

UNCTAD's work programme on a possible multilateral framework: an update on investment

The proliferation of discussions and negotiations of international investment agreements at the bilateral, regional and multilateral levels highlights the important role that foreign direct investment (FDI) has assumed in the world economy as well as FDI's contribution to growth and development. Economic analysis and the legal treatment of FDI flows have become one of the major new issues in international economic relations.

In view of the growing role of FDI, any discussions on international investment agreements are obviously important to all Governments and civil society as a whole, and accordingly all countries and all groups of civil society should participate fully and effectively, so that their views can be heard and so that others can benefit from their experiences.

The mandate for UNCTAD's work on investment agreements derives from the Midrand Declaration of UNCTAD IX, which requested UNCTAD to provide a forum for international dialogue on these issues. In particular, Midrand called for UNCTAD to identify and analyse the implications for development of issues relevant to a possible multilateral framework on investment (PMFI), beginning with an examination and review of existing agreements, taking into account the interests of developing countries and bearing in mind the work undertaken by other organizations.

Why UNCTAD works on international investment framework issues

The prime objective of UNCTAD's work in this area is to help developing countries and economies in transition participate as effectively as possible in international discussions on investment rule-making, be it at the bilateral, regional, plurilateral or multilateral level. This reflects the need for greater information, transparency and proper economic and legal analysis.

UNCTAD's work involves a two-track process that encompasses (i) substantive support to the intergovernmental debate in various intergovernmental bodies, especially the Commission on Investment, Technology and Related Financial Issues and its expert meetings on the subject; and (ii) secretariat work, which are described below.



Substantive support to the intergovernmental debate

The main forum for UNCTAD's intergovernmental debate on issues related to investment and a possible MFI is the Commission on Investment, Technology and Related Financial Issues (whose next session is scheduled to be held 4-8 October 1999), one of the three subsidiary bodies of the Trade and Development Board. The Commission draws on the findings of expert meetings which serve as a forum for the exchange of experiences and debate on existing investment agreements and their implications for development. In particular, the meetings address the nature and implications of these agreements; the range of issues addressed by them; the extent to which the development dimension is taken into account; and the extent to which issues arising in the context of the agreements are relevant, from a development perspective, to a PMFI. The next expert meeting, scheduled for 24-26 March 1999, will discuss concepts that allow for a certain flexibility in international investment agreements to promote growth and development. It follows two previous meetings on bilateral investment treaties and on regional and multilateral investment agreements and their development dimension, held in May 1997.

Following the encouragement given by the 1996 Ministerial Conference of the World Trade Organization (WTO) in Singapore to cooperation between the two organizations, UNCTAD has received special observer status in the WTO working group on the relationship between trade and investment and in the WTO working group on the interaction between trade and competition policy. UNCTAD contributed to the discussions of the working group with the submission of a document on "Transnational corporations, foreign direct investment and development" and of working documents on the deliberations and conclusions of the Commission and its expert meetings. At the group's March 1998 meeting, UNCTAD summarized the main results of its recent analytical work on existing investment agreements. At the June 1998 meeting in response to a request by the working group, UNCTAD explained its ongoing work on the development dimension of international investment agreements. Also at the group's request, at its third meeting (September 1998) UNCTAD submitted a short paper on the "Similarities and differences between the draft United Nations Code of Conduct on Transnational Corporations and the OECD Guidelines for Multinational Enterprises" and provided a list of recent UNCTAD publications relevant to the group's work. The official reports of the intergovernmental expert meetings and the Commission relating to international investment agreements and their development dimension are made available to the working group on a regular basis.

Secretariat work

- ***Preparation and dissemination of a series of "International Investment Agreements Issues Papers"***

The main purpose of the International Investment Agreements Issues Papers series is to address key concepts and issues relevant to international investment agreements and to present them in a manner that is easily accessible to end-users, with particular attention being given to the way in which the key issues have been dealt with so far in existing international investment agreements and to the needs and concerns of developing countries. Each paper addresses the following questions: How is the concept or issue defined? How has it been used in relevant instruments to date? What are the principal economic implications, especially for development and under conditions of liberalization? How can the positive implications for development be maximized?

For the production of these papers a systematic legal and economic review system, as well as a peer review system, have been initiated. The series was launched in February 1999 with the publication of the following six papers:

**Foreign direct investment and development
Scope and definition**



Admission and establishment
Investment-related trade measures (IRTMs)
Most-favoured-nation treatment
Transfer pricing

A seminar was held in Geneva in February 1999 for senior economic journalists from developed and developing countries on issues related to international investment agreements, at which a preview was provided of the contents of the six papers.

The papers will be made available to the member States of UNCTAD and WTO, both through distribution to the Permanent Missions and at the various training events organized as part of the project. (An advance version of the paper on "Foreign direct investment and development" had already been made available to the WTO working group on the relationship between trade and investment.) The papers are also available to the general public and will be disseminated widely.

The organization of capacity-building seminars, regional symposia and training courses:

- On the basis of a review of current efforts in the area of international investment rule-making, regional symposia for decision-makers focus on key concepts and issues relevant to discussions on a PMFI. The first such symposium took place in Fez, Morocco, for African countries in June 1997. Since then, three further symposia have been organized:
- A regional symposium for Asia took place in New Delhi, India, in July 1998. Hosted by the Government of India, it was attended by 19 participants from 16 Asian countries. Apart from international experts (including Mr. Jagdish Bhagwati as keynote speaker), the faculty also included representatives of non-governmental organizations (NGOs) and business. The symposium concluded by adopting the "Message from Delhi", a declaration calling for UNCTAD to continue helping developing countries to participate as effectively as possible in discussions on international investment arrangements, including by organizing further subregional and interregional symposia on the subject, bearing in mind the specific needs of developing countries, particularly the least developed countries (LDCs). The results of the symposium were reported to the third session of the Commission on Investment, Technology and Related Financial Issues and the WTO working group on the relationship between trade and investment. On the occasion of the symposium, UNCTAD and the Consumer Unity and Trust Society (CUTS) co-organized a round table with NGOs that took place in New Delhi on 17 July.
- The regional symposium for the Caribbean was jointly organized with the Organization of American States (OAS) and took place in Kingston, Jamaica, in September 1998. Conducted in cooperation with the University of the West Indies, it hosted participants from 11 English-speaking Caribbean countries, as well as representatives of civil society. The results of the symposium were reported to the Trade and Development Board and the WTO working group.
- A regional symposium for the Andean Group took place in November 1998 in Lima, Peru, organized jointly with the Secretariat of the Andean Community and the OAS. It was attended by 52 participants from the five Andean countries and observers from civil society (academia, business and trade unions). Speakers, chairpersons and commentators were reputed international experts and made substantive presentations, supported by papers or



slide presentations on key issues. The symposium was followed that same month by a round table for NGOs and representatives of business and academia, organized in conjunction with the Universidad del Pacífico on "International investment arrangements and their implications for civil society". A seminar on the future of a multilateral framework on investment was also organized in Buenos Aires, Argentina attended by some 25 representatives of academia and the Ministry of Foreign Affairs. The results of the symposium were reported to the eighth session of the WTO working group on the relationship between trade and investment.

Currently, regional symposia are being prepared for Latin America in Argentina and for Arab countries in Egypt, with preparations also underway for an inter-regional symposium.

- The Geneva seminar series was launched in cooperation with WTO, each seminar commencing on the first day with an in-depth examination of the economics of FDI and its implications for development and concluding on the second day with an examination of key concepts and issues of importance to international investment agreements. The faculty for the regional symposia and the Geneva seminar series includes experts from academia, the business community, trade unions and NGOs. The first and second joint seminars were held in Glion-sur-Montreux in February and June 1998; both events included representatives of civil society. The third joint seminar has been scheduled for 21-22 April 1999 and will be conducted in French.

In 1998, the seminar series was attended by a total number of 50 participants from 43 member countries of WTO and UNCTAD. The evaluation undertaken by an independent team reported overwhelmingly positive feedback both as to the topical depth and the organization of the seminars.

- Training courses on FDI are being developed for diplomats and government officials and are designed to give participants more knowledge about FDI and FDI-related issues. A pilot training course took place in Turin, Italy in December 1997. In addition, an intensive training course is being developed for a core group of negotiators from developing countries involved in discussions relating to international investment agreements.

The International Investment Agreements Issues Papers will be part of the training package which will also comprise lectures, case studies, sharing of experiences and simulation exercises.

Responding to ad hoc technical assistance requests

Responding to national and regional ad hoc requests is at the core of the secretariat's technical assistance work. As an example of activities in this area, the secretariat, in response to a request by the Group of 15, organized jointly with the Technical Support Facility of the Group of 15 and the Special Unit for Technical Cooperation among Developing Countries of the United Nations Development Programme (UNDP) a forum for bilateral negotiations of bilateral investment treaties among the G-15 countries. The forum, held from 7-14 January 1999 in Glion-sur-Montreux, resulted in the negotiations of eight bilateral investment treaties. UNCTAD organized the event and provided the resource persons and background documentation, including the recently completed study on Bilateral Investment Treaties in the Mid-1990s (United Nations publication, sales no. E.98.II.D.8.)



- *The organization and facilitation of public private sector dialogue*

The organization of round table events with interested groups from civil society provides a forum for public private sector dialogue on issues related to international investment agreements. The first such dialogue was organized in Geneva in cooperation with the European Round table of Industrialists in December 1997. This dialogue was continued with a round table between ambassadors and NGOs in June 1998, which was held just prior to the annual UNCTAD-NGO consultations. During the consultations NGOs were briefed about UNCTAD's work in this area. A similar event with the International Confederation of Free Trade Unions (ICFTU) took place in Geneva last December.

As mentioned above, the civil society dialogue is also implemented on a regional level. Both the Indian and the Peruvian symposia were followed by events for the national and regional NGO community.

- *Research and policy analysis*

The PMFI work programme is embedded in UNCTAD's policy-oriented research in the area of FDI and, in particular, its World Investment Report series and several topical studies, as for example on incentives and bilateral investment treaties. The World Investment Report 1998: Trends and Determinants, reported on international developments in the area of investment and contained a brief assessment of a possible multilateral framework on investment as an FDI determinant. In addition, the journal Transnational Corporations provides a forum for views on FDI; in the August 1997 issue, Magda Shahin, Deputy Assistant Minister and Head of International Economic Affairs at the Ministry of Foreign Affairs, Egypt, examined the desirability of negotiating multilateral rules for FDI as well as competition policy in WTO, while the April 1998 issue featured an article by Patrick Robinson, then Deputy Solicitor-General of Jamaica, on criteria to test the development-friendliness of international investment agreements.

Evaluation

As an inherent part of the Trust Fund project, UNCTAD organized an independent evaluation from the inception of the project. The evaluation is undertaken by a team of evaluators who look at all aspects of the programme. During the reporting period, evaluators participated in intergovernmental meetings, Geneva seminars, regional symposia and civil society events, and made some interim observations, some of a corrective and some of a forward-looking nature.



Resources for UNCTAD's PMFI work programme have been received from Australia, Brazil, Canada, the Netherlands, Norway, Switzerland, the United Kingdom and the European Union. In addition, India, Morocco and Peru have contributed to the work programme by hosting regional symposia. All of these contributions were gratefully acknowledged in the proceedings of the seminars and symposia, as well as in prefaces to the Issues Papers.



LIST OF RECENT UNCTAD AND UNITED NATIONS PUBLICATIONS

Investment-Related Trade Measures. 64p. sales no. E.99.II.D.12. \$12.

Most-Favoured-Nation Treatment. 72p. sales no. E.99.II.D.11. \$12.

Admission and Establishment. 72p. sales no. E.99.II.D.10. \$12.

Scope and Definition. 96p. sales no. E.99.II.D.9. \$12.

Transfer Pricing. 72p. sales no. E.99.II.D.8. \$12.

Foreign Direct Investment and Development. 88p. sales no. E.98.II.D.15. \$12.

Bilateral Investment Treaties in the Mid-1990s. 322p. sales no. E.98.II.D.8. \$46.

World Investment Report 1998: Trends and Determinants. 430p. sales no. E.98.II.D.5. \$45.

World Investment Report 1997: Transnational Corporations, Market Structure and Competition Policy. 381p. sales no. E.97.II.D.10. \$45.

World Investment Report 1997: Transnational Corporations, Market Structure and Competition Policy. Overview. 68p. Free-of-charge (Arabic/Chinese/English/French/Russian/ Spanish).

International Investment Instruments: A Compendium. Volume I, 371 p., sales no. E.96.II.A.9; Volume II, 577 p., sales no. E.II.96.A.10; Volume III, 389 p., sales no. E.96.II.A.11; sales no. E.II.96.A.12 (the set). \$125

World Investment Report 1996: Investment, Trade and International Policy Arrangements. 364 p. sales no. E.96.II.A.14. \$45.

World Investment Report 1996: Investment, Trade and International Policy Arrangements. Overview. 22 p. Free-of-charge (Arabic/Chinese/English/French/Russian/Spanish).

Incentives and Foreign Direct Investment. Current Studies, Series A, no. 30, 98p. sales no. E.96.II.A.6. \$30.

The United Nations Library on Transnational Corporations. (Published by Routledge on behalf of the United Nations).

Volume 19: Transnational Corporations and National Law. 322p.

Volume 20: Transnational Corporations: The International Legal Framework. 545p.

Transnational Corporations. Published three times a year. Annual subscription price: \$45; individual issues \$20.

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