activities that will be engaged in by the host state, the direct beneficiary of investment promotion. Investment promotion provisions may be voluntary, best efforts or mandatory. In most cases, investment promotion provisions in existing IIAs contain vague, non-binding commitments or merely confirm the continuation of existing programmes.<sup>5</sup> Often the

<sup>4</sup> Among the most detailed and specific provisions dealing with investment promotion are those in the COMESA Investment Agreement (2007) (Schedules I and II).

<sup>5</sup> E.g. UK model IPPA, Art. 2(1); European Union-Russian Federation, Agreement on Partnership and Cooperation between the European Communities and the Russian Federation, signed 24 June 1994, in force 1 December 1997, Art. 58; Colombian model agreement, Art. III.1. The AALCC Draft has a slightly stronger general commitment (Art. 2(i)). See also Art. IV of GATS.

obligation is expressed to apply only to the host state. For example, the UK model treaty provides that:

Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory ...

Some agreements, especially those that form part of regional economic integration initiatives, contain more detailed provisions. The ASEAN Agreement, for example, sets out both a series of investment promotion co-operation objectives and an indicative list of co-operation activities in relation to investment within the ASEAN region.<sup>6</sup> The COMESA Investment Agreement also sets out a detailed list of co-operation activities, including both country-level commitments and regional commitments, such as the creation of a regional database of suppliers and investment opportunities.<sup>7</sup> It would be possible to target investment promotion at categories of investment that promote sustainable development objectives or that meet certain standards for corporate social responsibility, though this is not typically done.

### 8.1.2 Possible costs and benefits of investment promotion commitments

Investment promotion provisions in IIAs may assist in encouraging increased investment into host countries more effectively than investor protection obligations alone. Providing a commitment to promote investment in the treaty text should increase the likelihood that party states will actually engage in promotion activities. Ultimately, of course, there can be no guarantee that investment will actually increase as a result of such activities. Because investment promotion provisions are relatively rare, successfully negotiating such commitments may give a host country an advantage in the competition with other states to attract investment.

Implementing investment promotion provisions may involve costs to the home state, the host state or both. States must take these costs into account in evaluating the desirability and content of investment promotion commitments. Capacity constraints in some host developing countries may prevent them from designing a coherent investment promotion strategy, setting up an investment promotion agency or even improving transparency regarding investment opportunities and rules. Host state commitments to engage in these investment promotion activities may have little effect in the absence of technical assistance from the other state to support their implementation. In addition, IIA commitments regarding investment promotion can restrict party state flexibility regarding the design and operation of investment promotion programmes. For example, commitments to provide incentives through generally available tax holidays may limit the funds available to a host state to adopt

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6 ASEAN Agreement (2009), Arts. 24, 25 and 26.

7 COMESA Investment Agreement (2007), Schedule I and II. Precedents for investment promotion commitments may be found in a wide variety of agreements outside IIAs. See UNCTAD (2001), *Home Country Measures*, United Nations, New York and Geneva.

subsidy programmes targeting the promotion of investment in specific sectors or regions.<sup>8</sup>

### 8.1.3 Other issues in the design of investment promotion commitments

Other considerations relevant to the specific kinds of investment promotion activities to which states may wish to commit in an IIA include a host state's openness to foreign investment and, more generally, its orientation to the market. Countries that favour free markets as the best way to encourage development may want investment promotion to be directed to improving their general institutional framework and policy environment for investment. Countries that favour intervention to guide economic activity as the best approach to encouraging development may prefer investment promotion that is targeted at channelling investment to specific sectors or activities.

### 8.1.4 A role for investors' home state in investment promotion

From a home state point of view, the benefits associated with programmes and activities to promote investment in host states may not be obvious. Judging from existing practice, home states are satisfied with IIAs that promote investment only indirectly by providing protection to their investors. Nevertheless, there may be advantages to particular kinds of investment promotion activities. For example, efforts to improve the transparency and reduce the burden of domestic regulation in a host state support the operation of home state investors in the host state by reducing the burden of regulation and making its operation more predictable. Support for market-opening reforms in a host state that may be helpful to a home state's investors may also help other home state businesses. Commitments to reduce host state tariffs and other restrictions on inputs that home state investors want to import into the host state from businesses in the home state provide one example. Home states are most likely to be willing to support investment promotion commitments that further their interests.<sup>9</sup> A home state's interest in, and capacity to deliver on, investment promotion commitments will also be affected by its level of development. A final reason that a home state may be willing to make commitments related to the promotion of investment in the host state is that the home state's support for investment promotion may be used as a bargaining chip in exchange for the host state's agreement to protect the home state's investors through an IIA.

Finally, the provision of support to a developing country host state gives effect to exhortations in documents on sustainable development that co-operation between developed and developing countries in partnership is essential for the achievement of sustainable development. Moreover, this kind of support recognises the common but differentiated responsibilities of countries at different levels of development to help each other achieve the goals of sustainable development.

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8 The use of incentives to target investment to specific sectors or regions may have investment distorting effects. UNCTAD (2007), *Development Implications of International Investment Agreements*, IIA Monitor No. 2, United Nations, New York and Geneva, at 2.

9 UNCTAD (2001), *Home Country Measures*, op. cit., at 7.

### 8.1.5 Relationship between investment promotion and other IIA provisions

In designing investment promotion commitments and programmes, it is necessary to consider their compatibility with other IIA commitments:

- **Some kinds of incentives that are conditioned on investors doing certain things, such as transferring technology, may be inconsistent with IIA performance requirement prohibitions, in the absence of an applicable exception in the agreement;**<sup>10</sup>
- **Using subsidies and other forms of incentives that discriminate in favour of investors from a particular home state may be contrary to an MFN obligation in an IIA with another state, in the absence of an applicable exception in that agreement;** and<sup>11</sup>
- **Transparency regarding a host state's regime guaranteed by commitments in an IIA may be useful to promote investment.** Transparency obligations in an IIA need to be consistent with investment promotion obligations and designed with investment promotion in mind.<sup>12</sup>

#### **Box 8.2 Options for investment promotion provisions**

1. *No reference to investment promotion*
2. *Including an investment promotion provision*

There are two main variations in the form of investment promotion provisions:

- a. A provision that says simply that a party state shall endeavour to encourage investment from the other party state
- b. A provision that commits both parties to undertake specific investment promotion activities to encourage investment in a party state

### 8.1.6 Discussion of options

1. *No reference to investment promotion*

This is the most common approach in existing IIAs. It means that the only IIA commitments that may promote investment are the investor protection obligations and transparency commitments in the agreement. In addition, it may be that some other IIA obligations, such as commitments related to performance requirements, may limit a state's ability to engage in some kinds of investment promotion activities.

10 See Section 5.9 (Performance requirements).

11 See Section 5.4 (Most favoured nation).

12 See Section 5.10 (Transparency).

## 2. *Including an investment promotion provision*

- a. A provision that says simply that a party state shall endeavour to encourage investment from the other party state

This kind of provision does not create a commitment to any investment promotion activity, but rather creates a very vague non-binding best efforts undertaking by host states to create favourable conditions for investment. It does not impose any obligation at all on home states with respect to investment in the host state.

Nevertheless, a provision that expresses a non-binding intention of *both parties* that they will seek to promote investment may have some benefits. The negotiation of this kind of provision provides an opportunity for the party states to discuss (i) what needs the host state has with respect to investment promotion, (ii) what kinds of investment promotion activities are consistent with the policies of the host state and within its capacity to deliver, (iii) what opportunities exist for the home state to co-operate with the host state in the delivery of investment promotion activities consistent with the capacity of the home state and the needs and priorities of the host state, and (iv) how to ensure investment promotion activities generally are consistent with the other obligations agreed to in the IIA. Specific priority areas for investment promotion can be identified in such a provision.

If investment promotion is not provided as contemplated, a non-binding treaty provision still provides a basis for the host state to raise the issue with the home state. Such a provision may be complemented by obligations to monitor and/or periodically review what states have done to assess whether investment promotion activities are being carried out as contemplated in the treaty.

- b. A provision that commits parties to undertake specific investment promotion activities to encourage investment in the host state

As with option 2a., this option provides an opportunity to identify and articulate specific investment promotion commitments consistent with the host state's needs and priorities and the other party's capacity. Because these obligations are made specific and binding, however, performance is more likely and the dispute settlement provisions in the treaty could be used to seek compliance if consultations do not lead to a satisfactory solution.

Investment promotion activities pursuant to specific commitments may result in higher levels of investment in the host state, though in some cases they may involve costs that states will have to take into account.

### 8.1.7 Discussion of sample provision

In light of the diverse nature of investment promotion activities and the various factors that may influence party state choices regarding the priority to be attached to different sorts of investment promotion activities, the Guide includes a sample provision that directs party states to develop a programme of investment promotion rather than committing them to specific investment promotion activities. Similar to

the ASEAN Investment Agreement, the provision identifies various possible activities that the party states should consider in determining what they will commit to. Each pair of negotiating states will have to determine the appropriate mix of investment promotion activities based on their needs, capacity and policy orientation. To help ensure the effectiveness of agreed activities, regular follow-up meetings of the party states are contemplated to review the implementation of the investment promotion commitments.

### 8.1.8 Sample provision: assistance and facilitation of foreign investment

#### Assistance and Facilitation of Foreign Investment

1. In accordance with the principle of common but differentiated responsibilities, a Party with the capacity to do so shall assist the other Party in the promotion and facilitation of foreign investment into the other Party, in particular by its own investors. Such assistance shall be consistent with the development goals and priorities of the other Party.
2. Such assistance may include but is not limited to:
  - a. Provision of information to a Party's investors on the other Party's measures to promote investment in the other Party and information on the other Party's investment regime;
  - b. Programmes based on commercial principles that provide insurance to its investors in connection with risks related to their activities in the other Party;
  - c. Direct financial assistance and fiscal incentives to a Party's investors in support of their investments in the other Party or of feasibility studies prior to an investment in the other Party being established;
  - d. Establishing links between a Party's research and training centres, specialised agencies and business organisations and those in the other Party; and
  - e. Periodic trade missions, support for joint business councils and other co-operative efforts to promote sustainable development in the other Party.

The amount, type and duration of the assistance provided under section 1 will be determined by the Commission.<sup>13</sup> At least once per year, the Commission will review the implementation and operation of this Article and report on its findings to the Parties.

## 8.2 Technical assistance

### Cross references

Section 5.10 Transparency	204
Section 6.6 Sustainability assessments	267

<sup>13</sup> See Section 9.2 (Commission).

Section 6.12 Other rights and obligations of states	345
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Few existing IIAs create specific obligations to provide technical assistance. In part, this is because traditional BITs only impose obligations on host states to refrain from actions that cause injury to investors. More recent agreements impose a more complex set of requirements for host states, including transparency obligations and commitments to ensure that domestic administrative procedures meet certain standards.<sup>14</sup> Some more recent IIAs, especially those in which investment obligations are combined with comprehensive trade commitments, such as free trade agreements and economic partnership commitments, contain positive obligations for host states to maintain and enforce standards in areas such as environmental protection, labour rights and bribery and corruption.<sup>15</sup> Some of these agreements also embrace a conception of the relationship between home and host states that is based on a partnership to contribute to sustainable development in the host state.<sup>16</sup> Agreements of this kind are more likely to contain technical assistance commitments to support the host state's implementation of its obligations, as well as to support the creation of robust and effective regulatory regimes in the host state to achieve its development goals and investment promotion programmes.<sup>17</sup>

The Guide discusses provisions that impose obligations on host states to ensure that their domestic regimes meet international standards for human rights, health and safety standards, and the protection of workers, indigenous peoples and the environment. The sample provisions in the Guide also provide examples of obligations that impose requirements for host states to:

- Establish standards and a process for sustainability assessments, including a grievance procedure and compliance process;
- Impose criminal sanctions against investors committing grave violations of human rights or being complicit in corruption; and
- Create a civil liability regime for non-compliance with standards imposed on investors under the treaty.<sup>18</sup>

All these obligations may be difficult to comply with if technical assistance by the other party state supported by adequate funding is not provided.

14 See Section 5.10 (Transparency).

15 E.g. EC–CARIFORUM, Economic Partnership Agreement, signed 15 October 2008, in force 29 December 2008, Part II, Title III, Investment Trade in Services and E-Commerce, Art. 11.

16 E.g. EC–CARIFORUM EPA (2008), Part I, Trade Partnership for Development.

17 E.g. EC–CARIFORUM EPA (2008), Part I, Art. 6–8, Part II, Title III, Investment, Trade in Services and E-Commerce, Arts. 56 and 57 (tourism), Art. 60 (e-commerce), Chapter 7 (Cooperation); SADC Investment Protocol (2006); Agreement on Trade-related Aspects of Intellectual Property Rights, Art. 66. See, generally, UNCTAD (2001), *Home Country Measures*, op.cit.

18 See Section 6.6 (Sustainability assessments); Section 6.16 (Civil liability of investors).

## 8.2.1 IIA practice

Technical assistance commitments in IIAs range from no commitment to hortatory statements to detailed and specific commitments backed up by funding obligations. No commitment is by far the most common approach. Technical assistance commitments can be made more effective if they are supported by institutions established under the treaty responsible for planning and co-ordinating delivery of technical assistance and monitoring compliance with commitments.<sup>19</sup> The EC–CARIFORUM EPA provides an example of an attempt to address the technical assistance challenge in specific ways related to the comprehensive relationship established between the parties under that agreement. Its main features are set out in Box 8.3.

### **Box 8.3 Key elements of EC–CARIFORUM EPA technical assistance provisions**

- A general commitment to development co-operation with the identification of the following specific priorities.
  - i. The provision of technical assistance to build human, legal and institutional capacity in the CARIFORUM States so as to facilitate their ability to comply with the commitments set out in this Agreement;
  - ii. The provision of assistance for capacity and institution building for fiscal reform in order to strengthen tax administration and improve the collection of tax revenues with a view to shifting dependence from tariffs and other duties and charges to other forms of indirect taxation;
  - iii. The provision of support measures aimed at promoting private sector and enterprise development, in particular small economic operators, and enhancing the international competitiveness of CARIFORUM firms and diversification of the CARIFORUM economies;
  - iv. The diversification of CARIFORUM exports of goods and services through new investment and the development of new sectors;
  - v. Enhancing the technological and research capabilities of the CARIFORUM States so as to facilitate development of, and compliance with, internationally recognised sanitary and phytosanitary measures and technical standards and internationally recognised labour and environmental standards;

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19 The IISD model treaty creates a technical assistance committee that is charged with organising the provision of technical assistance to the party states relating to the implementation of the agreement and with administering a special fund to be set up by the party states for the provision of technical assistance. See IISD model treaty, Art. 37. Precedents for technical assistance commitments may be found in a wide variety of agreements outside IIAs and home country programmes. See UNCTAD (2001), *Home Country Measures*, op. cit.

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- vi. The development of CARIFORUM innovation systems, including the development of technological capacity; and
- vii. Support for the development of infrastructure in CARIFORUM States necessary for the conduct of trade.
- Additional more specific commitments to provide technical assistance in the following areas.
  - i. Improving the ability of service suppliers of the Signatory CARIFORUM States to gather information on and to meet regulations and standards of the EC Party at European Community, national and sub-national levels;
  - ii. Improving the export capacity of service suppliers of the Signatory CARIFORUM States, with particular attention to the marketing of tourism and cultural services, the needs of small and medium-sized enterprises, franchising and the negotiation of mutual recognition agreements;
  - iii. Facilitating interaction and dialogue between service suppliers of the EC Party and of the Signatory CARIFORUM States;
  - iv. Addressing quality and standards needs in those sectors where the Signatory CARIFORUM States have undertaken commitments under this Agreement and with respect to their domestic and regional markets as well as trade between the Parties, and in order to ensure participation in the development and adoption of sustainable tourism standards;
  - v. Developing and implementing regulatory regimes for specific service sectors at CARIFORUM regional level and in Signatory CARIFORUM States in those sectors where they have undertaken commitments under this Agreement; and
  - vi. Establishing mechanisms for promoting investment and joint ventures between service suppliers of the EC Party and of the Signatory CARIFORUM States, and enhancing the capacities of investment promotion agencies in Signatory CARIFORUM States.
- Additional sector-specific co-operation commitments related to tourism and ecommerce.
- Establishment of a regional development fund by both parties to mobilise and direct development funding.

The IISD model contains a specialised technical assistance commitment not found in any existing IIA. It provides for the establishment of a 'Legal Assistance Centre' to provide support for developing countries defending investor–state claims.

Modelled on the Advisory Centre on WTO Law, the Centre is to be independent of other institutions created under the agreement and provide: (i) legal advice in connection with specific cases; (ii) capacity building on legal issues; and (iii) support for implementation of the agreement. Financing is to come from a variety of sources.<sup>20</sup>

In addition to these recommendations, it would be prudent to consider the potential benefits of technical assistance in developing dispute avoidance policies and practices in host states as well as support for the development of expertise in ADR. The potential benefits of ADR in terms of maintaining relationships between investors and host states and increasing prospects for early, cost-effective and mutually satisfying resolution of disputes suggest that technical assistance in these areas would be useful for states and investors. Other possible targets for technical assistance related to dispute settlement might include the development of regional arbitration centres and training for arbitrators, with the goal of enhancing local competence to adjudicate investor–state and other disputes.

### 8.2.2 Challenges in drafting a technical assistance provision

It is not possible to specify in the abstract what assistance or what level of funding will be required in an IIA. The determination of what is appropriate must be left to each pair of negotiating states in light of the needs and priorities of the host developing country party and the capacity, resources and political will of the other party to the treaty. It is likely to be easier to negotiate technical assistance commitments in the context of regional integration initiatives and broad-based economic partnership agreements whose purposes go far beyond investor protection. In addition, like investment promotion, it will be easiest to negotiate technical assistance commitments that advance home state interests. For example, supporting improvements in the transparency and efficiency of host state regulation may be something that the home states would be interested in funding because such improvements facilitate the operation of their investors in the host state by reducing their costs and increasing the predictability of host state rules.<sup>21</sup>

#### **Box 8.4 Summary of options for technical assistance provisions**

1. *No technical assistance provision*
2. *A hortatory or best efforts technical assistance obligation*
3. *Binding obligation to provide technical assistance*
  - a. Establish a body under the treaty with representation from both parties to identify technical assistance activities, develop a technical assistance plan and periodically review its achievements
  - b. Establish a dedicated fund for the delivery of technical assistance

20 IISD model treaty, Art. 41.

21 IISD model treaty, Art. 41.

### 8.2.3 Discussion of options

#### 1. *No technical assistance provision*

If, as in most existing IIAs, there is no provision dealing with technical assistance, technical assistance will be provided only on the basis of ad hoc arrangements between the parties.

#### 2. *A hortatory or best efforts technical assistance obligation*

A provision that expresses a non-binding intention of the parties that one party will provide technical assistance creates no legal commitment, but may have some benefits. Its inclusion in an IIA means that the negotiating parties have directed their minds to the need for such assistance. Such a provision may set out a detailed elaboration of specific objectives or activities that the parties agree should be part of the non-binding commitment to provide technical assistance. The parties have an opportunity to discuss (i) the host state's needs for assistance, (ii) the kinds of technical assistance activities that are consistent with the policies of the host state, and (iii) the opportunities that exist for the home state to co-operate with the host state in the delivery of technical assistance, consistent with the capacity of the home state and the needs and priorities of the host state.

If technical assistance is not provided as contemplated, a hortatory or best efforts treaty provision provides a basis for the host state to raise the issue with the home state. A hortatory or best efforts undertaking may be the subject of monitoring and/or an obligation to review periodically whether technical assistance is being provided as contemplated in the treaty.

#### 3. *Binding obligation to provide technical assistance*

This is the strongest form of obligation. As with option 2, this option provides an opportunity to identify and articulate specific technical assistance commitments. In addition, it could be the subject of dispute settlement where commitments were not being complied with. Such a provision can be made more effective by the following complementary provisions:

- a. Establish a body under the treaty with representation from both parties to identify technical assistance activities, develop a technical assistance plan and periodically review its achievements;
- b. Establish a dedicated fund for the delivery of technical assistance.

In general, technical assistance commitments that are expressed in very specific terms will be easier to enforce. Agreement on technical assistance commitments is more likely in broad-based economic partnership agreements.

### 8.2.4 Discussion of sample provision

In recognition of the impossibility of enumerating specific technical assistance commitments in the abstract, the Guide sample provision simply contemplates that a technical assistance committee will be established by the parties acting through

the Commission.<sup>22</sup> The committee will be responsible for developing a technical assistance plan. The purpose of the plan is to identify specific activities that support the implementation of the agreement and party states' compliance with their obligations. Assistance may also be directed towards a variety of other goals to be identified by the committee that may include improved domestic regulation, technology transfer, investment promotion and capacity building in relation to IIA dispute settlement and prevention, including training for arbitrators. The committee will also be responsible for administering a technical assistance fund to be set up by the party states. Each year, the committee will be charged with reporting to the Commission on the achievement of the milestones in the technical assistance plan and the expenditures from the fund. In the interests of transparency and accountability, the committee's report must be made public.

The sample provision also requires each party state to provide the other with information necessary to fulfil its obligations under the IIA. This may include information regarding standards employed by a party in its domestic sustainability assessment process, which would be needed by a host state in connection with the implementation of a provision like the Guide sample provision on sustainability assessments.<sup>23</sup>

## 8.2.5 Sample provision: technical assistance

### Technical Assistance

1. The Commission shall establish a technical assistance committee with equal representation from both Parties composed of individuals with expertise in the promotion of sustainable development.
2. The technical assistance committee shall be responsible for developing a technical assistance plan that provides for:
  - a. Actions designed to support the implementation of this Agreement and the compliance by Parties with their obligations under this Agreement, including obligations to:
    - i. develop sustainability assessment standards and an assessment process [see Guide Section 6.6 (Sustainability assessments)];
    - ii. develop a grievance procedure and compliance process related to environmental and social impact assessments in accordance with [Guide sample provision in Section 6.15 (Grievance procedure and other measures to enforce the management plan produced in the sustainability assessment)];
    - iii. create a civil liability regime for non-compliance with this Agreement by investors in accordance with [Guide sample provision in Section 6.16 (Civil liability of investors)]; and

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22 See Section 9.2 (Commission). This is a body composed of ministerial-level members of the executive branch of the governments of both party states.

23 See Section 6.6 (Sustainability assessments).

- iv. impose criminal sanctions against investors of either Party for the commission of or complicity in grave violations of human rights or for the commission of or complicity in corruption in accordance with [Guide sample provision in Section 6.14 (Criminal sanctions)], and
- b. Such other matters as the members of the committee or the Commission determine, which may include assistance by a Party to:
  - i. develop transparent and effective regimes for the facilitation, admission and regulation of foreign investment in the other Party;
  - ii. build human, legal and institutional capacity in the other Party so as to facilitate its ability to comply with the commitments set out in this Agreement;
  - iii. provide support aimed at promoting private sector and enterprise development, in particular small economic operators, and enhancing the international competitiveness of the other Party's firms and diversification of the other Party's economy;
  - iv. enhance the technological and research capabilities of the other Party so as to facilitate development of, and compliance with, internationally recognised technical, and labour and environmental standards;
  - v. support for the development of infrastructure in the other Party necessary for the conduct of economic development;
  - vi. build capacity with respect to the other Party's agencies responsible for and programmes on investment promotion and facilitation;
  - vii. provide technical or financial support for sustainability assessments of potential investments in the other Party;
  - viii. encourage technology transfer and exchange of expertise on entrepreneurship, management research and management centres, quality and production standards to the other Party;
  - ix. develop regional arbitration centres in the other Party and provide training of arbitrators in the other Party;
  - x. support the development of policies and procedures in the other Party designed to avoid disputes and manage conflicts with investors; and
  - xi. build capacity in the other Party state to engage in alternative dispute resolution procedures in connection with investor–state disputes.
- c. Administering the technical assistance fund established under section 3; and
- d. Reviewing the technical assistance plan on an annual basis and preparing a report to the Commission on the use of funds from the technical assistance fund and the implementation of the technical assistance plan.

The report of the Commission shall be made available to the public by the Commission.

3. The Parties shall establish a technical assistance fund to provide support for institutional development and capacity building in a Party and the achievement of the technical assistance plan. The amount of funds to be allocated to the technical assistance fund shall be determined annually by the Commission.
4. On request by the other Party, a Party shall, in a timely manner, provide to the other Party such information as is requested and available for the purposes of assisting that Party to meet its obligations and perform its duties under this Agreement. Parties shall protect confidential business information in fulfilling the obligations in this Article.
5. For greater certainty, the obligation of a Party under subsection 4 includes an obligation to provide information regarding the standards that would apply in that Party to investors in that Party in circumstances similar to those of an investment proposed by an investor of that Party in the other Party, including but not limited to standards employed in that Party's sustainability assessment process.