factsheet GLOBAL ENVIRONMENTAL NEGOTIATIONS

MULTILATERAL AGREEMENT ON INVESTMENT

Multilateral Agreement on Investment

Negotiations started in 1995

Collapsed in 1998 after France backed out of negotiations

ozone depletion
hazardous waste
prior informed consent
right to information
commission on sustainable development
climate
biodiversity
desertification
persistent organic pollutants
forests
trade and environment
multilateral agreement on investment
global environment facility
institutions for environment

Problem

Foreign direct investments (FDIs) are important for multinational corporations (MNCs) to deliver goods and services to foreign markets and gain a competitive edge by organising production internationally. MNCs are constantly on the prowl for relaxation of national laws that hinder investments in developing countries, which represent new markets. So far, these investments are ruled by 1850-odd bilateral treaties, which protect national interests. For instance, a bilateral investment treaty may lay down specific conditions for technology transfer or local purchase of raw material. But these prove a hindrance to MNCs.

These bilateral agreements are also often a result of an unequal negotiating relationship, between a developing country government eager to attract investments and investing countries eager to get the most favourable terms for their companies. Most MNCs are based in the North and these countries are net exporters of investment capital, while developing countries usually play the role of host nations.

Attempted agreement

The first suggestion for a multilateral agreement on investment (MAI) came during the Uruguay Round in 1994. It was strongly opposed by Southern countries as it threatened to take away regulatory control over foreign investment. The EU made an unsuccessful attempt to introduce the idea at the 1996 Singapore ministerial of the World Trade Organisation (WTO).

Civil society groups around the world have been wary of attempts to establish global multilateral investment rules since the Organisation for Economic Co-operation and Development (OECD), a 'wealthy club' of 29 countries with over 95 per cent of the world's largest MNCs, tried to secretly negotiate a MAI treaty that would vest MNCs with the power to question the decisions of national governments. This attempt was scuttled in 1998 by non-governmental organisations (NGOs) around the world, which formed a 'guerrilla network' to protest against the veiled negotiations.

Some of the provisions of the draft that were most objected to include:

- National Treatment: Countries are prevented from treating MNCs any differently than they would their own companies.
- Most favoured nation status: Governments must treat investors from all foreign countries equally.
- No performance requirements: Foreign investors cannot be asked to meet certain performance requirements even if these are imposed on local companies.
- Expropriation and compensation: Governments would have to pay compensation even if they implement stringent environmental laws that result in loss of business for investors. Using a similar rule under the North American Free Trade Agreement (NAFTA), for instance, a US company sued the

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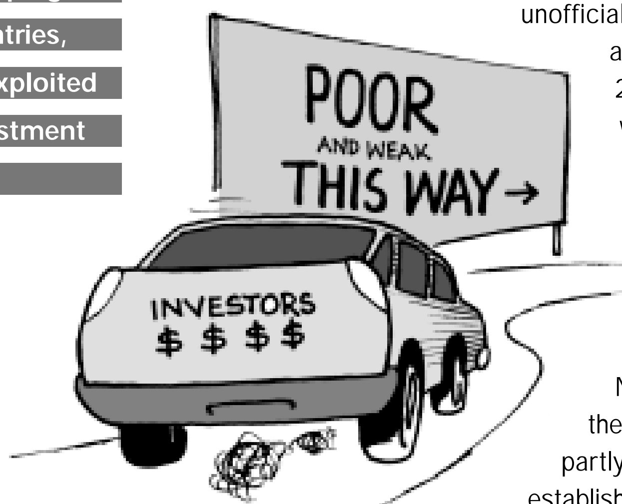
Canadian government for banning MMT, a gasoline additive that posed a health and environmental risk.

- Dispute resolution: Companies can sue governments directly, rather than going through their home governments as they do now. Reciprocal rights were not granted to governments.

OECD talks broke down after France backed out in 1998, responding to the protests. But the MAI threat is not over. The United Nations Conference on Trade and Development (UNCTAD) is implementing a work programme on a possible multilateral framework on investment. Furthermore, unofficial negotiations for an investment agreement began under WTO in April 2001. It still remains to be seen which way it will swing – whether, like its predecessor, it will completely favour MNCs, or whether it will take on board concerns such as national sovereignty and cultural diversity. Given the pro-industry nature of WTO, the former is more likely. Northern Nations are keen to transfer the investment treaty to the WTO forum partly because it already has a well-established dispute-settlement mechanism.



Challenges ahead

Developing countries have to carefully address a number of issues.

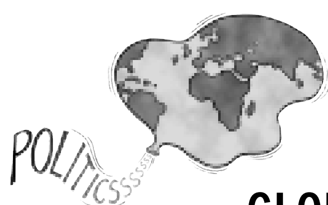
Those who favour MAI say it will increase the flow of FDIs into developing countries. But will countries that refuse to negotiate an investment treaty lose out on investments? Generally, the current trend of concentrated investments in regions with high infrastructure is unlikely to change because investment decisions are based on the potential market size, the legal/institutional framework, and the availability of human and natural resources. However, a carefully negotiated MAI treaty could end up helping developing countries, who often are exploited by bilateral investment treaties.

As for the current negotiations, WTO seems not to be the appropriate institution to negotiate an investment treaty that does justice to national governments and to investors, given its inherent bias towards free and unregulated trade. From the point of view of developing countries, the UN is more likely to provide neutral grounds for such an investment treaty than the WTO.

'Pragmatists' in the North claim that industry and governments will have to meet halfway and give to industry as much as they take, in a world where complete national sovereignty is no longer possible.

In any case, developing countries stand to lose more sovereignty than their richer cousins in the North, who hold the reins on FDI. It seems likely that for instance the European Union will push for environment and health 'conditionalities' on foreign direct investment, just as there are conditionalities on development aid.

The key element that developing countries will have to push for in an investment treaty is for 'investor responsibility', to ensure investors respect the laws and regulations of the host country and not become a law into themselves.



GLOBAL ENVIRONMENTAL NEGOTIATIONS

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