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Trade and Investment at the WTO: Just Do It!

EDWARD M. GRAHAM

At the December 1996 ministerial meeting of the World Trade Organization (WTO), the WTO member nations authorized the creation of a Working Group on Trade and Investment. However, several members indicated that no formal negotiations should be begun in this area until after completion of ongoing negotiations at the Organization for Economic Cooperation and Development (OECD) to create a Multilateral Agreement on Investment (MAI). At the time of the WTO meeting, OECD nations expected that the MAI would be concluded within six months, in time to be adopted at the 1997 OECD ministerial meeting. That did not happen.

Indeed, the MAI negotiations were still not finished in time for the 1998 OECD ministerial meeting. Rather, because of unresolved differences among the negotiating parties, the deadline was, in effect, indefinitely postponed.

In light of the stalled OECD negotiations, some have suggested it is time to reconsider starting negotiations at WTO.[1] The original rationale for the OECD negotiations was that the relatively small OECD membership of "like-minded" nations would be able relatively quickly to craft a "state of the art" investment agreement embodying "high standards."[2] Clearly, that rationale should now be critically reexamined.

Edward M. Graham is Senior Fellow at the Institute for International Economics, Washington.
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1. See, e.g., "The Talking FDI Blues," and "An Investment Treaty in Trouble," *The Economist* 346, no. 8059 (14 March 1998): 18-19 and 81-82.

2. Words and phrases in quotes are taken from OECD public documents.

The position this chapter takes is that it is indeed time for negotiations on trade and investment to move to the WTO. There are several reasons for this, in addition to the simple fact that the OECD negotiations have stalled:

- The WTO has more members than the OECD, and a number of WTO nations that arguably should have been party to MAI negotiations but were excluded because they are not OECD members would now be included.
- An agreement on trade and investment should be part of the WTO single commitment for substantive reasons, because trade and direct investment in the globalized economy are highly interlinked.
- An agreement on trade and investment should be part of the WTO single commitment for administrative reasons, because such an agreement should be consistent with other obligations of WTO members and subject to the same procedures for dispute settlement and adjudication.
- The WTO as an institution is far more experienced at crafting and implementing binding multilateral agreements and thus might be able to succeed where the OECD has failed.

But even if these negotiations were to move to the WTO, the factors that caused the OECD negotiations to stall would remain. Thus, any WTO negotiation must confront that failure. Several factors contributed to it: unexpected domestic opposition, member nation disagreements on policy, and the limited room for "horse trading" within the narrow purview of the agreement.

There has been a surprising amount of general domestic opposition to the MAI within certain OECD nations, much of it based on reasoning that can easily be dismissed as flawed. For example, some opponents argue that the additional direct investment enabled by the MAI will induce companies to transfer operations from high- to low-income countries, resulting in massive job losses in the richer countries and producing no offsetting gains for the poorer countries because "slave labor" conditions will prevail there. However, such transfers and job losses are *not* generally associated with foreign direct investment (FDI), as will be further examined below. Other MAI opponents have adopted lines of reasoning that are questionable but not necessarily dismissible—for example, that the MAI or any similar agreement would lead to human rights violations or degradation of the environment. And some of the opposition is well founded. For example, the MAI (at least as per the 24 April 1998 draft) could open a route for private companies to sue governments for compensation for regulatory "takings." The substantive issue of whether regulatory taking should be compensated is a debatable point, but a multilateral agreement should not in any case be the venue by which such a right is first granted to private parties. The decision of whether or not to convey such a right should remain in the hands of individual sovereign governments. Whatever the merits of the opposition's reasoning on these various points, any negotiation on investment matters must be sensitive to the simple fact that the opposition exists. This issue is also explicated later in this chapter.

Also unexpected in advance of the MAI negotiations were the number of differences among the principal negotiating parties as to best policy. Certain of these disputes might be more easily resolved under WTO auspices than in OECD. For example, the controversy over whether there should be a carve-out for regional economic integration organizations (REIOs) might be resolved at WTO by adopting a provision within an investment agreement that is consistent with existing GATT Article XXIV on trade. But other issues, such as the proposed general exceptions for cultural industries and the issues surrounding application of the US Helms-Burton law, would likely remain difficult, irrespective of the negotiating venue.[3]

Some issues raised in the MAI negotiations might require a broader negotiating mandate than that of the MAI per se to resolve. The broader the mandate, the more room for constructive "horse trading," whereby one country (or group of countries) concedes something in exchange for an unrelated concession from another country (or group of countries). Indeed, the involvement of developing nations in negotiating an investment agreement argues strongly for including the issue as part of a broader set of negotiations. In particular, investment issues might be more readily resolved in the context of a "millennium round" of multilateral trade negotiations than in a stand-alone negotiation like that at OECD. In addition, there are issues a multilateral investment agreement should address that, for various reasons, have been removed from the table at the OECD. The most important of these is the matter of investment incentives: the subsidy and subsidy-like measures governments offer to multinational firms to induce them to locate operations within the governments' territory. Subnational as well as national governments offer these incentives, and indeed it is the subnational authorities that have proved most problematic. The US government in particular has refused to allow subnational investment incentives to be included in the MAI negotiations out of the belief that it cannot (or should not) bind state governments to obligations regarding investment incentives that might emerge from these negotiations. Several other governments, most notably those of Canada and Germany, hold similar concerns.

3. In May 1998, a US-EU agreement to resolve differences on Helms-Burton (Understanding with Respect to Disciplines for the Strengthening of Investment Protection) was announced. However, at the time of this writing (June 1998), this agreement had not been ratified by the US Senate and hence was not operative.

The political concerns of these countries notwithstanding, there are sound economic reasons to believe that investment incentives can have distortive effects not unlike those of trade restrictions (Graham 1998b reviews relevant literature). The overall effect is a reduction of world welfare, and, to make the matter worse, taxpayers in the jurisdictions offering the incentives are the ones who ultimately finance these incentives, though it is international investors who receive them. International disciplines on investment incentives would thus be in the overall interest of member nations, much as disciplines on tariffs are in their overall interest. Indeed, one advantage of transferring MAI negotiations to the WTO is that some of the new negotiators in an enlarged group of nations might be more insistent on coverage of investment incentives than the OECD group has been.

As indicated, the MAI negotiations stalled in part because of a surprisingly vocal domestic opposition (most especially in the United States and Canada). The next section examines their arguments against the MAI more closely. The main finding is that the opponents have the facts wrong on many points. However, the opposition has raised a valid point pertaining to regulatory taking, and this issue is addressed in a subsequent section. The last section offers some general conclusions.

MAI Opponents Are Wrong on Many of the Facts

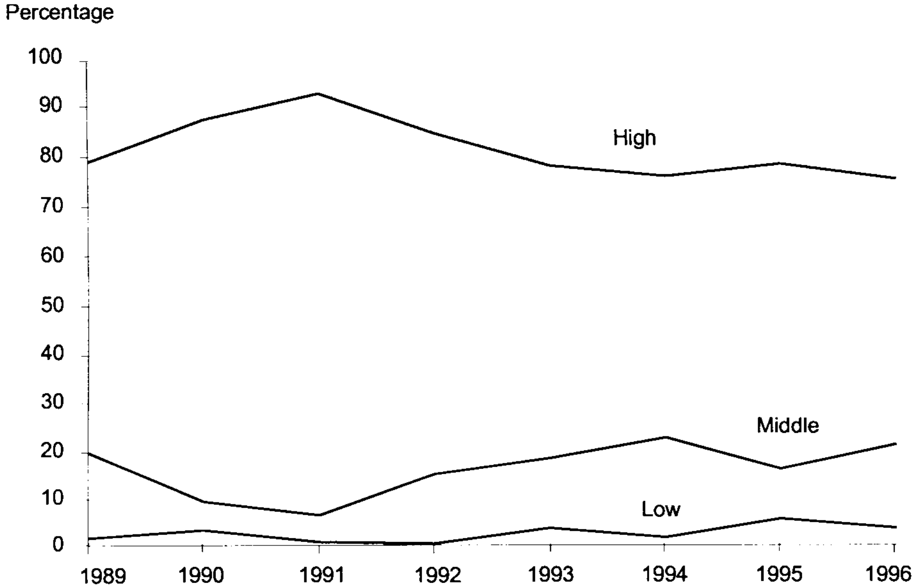
Domestic US opponents of the MAI base much of their case against FDI on the premise that direct investors are motivated largely by "labor arbitrage." That is, these investors putatively seek to place production operations where labor costs are the lowest. Because these investors possess advanced technological and organizational skills, they can (according to the critics) combine low wages with high productivity, which results in products flooding the market at prices so low that no product made in advanced nations can compete. The implication is that, unless checked, direct investment will transfer massive numbers of jobs from high-income to low-income nations. It is further argued that this transfer would be to no one's benefit because the high-income nations will suffer from high unemployment while the low-income nations will see no improvement in wages or employment conditions.

The facts as well as careful reasoning should dispel these concerns.

To begin with, US direct investment abroad is not primarily located in low-income nations. At the end of 1996 (the most recent year for which data are available), the stock of this direct investment was overwhelmingly concentrated in high-income nations.[4] Of a total stock of

4. "High income," "middle income," and "low income" are defined as per classifications of the World Bank.

Figure 1 US equity capital outflow, 1995 income level



Source: US Direct Investment Abroad (*various years*), US Department of Commerce

slightly more than $792 billion of this investment, over 81 percent was in high-income nations. Further, 17.9 percent—most of the remainder—was in middle-income nations. Only 1.1 percent was located in low-income nations.

Furthermore, US direct investment shows no strong trend toward low-income nations. Figure 1 indicates US equity capital outflow (the best measure of newly invested FDI)[5] by destination countries as a percentage of the total such outflow, where the countries are classified by income level. Slightly less than 80 percent of the total goes to high-income countries, about 20 percent to middle-income countries, and the remainder (less than 5 percent) goes to low-income countries. Since 1992 there appears to be a very weak trend away from high-income countries toward middle-income countries. However, the number of data points is too small to conclude that this indeed is a trend; even if it is, it certainly is not a strong one.[6]

5. Equity capital outflow equals total US direct investment abroad outflow minus retained earnings minus changes in intrafirm loans.

6. To express this somewhat more rigorously, one cannot rule out, with confidence, the possibility that the rise in the share of FDI going to middle-income countries from 1991 to 1995 is the result of random fluctuation.

Table 1 Net fixed assets per employee of US firms' overseas affiliates (manufacturing sector only) by income level and US manufacturing sector, 1995
(thousands of dollars per employee)

Overseas affiliates of US firms (worldwide)	$48.68
High-income countries	$61.01
Middle-income countries	$27.80
Low-income countries	$18.79
US manufacturing sector	$65.94

Sources: (for US Manufacturing), US Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business* (September 1997); US Department of Labor, Employment and Earnings (January 1996); (for overseas affiliates) US Department of Commerce, Bureau of Economic Analysis, *US Direct Investment Abroad: Operations of US Parent Companies and Their Foreign Affiliates* (1995).

Do US firms, when making overseas investments, largely transfer abroad their labor-intensive operations? Table 1 indicates the net fixed assets per employee by overseas affiliates of US firms, broken down by income level of host country, as well as net fixed assets per employee in the United States. The data are for the manufacturing sector and exclude petroleum refining, which is very capital-intensive irrespective of location. As might be expected, fixed assets per employee are about the same in the high-income host countries as in the United States (albeit slightly higher in the United States), but much lower in the middle-income and still lower yet in the low-income countries. These data do support the notion that operations of US firms in the low- and middle-income countries tend to be more labor-intensive than those in the United States. But the data do not support the notion that operations of US firms in high-income countries—which constitute the overwhelming majority of US FDI, as noted already—are significantly more labor-intensive than operations in the United States.

What about compensation by overseas affiliates of US firms? Is this overseas compensation lower than that paid by the parent firms in the United States? Do US firms pay "slave labor" wages in the poorest countries?

Table 2 indicates per capita compensation by these investors in the three income categories of host nations and compares this compensation with that paid in the home country of the parent firms (the United States). These data are disaggregated by the industry of the parent. Two things stand out. First, there is hardly any difference in *per capita* compensation between the parents and overseas affiliates in the high-income countries ($43,900 by parent firms in the United States versus $41,800 by affiliates in the high-income countries). In fact, compensation in the United States is slightly higher than abroad. (The disaggregated figures show that in some sectors the average compensation is higher for the overseas affiliates

Table 2 Average per capita compensation paid by US multinational firms' affiliates in key industries, 1995 (thousands of dollars)

Industry	Affiliate[a] Total	High	Middle	Low	Parent
All	32.5	41.8	16.2	8.1	43.9
Petroleum	50.5	65.3	35.1	28.1	64.4
Manufacturing	31.2	37.6	15.3	4.3	49.4
Food and kindred products	24.3	47.1	na	6.7	33.7
Chemicals and allied products	41.5	49.8	20.0	6.1	60.1
Primary and fabricated metals	31.6	39.0	12.6	7.1	46.2
Industrial machinery and equipment	39.3	42.0	na	na	50.1
Electronic and other electric equipment	17.6	33.6	13.6	na	46.7
Transportation equipment	38.0	na	na	na	64.2
Other	31.2	34.3	na	na	43.2
Wholesale trade	49.7	53.7	23.8	9.5	40.0
Finance, insurance, and real estate	53.8	60.9	17.5	na	63.1
Services	37.7	45.6	18.1	na	32.1
Other	19.9	na	14.9	2.5	34.3

na = not available.

a. These numbers are calculated only when the data are available for more than half of the countries in each category.

Source: US Department of Commerce, Bureau of Economic Analysis, *US Direct Investment Abroad: Operations of US Parent Companies and Their Foreign Affiliates. Preliminary 1995.*

than for the US parents.) Second, average compensation by affiliates of US firms is significantly lower in the middle- and low-income countries than that paid by the parent firms in the United States.

However, these figures include compensation for all categories of employees, including expatriate employees, who presumably are paid at levels comparable to those of equivalent personnel in the United States. Thus, one might be interested in the compensation only of local employees who are citizens of the countries in which they are employed. Alas, such data are not published by the US Commerce Department. However, data by country on the percentage of local employees who are US citizens are published. To estimate the wages paid to local employees who are not US citizens, I subtracted from total wages and salaries paid by affiliates of US firms the following product: number of employees who are US citizens times average wages and salaries reported to the IRS by US taxpayers filing from the middle-income nations. I then divided this amount by the total number of the affiliates' employees who are not US citizens. The result, shown in table 3, is an estimate of the average wages and salaries paid to non-US citizens employed by the affiliates in these countries.

It should be noted that the data in table 3 differ from those in table 2 in three ways. First, the data for table 3 are for 1994, whereas the data

Table 3 **Ratio of average wages and salaries paid to non-US citizens by affiliates of US multinationals to per capita GDP by income level of host-country group, 1994**

	Total	High	Middle	Low
Average wages and salaries (in thousands of dollars)	25.6	32.4	9.5	3.4
Per capita GDP (thousands of dollars)	11.5	20.9	3.2	0.4
Ratio of wages and salaries to GDP, per capita	2.2	1.6	3.0	8.5

Source: US Department of Commerce, Bureau of Economic Analysis, *US Direct Investment Abroad: 1994 Benchmark Survey, Preliminary Results;* The World Bank, *World Development Report 1997.*

for table 2 are for 1995 (in either case, the year is the most recent for which the underlying data are available). Second, the data for table 3 are for wages and salaries, whereas those for table 2 are for total compensation (wages and salaries plus fringe benefits; the value of fringe benefits is on average about 25 percent of wages and salaries). And, third, as already noted, the data for table 3 include only non-US citizens whereas the data for table 2 include both US and non-US citizens. (Thus, table 3 is presented because we are most interested in the wages and salaries paid to employees of overseas affiliates of US firms who are not US citizens. Table 2 is presented because it provides some data that are disaggregated by sector but that are available only for total employment of these affiliates, where this total includes both US and non-US citizens.)

Table 3 shows that average wages and salaries paid to non-US citizens by affiliates of US firms in the middle- and low-income nations are indeed much below those paid in the high-income countries. However, the wages and salaries paid by these affiliates in middle- and low-income nations are not low by local standards. Table 3 indicates wages and salaries divided by national income (gross domestic product) per capita for all three categories of nations. This ratio is greater than one for all three categories of nations: 1.6 for the high-income nations, 3.0 for the middle-income nations, and a striking 8.5 for the low-income nations. Thus, relative to average per capita national income, wages and salaries of employees of US firms are, on average, much better in the low- and middle-income nations than in the high-income nations. But it is equally clear that, on an absolute basis, the wages and salaries of the affiliates' employees in the poorer nations are fairly low. If one assumes that in the low-income nations, workers in affiliates of US firms work 50 hours per week and 50 weeks per year, hourly wages on average are $1.36, a figure that most Americans would judge to be very low. However, this figure is much more than the "less than a dollar per day" that is claimed by some groups opposed to US outward direct investment.

None of this necessarily refutes the often-heard claim of the critics that the pay and working conditions offered by some overseas affiliates of US firms to their workers is deplorable. Such situations doubtless exist. However, it is very important to distinguish between the average situation and the outlier. Where outliers exist—that is, where US firms are responsible for deplorable labor conditions—the situation should be corrected.[7] But it would be folly to discourage all US direct investment abroad on grounds that this investment promulgates deplorable labor conditions in isolated incidents. Just as a nation cannot incarcerate the entire populace because some people are criminals, it cannot lock all firms inside their national boundaries because some firms exploit labor overseas.[8]

Of course, labor conditions in the host countries are not the critics' only concern. They also worry about effects on labor in the home countries. In particular, they fear that US firms' investment in production and distribution facilities abroad in effect "exports" jobs from the United States.

Perhaps the first thing to note in this regard is that the past decade has seen a rise in direct investment worldwide that is without precedent, including by firms based in the United States. (United Nations Conference on Trade and Development 1997). And yet the US economy now is experiencing the lowest levels of unemployment in several decades. Thus, if direct investment abroad by US firms creates unemployment at home, this effect must occur with a long lag because the current evidence seems to suggest just the opposite. After almost 10 years of substantial flows of US direct investment abroad, the US economy continues to create domestic jobs at impressive rates.

If direct investment abroad has a direct effect on employment in the United States, the most direct linkage is likely to be through trade. To be more specific, a direct effect on jobs would be clear if, say, a US firm were to open a facility abroad that displaced exports from the United States to the market that the overseas affiliate now served and, as a response, the exporter were to lay off workers. Likewise, a direct effect might be observed if the overseas facility exported its product back to the United States, causing domestic producers of competing products to lay off workers.[9]

7. The cited cases of abuse seem to be concentrated in certain sectors—e.g., footwear and clothing manufacture—and often the US firm is not the direct operator of the production facility but rather a distributor and marketer of branded products (e.g., Herbert 1998).

8. Similar comments could be directed toward the issue of human rights. While there might be cases where overseas activities of US firms have had the effect of suppressing human rights, the overall record of US firms in this domain is highly positive (Spar 1998).

9. We should note that these layoffs would not necessarily add to US unemployment because the laid-off workers might readily find reemployment elsewhere. Nonetheless, the workers might experience some trauma.

Are such effects observed? The evidence on this is quite surprising. Econometric work done at the Institute for International Economics and elsewhere indicates that net US direct investment abroad is associated with *greater* exports, not reduced exports (that is, FDI and exports are complements, not substitutes; see Graham 1998a). But this direct investment is also associated with increased US imports. The former effect would add to labor demand in the United States, while the latter would reduce labor demand.

What is the net effect? The short answer is that US direct investment abroad seems to affect the composition of demand for labor in the United States rather than the total quantity of labor demanded. In particular, there is evidence that exports generate demand for jobs carrying a wage premium, which exists probably because production of products or services that can be exported requires relatively greater inputs of highly skilled labor than does production of nontraded or imported goods or services (Richardson and Rindal 1996). Imports, by contrast, compete with domestic products and services requiring relatively less-skilled workers, whose services do not command a wage premium. The net result is that US outward investment seems to increase domestic demand for highly skilled workers but suppress demand for less-skilled ones.

The bottom line is that the overall effect is positive (the United States should want to create demand for highly skilled workers because this is associated with long-run productivity and wage gains). But there might be losers—those workers who simply do not have the levels of skill required. The answer to their dilemma, however, surely does not lie in curtailing a process by which demand is increased for those workers who do have such skills. Rather, the answer must lie in helping workers without skills that are in demand to acquire them.

Critics of US direct investment abroad do not limit their case to labor standards. They also maintain that US firms seek overseas locations in order to circumvent US environmental regulations. Dua and Esty (1997) and Esty and Gentry (1997) cast aspersions on this view, as do the data presented in figure 1. Dua and Esty find that lax environmental regulation is not a strong factor in direct investment decisions by US firms and, further, that multinational firms exhibit a greater propensity to use the latest and best technologies in their production operations than do their local rivals. Furthermore, this latest and best technology tends to be more environmentally friendly than older vintage technology. There is a positive relationship between per capita income and high environmental standards—the richer a country per capita, the more likely it is to enforce high standards—yet the data of figure 1 show no tendency of US firms to locate in "pollution haven" countries.

Again, as with compensation, there are exceptions, even though the average US direct investor behaves quite well with respect to environmental regulation. Some of these exceptions involve whole sectors (e.g., logging of the rain forests). Also, it must be acknowledged that there is a positive relationship between income and demands that are placed on the earth's scarce resources, and to the extent that direct investment makes the world's population richer (which it does), it also adds to these demands.[10] And there is little doubt (at least none on the part of this author) that environmental concerns are serious ones requiring serious answers. But, again, what is not at all clear is that the answer to environmental degradation is to restrict FDI. Indeed, in many instances, such restrictions might add to the degradation (Esty and Gentry 1997).

The bottom line is that there might very well be a case to be made for internationally recognized minimal labor standards or environmental standards, but it seems neither necessary nor wise to impose such standards only on multinational firms. These firms by and large are not the culprits behind the ills that the critics cite. On average, they pay better than prevailing wages (and in the poorest countries much better), and they tend to use relatively environmentally friendly technology. Increased FDI neither worsens the lot of the typical wage earner nor adds to the degradation of the environment; thus, there is no basis for discouraging countries—whether acting unilaterally or multilaterally—from liberalizing policies toward FDI on these grounds. Rather, the evidence strongly supports the contention that FDI in the aggregate actually improves the lot of the wage earner (and especially so in the lowest-income countries).

If there is a case for restricting FDI for environmental reasons, this case would surely be sector-specific and subject to "national treatment" considerations. For example, there might indeed be a very strong case for preservation of tropical rain forests, but it would make little sense to ban multinational firms from logging in tropical areas while allowing domestic firms to continue logging.

The very bottom line is that concerns about labor conditions and environmental degradation do not add up to a case against an agreement to liberalize FDI. As stated earlier, this is not to dismiss the concerns themselves. But those concerns are misplaced when they link poverty in developing nations, or loss of employment in the United States (and other advanced countries), or environmental degradation worldwide to the "globalization" of business. These concerns are so misplaced that in most instances the proposed "cure"—that is, retarding FDI—would actually aggravate the disease. That is, to eliminate flows of FDI to the world's poorest countries would be to eliminate one of the greatest hopes the impoverished in these nations have to better their economic circumstances.

10. There is some evidence that, as nations become very rich, they adopt policies that in net reduce environmental degradation within their own territories. Even so, it is mostly the very rich nations that deplete nonrenewable organic energy sources and emit greenhouse gases. The relationship between income growth and the environment thus appears to be very complex.

But the Critics Are Right on the Issue of Regulatory Taking

A regulatory taking is a situation in which the assets of a private party lose value because of the implementation of a government law or regulation (whether at the national or the subnational level). The right of governments to pass laws or to issue regulations is not at issue. Indeed, there are many instances in which circumstances virtually require such a law or regulation. For example, if research shows that a chemical in common use harms those who come in contact with it, few would question laws or regulations to restrict or ban it. Most would believe that such restrictions or bans are necessary and proper. One would hope and expect, of course, that the government followed due process in passing the law or regulation.

Much more contentious is whether the private party whose assets lost value when the chemical was restricted or banned should be compensated. On this, legal standards do not seem to be wholly consistent. In most countries, for example, if the government seizes property and takes title or ownership of it for a public purpose (e.g., land to build a road), under the doctrine of eminent domain the assets must be compensated at fair market value.[11] However, if the ownership remains in the hands of the original party, albeit at diminished value, under the law of most countries no compensation need be granted (and, under the doctrine of sovereign immunity, the government is not subject to being sued for the diminished value). However, there is a school of thought within the legal community that private parties should be entitled to compensation in such cases.[12]

This issue is relevant to a multilateral agreement on investment because the draft language of the OECD MAI apparently qualifies a regulatory taking affecting a foreign investor as an expropriation and hence makes it subject to compensation (Article IV.2.1 of the draft of 1 October 1997):

> A Contracting Party shall not expropriate or nationalise directly or indirectly an investment in its territory of an investor or another Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation") except:
> a. for a purpose which is in the public interest,
> b. on a nondiscriminatory basis,
> c. in accordance with due process of law,
> d. accompanied by payment of prompt, adequate, and effective compensation. . . .

11. In this instance, in the United States, compensation is a basic right under the 5th amendment of the US Constitution.

12. The classic work on this is Epstein (1985). A somewhat different view is offered by Fischel (1995).

The language that seems to admit regulatory takings as expropriations is that pertaining to "measures having equivalent effect." Critics maintain that this language would give international investors virtually unlimited rights to "sue" (i.e., to invoke investor-to-state dispute settlement procedures) in the event of a regulatory taking that might diminish the value of their property. The consequence, according to the critics, is that health and environmental laws and regulations could be undone because governments would be unwilling to meet the fiscal burdens that such compensations to foreign investors might impose.

These consequences, as just stated, are doubtless exaggerated because there would be limits on the amounts that could be awarded to investors, even if the idea that regulatory takings should be compensated were commonly accepted. However, the critics are right in this regard: it would unacceptably encroach on governments' sovereignty to impose, via a multilateral agreement, a doctrine on compensation for regulatory taking that is not generally accepted in domestic law. Whether or not such compensation should be awarded is not the issue. Rather, this is a matter that should be decided at the level of national (or even subnational) governments, not in a multilateral negotiation. And while a multilateral agreement on investment should provide for strong investor protection, this protection should not exceed that which would be afforded similar domestic investments under established and accepted principles of law. (In other words, "national treatment" for foreign investors should not be extended to become "supernational treatment.") Societies, and the governments that represent societies, might or might not come to accept a doctrine that would compensate private parties whose assets are diminished by laws and regulations designed to protect health or the environment. If they decide that compensation should be paid, this compensation should be extended to foreign investors on a national-treatment basis. But this issue remains controversial and undecided.

Bring It into the WTO

There is much to be gained from a multilateral investment agreement: removal of at least some remaining obstacles to FDI, removal of distortions that reduce the benefits to this investment, creation of uniform standards for national policies affecting FDI. Exactly how much such measures would be worth has not been reliably estimated, and the lack of such an estimate probably has hampered efforts to reach an agreement. A very rough guess can be hazarded, however: the United Nations estimates that the value added by overseas affiliates of multinational firms exceeds $1.5 trillion annually (United Nations 1997) This figure is no doubt conservative because it does not count the value added created by suppliers to these affiliates or value added by the parent operations. But taking this figure as approximately correct, if a multilateral agreement were to improve resource allocation so that only 5 percent of additional benefit were created, this benefit would equal $75 billion annually—not a huge figure relative to world GDP, but certainly sizable enough to be worth achieving. And, of course, the benefits might be considerably greater.

Although the relevant governments are loath to admit it, the OECD MAI negotiations have lost momentum. The lofty goals of these negotiations—a speedy agreement embodying "high standards"—now appear unlikely to be achieved. Furthermore, as noted in the introductory section, even had these goals been achieved, there would have been major flaws in the resulting agreement, of which the most glaring would have been its limited geographic coverage.

The bottom line seems thus to have two components: first, a multilateral agreement still is worth doing, and second, a fresh start is called for. The time is right for the issue to be taken up at the WTO.

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