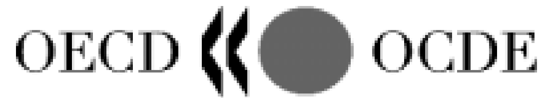

OECD GLOBAL FORUM ON INTERNATIONAL INVESTMENT

NEW HORIZONS AND POLICY CHALLENGES FOR FOREIGN DIRECT INVESTMENT IN THE 21ST CENTURY

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INTERNATIONAL INVESTMENT AGREEMENTS AND INSTRUMENTS

Carlos García-Fernández [1]
Mexico

[1] Director General of Foreign Investment, Ministry of Economy, Mexico. Head of the Mexican delegation to the OECD-MAI negotiations, as well as to other international negotiations on investment matters. Chairman *pro tempore* of the Negotiating Group on Investment of the Free Trade Area of the Americas.

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Foreword

In the past decades, there have been significant changes in national and international policies on foreign direct investment (FDI). These changes have been both cause and effect in the ongoing integration of the world economy and the changing role of FDI in it. They have found expression in national laws and practices and in a variety of international instruments, bilateral, regional and multilateral.[2]

FDI acquired increasing importance as the twentieth century advanced, and it began gradually to assume the forms prevalent today. In international legal terms, however, FDI long remained a matter mainly of national concern, moving onto the international plane, where rules and principles of customary international law applied, only in exceptional cases, when arbitrary government measures affected it in a negative manner.

In the 1980s, a series of national and international developments radically reversed the policy trends prevailing until then, with an immediate impact both on national policies regarding inward FDI and on regional and world-wide efforts at establishing international rules on the subject. At the end of the 1990s, host countries sought to attract FDI by dismantling restrictions on its entry and operation, and by offering strict guarantees, both national and international, against measures that seriously hampered investors' interests.

Today, an international legal framework for FDI has emerged. It consists of many kinds of national and international rules and principles, of diverse form and origin, differing in strength and degree of specificity.

I. Trends in Foreign Direct Investment.

Foreign Direct Investment (FDI) plays a key role in the globalisation process, generating both challenges and opportunities for more and more nations. In 2000, FDI grew by 18 percent faster than other economic aggregates like world production, capital formation and trade, reaching a record of $1.3 trillion.[3] The scope of activities by transnational corporations (TNCs) has never been greater. Estimates show that more than 60,000 TNCs today control some 800,000 foreign affiliates world-wide. Developed countries remain the prime destination of FDI, accounting for more than three-quarters of global inflows. Cross-border mergers and acquisitions (M&As) constitute the main stimulus behind FDI, and these are still concentrated in the developed countries. As a result, inflows to developed countries increased by 21 percent and amounted to a little over $1 trillion.[4]

FDI inflows to developing countries also rose, reaching $240 billion. Nevertheless, their share in world FDI flows declined for the second year in a row, to 19 percent, compared to the peak of 41 percent in 1994. The 49 least developed countries (LDCs) as a group remained marginal in attracting FDI, even though FDI flows in that group are on the rise, as is the role of FDI in their economies. Central and Eastern Europe maintained its share of around 2 percent in terms of world inflows, and in Africa and Latin America inflows declined even in absolute terms in 2000, for the first time since the mid-1990s.

The most important factors which determined not only the dynamism of FDI flows in 2000, but also the location of transnational investment were:[5]

[2] Trends in International Investment Agreements: An Overview. UNCTAD.
[3] World Investment Report 2001: Promoting Linkages. UNCTAD.
[4] World Investment Report 2001: Promoting Linkages. Op. cit.
[5] Idem.

- *Liberalisation of investment regimes*. Between 1991 and 2000, a total of 1,185 regulatory changes were introduced in national FDI regimes, of which 1,121 were in the direction of creating a more favourable environment for FDI. During 2000 alone, a total of 150 regulatory changes were made by 69 countries. Of these, the 98 percent was more favourable to foreign investors.

  The liberalisation of FDI regimes and the strengthening of international standards for the treatment of foreign investors allow firms greater freedom in making international location decisions and in choosing the mode for serving each market and meeting functional needs.

- *Technological progress.* The dynamics of international production largely reflects the nature, speed and pervasiveness of technical change. Rapid innovation provides the advantages that propel firms into international production; thus, innovation-intensive industries especially tend to be increasingly transnational, and TNCs have to be more innovative to maintain their competitiveness.

- *Corporate strategies*. Managerial and organisational factors strengthen the new locational determinants of FDI. A greater focus on core competencies, with flatter hierarchies and stronger emphasis on networking, steers investments towards locations with advanced factors and institutions and distinct clusters. New organisational techniques stimulate a more efficient management of global operations, encouraging a greater relocation of functions.

FDI flows are, however, expected to decline in 2001 for the first time in a decade, as a result of the slowdown in the world economy and the decline in cross-border mergers and acquisitions. FDI flows are expected to decrease significantly in developed countries, from $1,005 trillion in 2000 to an estimated $510 billion in 2001 (i.e. by 49%). In the case of developing countries, the decline is estimated to be 6 percent, from $240 billion to $225 billion. Such an expected drop in FDI flows oblige policy-makers to rethink their domestic strategies not only to attract FDI but also to maximise its benefits. [6]

II. Relevance of the Relationship between Trade and Investment.

International trade is an important engine of economic growth carried out mainly among related enterprises. According to the World Trade Organisation (WTO), there are empirical studies showing that FDI contributes to enhance the export outcome of the developing countries. Such a contribution could be *direct* when carried out through the export activities of the multinational enterprises, or *indirect*, when costs and barriers faced by domestic companies by the time they want to start exporting or broadening their exports are reduced. Those studies conclude that there is a global positive correlation between the FDI and the exports of the developing countries.[7] In this regard, a successful commercial liberalisation is possible only if it is accompanied by a liberalisation of productive capital flows generating fresh resources, more transfer of technology, better managing practices and jobs. That explains the reasons why countries have tended to create international instruments to promote and protect investment flows in line with an international legal framework to promote the export and import of goods and services.[8]

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[6] Idem.

[7] The Relationship between Trade and Foreign Direct Investment: Note by the Secretariat. World Trade Organisation. Geneva, September 18, 1997, pages 23-24.

[8] Flores Bernés, Miguel *¿Cómo se regularán los flujos de inversión a la entrada en vigor del Tratado de Libre Comercio México – UE? (análisis de los instrumentos jurídicos: APPRIs y TLCUEM). Revista Mexicana de Derecho Internacional Privado (1ª Edición). Academia Mexicana de Derecho Internacional Privado y Comparado,* April 2000, p. 91-108.

Even when there is an important number of international instruments that regulate investment flows (e.g. OECD Codes of Liberalisation, GATS, TRIMS), compared to the broad norms governing commercial flows, there is not a multilateral agreement which comprehensively regulates world investment flows. This situation has led nations to negotiate bilateral or regional agreements to promote and protect FDI.

III. World-wide Investment Rules

1. Bilateral Investment Treaties (BITs).

BITs are a principal element of the current framework for FDI. More than 1,941 bilateral treaties have been concluded since the early 1960s, most of them in the decade of the 1990s.

As elements of the international legal framework for FDI, BITs have been useful since they have developed a large number of variations on the main provisions of international investment agreements (IIAs) – especially those referring to the ways in which national investment procedures may be taken into account -. Although the treaties remain quite standardised, they are able to reflect in their provisions the differing positions and approaches of the many countries which have concluded such agreements. The corpus of BITs may thus be perceived as a valuable pool for IIAs.[9]

BITs were initially addressed exclusively to relations between home and host, developed and developing, countries. Yet, they have shown over the years a remarkable capability for diversification in participation, moving to other patterns, such as agreements between developing countries, with countries with economies in transition or even with the few remaining communist countries. Thus, while lacking the institutional structures and emphasis on review and development of multilateral and regional instruments, BITs appear capable of adapting to special circumstances. The increase in the number of BITs between developing countries suggests that they may also be useful in dealing with some of the problems in such relationships.[10]

Even when the principal focus of BITs has been from the very start on investment protection, they also cover a number of other areas to promote investment:

- Broad definition of investment.
- National treatment.
- Most favoured nation treatment.
- Disciplines concerning expropriation and compensation.
- Guarantee the right to transfers.
- Subrogation provisions.
- Mechanisms for the settlement of disputes State to State and Investor – State.

2. Regional and Plurilateral Agreements

Regional and plurilateral agreements are those in which only a limited number of countries participate. Such instruments are increasingly important in FDI matters.

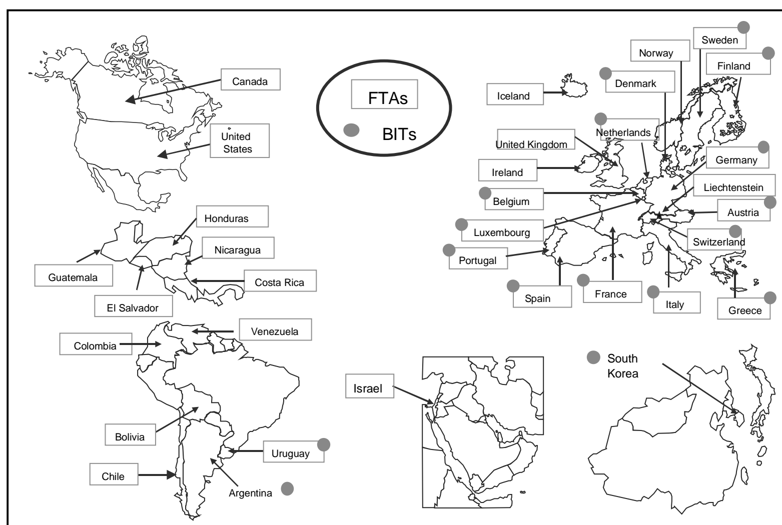
Regional economic integration agreements, for instance, involve a higher than usual degree of unity and co-operation among their members, sometimes marked by the presence of

[9] Trends in International Investment Agreements: An Overview. UNCTAD.
[10] Trends in International Investment Agreements: An Overview. Op.cit.

supranational institutions. NAFTA, APEC and the OECD are significant examples of regional agreements.

(i) Free Trade Agreements.

To illustrate the value of free trade agreements (FTAs), the case of Mexico is a good example. Mexico has become a very attractive country to foreign investment thanks to its broad net of FTAs. Today, Mexico has a preferential access to 850 million consumers in 32 countries.



All the FTAs signed by Mexico include investment chapters. These chapters contain the following principles and provisions:

- Broad definition of investment, based on the concept of enterprise.
- National treatment.
- Most-favoured nation treatment.
- Minimum standard of treatment.
- Senior management and board of directors.
- Reservations and exceptions.
- Performance requirements.
- Expropriation and compensation.
- Transfers.
- Investor – State Dispute Settlement Mechanism.

When talking about FTAs we refer to new investments and more exports and, consequently, more and better paid jobs and a stronger domestic market. We understand that, certainly, the FTAs will not solve immediately the ancient problems of inequity, unemployment and marginalisation, but they will – and they have to – contribute to solve them efficiently.

(ii) Organisation for the Economic Co-operation and Development (OECD).

The OECD has long been at the forefront in efforts to develop international rules relating to capital movements, international investment and trade in services. Member governments have set "rules of the game" for themselves and for multinational enterprises established in their economies by means of legal instruments to which all Member must adhere.

These instruments have been regularly reviewed and strengthened over the years to keep them up to date and effective. They contain the main legal commitments of OECD Members and

provide an essential yardstick in assessing the extent to which candidates for OECD membership adhere to standards set by these instruments.[11]

- Codes of Liberalisation.- The Code of Liberalisation of Capital Movements and the Code of Liberalisation of Current Invisible Operations constitute legally binding rules, stipulating progressive, non-discriminatory liberalisation of capital movements, the right of establishment and current invisible transactions (mostly services). All non-conforming measures must be listed in country reservations against the Codes.

- Declaration and Decisions on International Investment and Multinational Enterprises.- The 1976 Declaration by the Governments of OECD member countries on International Investment and Multinational Enterprises constitutes a policy commitment to improve the investment climate, encourage the positive contribution that multinational enterprises can make to economic and social progress, and minimise and resolve difficulties which may arise from their operations. The latest review by the OECD of the above mentioned Declaration and Decisions was held in 1991. All 30 OECD member countries, and three non-member countries (Argentina, Brazil and Chile) have subscribed to the Declaration.

  The Declaration consists of four elements, each of which has been underpinned by a Decision by the OECD Council on follow-up procedures:

  - The Guidelines for Multinational Enterprises.
  - National Treatment.
  - Conflicting requirements.
  - International investment incentives and disincentives.

All parts of the Declaration are subject to periodical reviews. A major review of the Guidelines was completed in June 2000.

(iii) Asia – Pacific Economic Co-operation (APEC).

APEC was established in 1989 in response to the growing inter-dependence among Asia-Pacific economies. With its 21 member economies, APEC has established itself as one of the primary regional vehicles for promoting open trade and practical economic and technical co-operation.

APEC Economic Leaders met for the first time in November 1993. They envisioned a community of Asia-Pacific economies, based on the spirit of openness and partnership which would make co-operative efforts to promote, among others, the free exchange of investment. In subsequent annual meetings, APEC Ministers and Leaders further refined this vision and launched mechanisms to translate it into action. APECs work on investment has centred on:

(a) the Non-Binding Investment Principles.
(b) the Facilitation and Liberalisation Principles (Osaka Action Agenda).
(c) the Individual Action Plans.
(d) the Collective Action Plans.

[11] www.oecd.org

(iv) Andean Community (CAN).[12]

The Andean Community is a sub-regional organisation endowed with an international legal status, which is made up of Bolivia, Colombia, Ecuador, Peru and Venezuela, and the bodies and institutions comprising the Andean Integration System (AIS).

The Community provisions in effect with regard to investment are *Decisions 291* y *292*. The former contains the general regime governing foreign investment and the latter regulates the case of the Andean multinational enterprises. These provisions are complemented by national laws and regulations, together with bilateral arrangements or agreements to promote and protect investments signed by Member Countries with third countries and even among themselves.

Decision 291, the *Regime for the Common Treatment of Foreign Capital and Trademarks, Patents, Licensing Agreements and Royalties,* enacted in March 1991, contains the definitions of foreign direct investment, and classifies investors and enterprises into national, mixed and foreign. It sets out the rights and obligations of foreign investors (national treatment and the right to transfer profits abroad in a freely convertible currency), but its provisions in general yield to the stipulations of national legislation on the subject. The Community body of law can therefore be said to give the Andean countries full freedom to regulate this field through their own national legislation.

It should be recognised, even so, that national legislation on the subject has been oriented since the mid 1980s to move toward facilitating the entry of foreign investment and giving it national treatment in almost all aspects, with the result that there is a large degree of coincidence among the laws of the different countries.

This is the result of the application of a standard economic conception for the entire region and the application and evolution of multilateral rules and regulations, particularly those of the GATT and TRIMS.

On the other hand, Decision 292, approved in March 1991 regulates the case of Andean multinational enterprises – AMEs --, which are defined as those in which at least 60% of the capital belongs to national investors from two or more Member Countries. These enterprises enjoy national treatment in regard to the public procurement of goods and services, the right to transfer abroad in a freely convertible currency the pertinent dividends, tax matters and the right to open up branches in other Member Countries. They also enjoy tax equality in regard to domestic taxes, provisions to avoid double taxation of income (in addition to those of Annex 1 to Decision 40, which contains the Agreement among the Andean Countries to Avoid Double Taxation) and on the transfer abroad of capital, and facilities for the hiring of Sub-regional personnel (qualified personnel of Sub-regional origin are considered to be national personnel for purposes of the application of quotas of foreign workers).[13]

(v) Caribbean Community (CARICOM).[14]

The Caribbean Community and Common Market (CARICOM) was established by the Treaty of Chaguaramas, which was signed by Barbados, Jamaica, Guyana and Trinidad & Tobago, coming into effect on August 1, 1973. Subsequently, the other Caribbean territories joint CARICOM: Antigua and Barbuda, Bahamas, Belize, Dominica, Grenada, Haiti, Montserrat, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines and Suriname.

[12] www.comunidadandina.org
[13] Idem.
[14] www.caricom.org

From its inception, the Community has concentrated on the promotion of the integration of the economies of Member States, co-ordinating the foreign policies of the independent Member States and in functional co-operation, especially in relation to various areas of social and human endeavour.

The work in CARICOM includes the negotiation of Protocols. Protocol II, on the *rights of establishment, Provision of Services and Movement of Capital* contains the relevant provisions on investment:

- Definition of investment.
- National Treatment.
- Compensation for losses.
- Transfers.

(vi) Common Market of the South (MERCOSUR).[15]

Argentina, Brazil, Paraguay and Uruguay signed, on March 26, 1991, the Treaty of Asuncion, creating the Common Market of the South. MERCOSUR constitutes the most relevant international project committed by those countries.

Investment is a especial matter for MERCOSUR. Thus, there are two international relevant instruments:

- The 1994 Protocol on the Promotion and Protection of Investments coming from Non-Members (Protocol of Buenos Aires).

- The 1994 Protocol of Colonia for the Reciprocal Promotion of Investments inside MERCOSUR.

Both Protocols encompass, among others, provisions related to definitions, treatment and protection of investment, and dispute settlement.

(vii) Free Trade Area of the Americas (FTAA).

The effort to unite the economies of the Western Hemisphere into a single free trade agreement began at the Summit of the Americas, held in December 1994 in Miami, Florida, USA. The Heads of State and Government of the 34 democracies in the region agreed to construct an FTAA, in which barriers to trade and investment will be progressively eliminated.

In 1998, through the San Jose Declaration, the Ministers of Trade agreed to "*create an stable and predictable environment that protect investors and their investments and related flows, without creating barriers to the investments coming from outside the Hemisphere.*" Such a task was given to the Negotiating Group on Investment (NGIN), which months later was mandated to develop a comprehensive framework that incorporates the rights and obligations on investment, taking into account the substantial areas previously identified by the FTAA Working Group on Investment (WGI).

During the first phase of negotiations, 12 topics were considered the elements to be included in an Investment Chapter:

- Basic definitions.
- Scope.
- National treatment.

[15] www.mercosur.org

- Most favoured nation treatment.
- Fair and equitable treatment.
- Expropriation and compensation.
- Compensation for losses.
- Key personnel.
- Transfers.
- Performance requirements.
- General exceptions and reservations.
- Investor – State dispute settlement mechanism.

During the second phase, the NGIN started a draft investment chapter as a result of a mandate given by the Ministers of Trade in the Fifth Ministerial Meeting, held in Toronto on November 1999.

Later, in the Sixth Ministerial Meeting (Buenos Aires, April 2001), a general mandate was given to all Negotiating Groups to intensify efforts in order to solve the existing divergences and reach a consensus, with a view to eliminate "square brackets" of the draft texts. Likewise, Negotiating Groups were asked to receive proposals from the delegations.

By the time, the NGIN has received six new topics which have been included in the draft chapter along with the former twelve substantive topics.

3. *Investment in the Multilateral Context*

(i) Multilateral Agreement on Investment (MAI).

In 1995, the 29 OECD Member countries plus the European Commission[16] started the negotiations of a Multilateral Agreement on Investment in order to make up for the necessity of international co-operation to treat comprehensively the FDI matter.

The MAI sought to facilitate capital flows among countries, eliminate investment barriers, improve the level of treatment and, consequently, properly protect investors and their investments.

The basic provisions contained in the MAI were:

- Scope.
- Treatment and protection of investment.
- Exceptions and safeguards.
- Financial services.
- Taxation.
- Transfers.
- Performance requirements.
- Expropriation and Compensation.
- Reservations.
- Relationship to other international agreements.
- Dispute settlement.

Because of the number and complexity of the topics covered, after long negotiations and internal consultations the MAI was suspended. Notwithstanding the good will of the

[16] Five observer countries were also participating: Argentina, Brazil, Chile, Hong Kong and the Slovac Republic.

governments, the difficulty to link the differing interests in a single text plus the complex negotiation system, stopped negotiations in April 1998. The objective was that each country make internal consultations and re-think its position carefully. Nevertheless, in December 1998 the MAI was definitely suspended.

(ii) World Trade Organisation (WTO).

After the Uruguay Round, international investment became a relevant issue in the core of the multilateral trade system. Even when, at a glance, only exists the Trade Related Investment Measures Agreement (TRIMs) with a reduced scope limited to certain performance requirements, other agreements, especially the General Agreement on Trade in Services (GATS), and less relevant, the Trade Related Intellectual Property Rights (TRIPs) and the Agreement on Subsidies and Countervailing Measures (ASCM), incorporate disciplines related to investment. Further, any conflict arising on investment will be settled by the rules established in the Understanding on Dispute Settlement.

a) Trade Related Investment Measures (TRIMs).

This Agreement recognises that certain measures on investment can cause trade distortions. It limits its scope to investment measures related to trade in goods (not in services) and forbids Member States to apply a TRIM not compatible with the obligations established in the 1994 GATT Articles III (National Treatment) and XI (General Elimination of Quantitative Restrictions).

There is an illustrative list of TRIMs attached to the Agreement which describes those measures that are inconsistent with the obligations mentioned above since they are mandatory or enforceable under domestic law or under administrative rulings, or because their compliance is necessary to obtain an advantage. It includes measures that:

- Require the purchase or use by an enterprise of products of domestic origin or from any domestic source.
- Require that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.
- Restrict the importation by an enterprise of products used in or related to its local production or the exportation or sale for export by an enterprise of products.

It is important to say that the Parties committed to review the Agreement before the following five years after its entry into force. The review would include a possible enlargement of the illustrative list and the addition of complementary provisions related to policy competition for investment.

The TRIMs Agreement has certain limitations:

- It only focuses on goods but ignores the services sector.
- The illustrative list only considers a limited number of TRIMs, if compared to the comprehensive list contained in NAFTA Article 1106 (Performance Requirements).
- It basically codifies current GATT jurisprudence, allowing the Parties a temporal escape from their obligations.

b) General Agreement on Trade in Services (GATS).

The GATS is considered the agreement of the multilateral trade system comprising the largest number of provisions – protection and liberalisation - related to investment. It rests on three pillars:

a) A framework of general provisions applicable to all measures affecting trade in services (e.g. MFNT, transparency, disclosure of confidential information, increasing participation of developing countries, economic integration, mutual recognition, general exceptions).
b) Specific commitments of national treatment and market access applicable only to those sectors and subsectors included in the lists of commitments of each country.
c) Some Annexes that explain the manner in which GATS rules are applied to specific sectors (e.g. air and maritime transport, financial services, telecommunications).

Even when the GATS does not mention the term "investment", this is included in the third mode of supply (commercial presence). In this sense, commercial presence is defined as any type of business or professional establishment, including through: i) the constitution, acquisition or maintenance of a juridical person; or, ii) the creation or maintenance of a branch or representative office within the territory of a Member for the purpose of supplying a service.

Dynamics of Liberalisation.

- The GATS Agreement does not grant the right of establishment. On the contrary, it is subject to the terms set out in the lists of commitments.

- The main provisions referred to liberalisation are: Most Favoured Nation Treatment (art. II), Market Access (art. XVI) and National Treatment (art. XVII). Of those disciplines, the MFNT is the only principle applicable to all Members and services sectors, although qualified by the exceptions to that obligation.

- Market Access is defined according to six types of limitations that the Members should prevent to impose.

- The National Treatment provision obliges each Member to accord to services and services suppliers of any other Member, treatment no less favourable than that it accords to its own like services and service suppliers. Article XVII points out that the national treatment could not always be identical, provided it does not modify the conditions of competition of the foreign suppliers.

- The GATS allows Members to maintain non-conforming measures provided they list them in the list of commitments under a negative approach. Likewise, Members may adopt new discriminatory measures in those sectors not established in the list of commitments (on a MFN basis) or in sectors subject to MFNT exceptions.

Other applicable provisions

- Article V establishes a general exception with respect to Economic Integration Agreements.
- There are general exceptions similar to those contained in the GATT.
- Provisions of future negotiations on safeguards and subsidies are established.
- GATS applies a test of "substantial business operations" to determine who qualifies to obtain the benefits of the Agreement. There are property and control elements included.
- There are no provisions on performance requirements or monitoring.

Investment Protection.

The GATS has only a few provisions related to the protection of investment:

- Payments and transfers.- It is not a general obligation; Members should not limit the current payments and transfers in committed sectors.
- Balance of payments clause.
- No provisions on expropriation and compensation.
- The Understanding on Disputes Settlement is applied.

IV. The future of Investment in the Multilateral Context

Since the suspension of the MAI negotiations, there have been several concerns about the necessity of having an international framework of rules on investment which facilitate the capital flows among countries, eliminate barriers to investments, improve the level of treatment to them and, in general, secure an appropriate protection to investors and their investments. Such demand has been heightened due to the structural unbalance existing in the multilateral system. We should remember that while WTO Agreements establish rules applicable to trade and services -and investment in services- there is not an applicable provision to investment in the goods sector (e.g. manufactures).

However, a negotiation of multilateral rules on investment would not be an easy task. Little political interest in multilateral negotiations has been shown. In fact, countries have given priority to regional or bilateral agreements, in part due to the difficulty to find consensus and in part also because of the fear that those kind of mechanisms be used as a platform for a renewal and unjustified NGOs activism.

Some have wondered whether the political costs of an eventual agreement are justified by the economic benefits. Some countries believe not. But the reality will be seen in few months when discussion for a possible multilateral set of rules on investment be carried out, according to the mandate given in the last Ministerial Conference.

At the Fourth Session of the Ministerial Conference (Doha 9-14, November, 2001), Ministers recognised the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment - particularly foreign direct investment - that will contribute to the expansion of trade. Ministers agreed that negotiations will take place after the Fifth Session of the Ministerial Conference (in mid-June) on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations.

In the period until the Fifth Session, further work in the Working Group on the Relationship between Trade and Investment will focus on the clarification of the following issues:

- Scope of definition.
- Transparency.
- Non-discrimination.
- Modalities for pre-establishment commitments based on GATS-type, positive list approach.
- Developing provisions.
- Exceptions and balance of payments safeguards.
- Consultation and the settlement of disputes between members.

Any framework should reflect, in a balanced manner, the interests of home and host countries alike, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest.[17]

V. Perspectives

Today, international investment faces a patchwork of regional and bilateral instruments that regulates FDI flows. On one hand, the existence of such a quantity of instruments definitely makes evidence of the levels of convergence that have been reached on investment, as well as the interest of the countries to guarantee more stability in the investment rules. On the other hand, it also introduces elements of confusion, inefficiency and uncertainty since it enhances the fragmentation and overlapping of different regimes applicable to FDI in a world in which investments are global or regional.

From this, it can be inferred that a multilateral negotiation on investment would be convenient. A multilateral framework could be useful to reduce the conflict among the rules of different countries and, at the same time, would reduce the inefficiencies and the wrong distribution of resources that provoke the number and diversity of rules on investment.

Nevertheless, it can be perceived certain reluctance to concrete a multilateral project. Even if in the Doha Ministerial Declaration there is a commitment for a negotiation in three years, strong technical, juridical and political conflicts may obstruct progress in the matter. Let us hope for the best from a technical perspective (i.e. trade – investment) and, most of all, from a human dimension.

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[17] www.wto.org