UNCTAD/ITE/Misc.58

PROGRESS REPORT

Work undertaken within UNCTAD's work programme on international investment agreements between the 10th Conference of UNCTAD, Bangkok, February 2000, and July 2002

United Nations
New York and Geneva, 2002

NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to foreign direct investment and transnational corporations. In the past, the Programme on Transnational Corporations was carried out by the United Nations Centre on Transnational Corporations (1975-1992) and the Transnational Corporations and Management Division of the United Nations Department of Economic and Social Development (1992-1993). In 1993, the Programme was transferred to the United Nations Conference on Trade and Development. UNCTAD seeks to further the understanding of the nature of transnational corporations and their contribution to development and to create an enabling environment for international investment and enterprise development. UNCTAD's work is carried out through intergovernmental deliberations, research and analysis, technical assistance activities, seminars, workshops and conferences.

The term "country" as used in this study also refers, as appropriate, to territories or areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. In addition, the designations of country groups are intended solely for statistical or analytical convenience and do not necessarily express a judgement about the stage of development reached by a particular country or area in the development process.

The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row;

A dash (-) indicates that the item is equal to zero or its value is negligible;

A blank in a table indicates that the item is not applicable;

A slash (/) between dates representing years, e.g. 1994/95, indicates a financial year;

Use of a hyphen (-) between dates representing years, e.g. 1994-1995, signifies the full period involved, including the beginning and end years.

Reference to "dollars" ($) means United States dollars, unless otherwise indicated.

Annual rates of growth or change, unless otherwise stated, refer to annual compound rates.

Details and percentages in tables do not necessarily add to totals because of rounding.

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Preface

Reflecting the growing proliferation of discussions and negotiations of international investment agreements, especially at the bilateral and regional levels, the tenth conference of UNCTAD, held in Bangkok, Thailand, in February 2000, requested the secretariat to help strengthen the understanding of the relationship between trade and investment. It also requested the secretariat to examine the role of international investment arrangements in the development process and how such arrangements could contribute to development, including through the facilitation of technology and enterprise development (Plan of Action, TD/386, paragraph 126).

This work has become all the more important in light of the November 2001 agreement of members of the World Trade Organization (WTO), in their Declaration of the Fourth Session of the WTO Ministerial Conference in Doha, to pursue further work in the area of trade and investment.

The present note documents the work that was carried out to fulfil UNCTAD's mandate in this area between February 2000 and July 2002.

The secretariat appreciates the support it has received from member countries in carrying out this mandate.

Karl P. Sauvant
Director, DITE/UNCTAD

Geneva, July 2002

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INTRODUCTION

Since UNCTAD IX in Midrand, South Africa, the secretariat has carried out a work programme on international investment agreements (IIAs) that was mostly financed through extra-budgetary contributions. In light of the evaluation of that work, and taking into account the endorsement of this work programme in the Bangkok Plan of Action, UNCTAD had established a new Trust Fund on Capacity-building in Developing Countries on Issues in IIAs. This trust fund has been amended to serve as the implementation device for the secretariat's follow-up work in the pursuit of the investment mandate arising out of the Doha Ministerial Declaration (box 1).

The trust fund became operational on 1 December 2000 with donations received from l'Agence pour la Francophonie; France; Japan; the Netherlands; Sweden; Switzerland; and the United Kingdom. In addition, China, Croatia, Egypt, Gabon, Germany, India, Indonesia, Malaysia, Namibia, Singapore, South Africa and Thailand have contributed to the work programme by hosting regional symposia, national seminars and training events. In pursuing this programme of work, UNCTAD has collaborated closely with a number of international, regional and national organizations, particularly with l'Agence pour la Francophonie; the Consumer Unity and Trust Society of India; the Dutch Foundation for Research on Multinationals (SOMO); the German Foundation for Development; the Indian Institute of Foreign Trade; Jawaharlal Nehru University, India; the Labour Resource and Research Institute (LaRRI), Namibia; the Legon Centre of Accra, Ghana; the National University of Singapore; Senghor University, Egypt; the Shanghai WTO Affairs Consultation Center, China; the University of Dar es Salam, Tanzania; the University of Pretoria, South Africa; the University of Tunis, Tunisia; the University of Yaoundé, Cameroon; and the World Trade Organization (WTO). All of these contributions are gratefully acknowledged.

This multi-donor trust fund is designed to support a work programme for a period of five years. In its amended form, it is structured around three main pillars: (1) policy analysis and development - through research and regional workshops; (2) human

Box 1. Joint UNCTAD/WTO follow-up to the Doha mandate

Members of the WTO recently agreed, in their Declaration of the Fourth Session of the WTO Ministerial Conference in Doha, on a work programme on investment (paragraphs 20-22) (see box 3 below). In this context, they also recognized (in paragraph 21) the need for strengthened technical assistance in the pursuance of that mandate. In response to this mandate, UNCTAD has developed a new technical assistance project that reflects consultations with a wide range of delegations in Geneva, especially from developing countries, and the Secretariat of the WTO. This project seeks to help implement the follow-up to the Doha mandate in close collaboration with the WTO, taking into account UNCTAD's experience with the implementation of its work programme on IIAs. The project involves three areas of activities that emerge, in order of priority, out of the three elements identified in paragraph 21 of the Doha Ministerial Declaration: policy analysis and development, human resources capacity-building and institutional capacity-building, as follows:

Activity 1: Policy analysis and policy development
(1a) Policy analysis of key issues in IIAs (preparation of studies on specific issues, studies aimed at identifying developing country interests, and translation of studies into all official United Nations languages)
(1b) Regional symposia for policy-makers from capitals[a]
(2) Policy analysis to examine recent trends in bilateral and regional investment agreements (preparation of studies)
(3) Policy analysis at the national level (national workshops and advisory missions related to direct negotiation-related policy analysis)
(4) Policy analysis through an international exchange of views (One-off event)
Activity 2: Human resources development
(1) Regional intensive training courses on issues in IIAs[a]
(2) Geneva-based in?depth training courses on key issues in IIAs[a]
(3) Negotiation facilitation workshops
(4) Geneva-based background seminars
Activity 3: Institutional development
(1) National workshops aimed at strengthening the national institutional framework and negotiation infrastructure[a]
(2) Technical assistance towards strengthening national investment institutions[b]

UNCTAD's proposed follow-up work to the Doha Ministerial Declaration was endorsed by the sixth session of the Commission on Investment, Technology and Related Financial Issues.

a Project planned to be undertaken jointly by UNCTAD and WTO.
b Project planned to be partly undertaken jointly by UNCTAD and WTO.

resource capacity-building - through intensive regional training courses and workshops for Geneva-based delegates, negotiation facilitation events and background seminars; and (3) institutional capacity-building - through national seminars and a civil society engagement element. The trust fund complements and supports the activities undertaken by UNCTAD in this area of work, particularly the issuance of a series of papers on *Issues in International Investment Agreements*, and research and analysis on foreign direct investment (FDI) in general. It envisions regular informal meetings with the donor and beneficiary community, as well as an independent evaluation after three years into the programme. The present report provides an overview of the activities undertaken within this programme of work since UNCTAD X in Bangkok in February 2000 (see annex 1), as well as an outlook on the activities in the pipeline (annex 2).[1] It also provides a summary assessment of the impact of the programmed activities, based on the evaluation of participants in seminars and training courses and the countries that have benefited from the trust fund activities.

A. TRUST FUND ACTIVITIES

1. Policy analysis and development

The policy analysis and development dimension of this work programme consists of four elements: (a) policy analysis on key issues in IIAs (activity 1(1a)); (b) regional symposia for policy-makers from capitals (activity 1(1b)); (c) policy analysis on recent trends in BITs and RIAs (activity 1(2)); policy analysis at the national level (activity 1(3)); and (d) policy analysis through an international exchange of views (activity 1(4)).

a. Policy analysis

The post-Doha policy analysis and development work concentrates on the FDI-trade/FDI-development nexus and, in particular, on key issues in IIAs, with a view towards deepening

[1] UNCTAD's earlier work in this area was reported on in the booklet titled "UNCTAD's Work Programme on International Investment Agreements: From UNCTAD IX, Midrand (1996), to UNCTAD X, Bangkok (2000)" (UNCTAD/ITE/IIT/Misc.26).

the understanding of the issues involved, exploring the range of issues that needs to be considered, identifying and protecting developing country interests and, in particular, ensuring that the development dimension is addressed.

While the specific post-Doha policy analysis work on these issues has as of yet not been initiated, other ongoing work has a bearing in this work. This includes in particular the continued work on the *IIA Issues Papers* (see below) and the *World Investment Report* series. In addition, the secretariat issues papers for the two 2002 expert group meetings of the Commission on Investment, Technology and Related Financial Issues (see below) touch on some of these aspects.

b. Regional symposia

The first joint WTO/UNCTAD regional symposium for 20 South, East and South-East Asian countries on "Trade, Investment and Development" took place from 14 to 15 March 2001 in Kuala Lumpur, Malaysia. This event, which was hosted by the Government of Malaysia and supported financially by the Government of Japan through the WTO Trust Fund and UNCTAD's Trust Fund on IIAs, attracted senior government officials from 20 countries of the region.

The first post-Doha joint WTO/UNCTAD regional seminar on "An evaluation of closer multilateral cooperation in the area of long-term cross-border investment, particularly foreign direct investment" was organized for the Asia and Pacific region. The seminar, which was organized by the WTO in collaboration with the UNCTAD secretariat, and hosted by the Government of Singapore, took place from 6 to 8 May and brought together 22 senior government officials from 20 economies of the region.

The second seminar was organized for francophone Africa and took place from 19 to 21 June in Libreville, Gabon. This seminar brought together 36 senior government officials from 25 francophone African countries and Haiti.

Similar seminars for Central America (Costa Rica, August 2002), Latin America (Peru, October 2002), Anglophone African

countries (Botswana, November 2002), Central and Eastern European countries (Croatia, February 2003) and Arab countries (Qatar, March 2003) are in their planning stages.

c. International exchange of views

Work also progressed on the policy analysis through an international exchange of views on the implications for development of closer multilateral cooperation in this field, with the full involvement of all stakeholders. For this element, a detailed project proposal has been developed and initiatives towards the establishment of a contact group involving several non-governmental organizations have been undertaken. This work is envisioned to bear fruit in the first half of 2003.

2. Human resources capacity-building

The human resources capacity building dimension of this work programme consists of four elements: (a) regional intensive training courses on issues in IIAs (activity 2(1)); (b) training workshops for Geneva-based delegates (activity 2(2)); (c) negotiation facilitation events for bilateral investment treaties and double taxation treaties (activity 2(3)); and (d) background seminars on the politics and economics of FDI (activity 2(4)).

a. Regional intensive training courses

Since Bangkok, four intensive training courses on issues in IIAs were organized. The programme and curriculum of the last two courses was adapted to fully reflect the Doha work programme on the relationship between trade and investment (DMD, paragraphs 20-22).

- The first course for francophone African countries took place in Alexandria, Egypt, from 5 to 15 June 2001. The course was organized in cooperation with Senghor University and l'Agence pour la Francophonie. It brought together 21 participants from 15 African countries (as well as the People's Republic of Laos).

- The training course for East, South-East and South Asia took place from 19 to 30 November 2001. This course was organized in cooperation with the Indian Institute of Foreign Trade as well as the Jawaharlal Nehru University, the National University of Singapore and the Shanghai WTO Affairs Consultation Center. Seventeen participants from 14 countries of the region took part in this course.

- The training course for anglo phone African countries took place from 18 to 29 March 2002. It was the first post-Doha training course organized by UNCTAD, and delivered in cooperation with the Investment and Trade Center of the University of Pretoria, the University of Dar es Salam, the Legon Center of Accra (Ghana) and the WTO. 29 participants from 19 countries (11 of which are LDCs) took part in this course.

- The second course for francophone African countries took place in Alexandria, Egypt, from 27 May to 6 June 2002. It was organized by UNCTAD in collaboration with the WTO and the University of Senghor, the University of Tunis and the University of Yaoundé. 21 negotiators from 19 francophone countries of the region, as well as and Haiti and Cambodia participated.

- The second course for Asia and the Pacific (New Delhi, November 2002), as well as the course for Latin America and the Caribbean countries (Lima, Peru, October 2002) are in their planning stages.

The intensive training seminars are based on the UNCTAD series on *Issues in International Investment Agreements*, and they also include a negotiation skills element. The regional capacity-building element of this work has borne fruit with an enhanced involvement of the regional counter-part institutions in the delivery of the second course for francophone Africa. Similar efforts are underway with regard to the second course for Asia and the Pacific.

As far as the long-distance learning element is concerned, both 2002 courses included e-based features aimed at directly supporting the courses and indirectly providing for an e-based follow-up mechanism. This has taken the form of the (ongoing)

updating of the IIA website and making all course materials available prior to the sessions on both the website and a CD-ROM. In addition, all *IIA papers* and the *Compendium of International Investment Instruments* have been published on a CD-ROM. Efforts are underway to improve the user-friendliness of the CD-ROMs and the interactivity element of the IIA website.

b. Geneva-based training workshops

The workshop series for Geneva-based delegates got underway in July 2002. The first Geneva training workshop took place on 2 July 2002. Dovetailed with the meeting of the WTO Working Group on the Relationship between Trade and Investment (WGTI) on 3 to 5 July, this event, organized by the WTO in collaboration with the UNCTAD secretariat, was tailored to provide insights into the seven topics listed in paragraph 22 of the Doha Ministerial Declaration, with particular emphasis on the three topics for the discussions in the 3-5 July WGTI Meeting ("Development provisions"; "Non-discrimination"; "Pre-establishment commitments on a GATS-type, positive list approach"). The workshop was based on the background notes prepared by the WTO secretariat and the UNCTAD series on *Issues in International Investment Agreement*. Similar workshops are planned in connection with the other forthcoming meetings of the WGTI in September and November 2002.

c. Negotiation facilitation events

Since February 2000, UNCTAD has implemented six rounds of bilateral investment treaty (BITs) negotiation facilitation events.

- The first round, which was financially supported by the Government of Japan through the WTO trust fund, took place in Sapporo, Japan, from 19 to 30 June 2000. It involved 12 countries and resulted in the signature of 23 BITs and seven agreed minutes.

- The second round, from 15 to 19 January 2001, was organized at the request of the Kyrgyz Republic and involved five countries (Austria, Denmark, Kyrgyz Republic, Latvia and Sweden).

This round resulted in the negotiation of four BITs.

- The third round of BITs negotiations, which concentrated on francophone least developed countries (LDCs), was held in Geneva from 24 January to 3 February 2001. Involving 19 countries, including nine LDCs and two developed countries (Belgium and Switzerland), it resulted in 42 BITs signed. Of these, 22 were finalized for signature during a ceremony at the Third United Nations Conference on the Least Developed Countries in Brussels, on 18 May 2001, which was presided over by Boutros Boutros-Ghali, Secretary General of the Organisation internationale de la francophonie. (The address by Mr. Boutros Boutros-Ghali on the occasion of this signing ceremony is attached; see annex 3.)

- The fourth round was organized in India from 20 to 28 February 2001. It involved seven countries (China, Croatia, Ethiopia, India, the Islamic Republic of Iran, Mongolia and Yemen) and resulted in six BITs signed.

- The fifth round took place from 19 to 28 April 2001 in Dubrovnik, Croatia, within the framework of the Balkan Stability Pact. This round involved six countries (Belarus, Croatia, Latvia, Malta, Moldova and Pakistan), and resulted in eight BITs. Belarus and Croatia also utilized this round to discuss a general trade agreement.

- The sixth round, which was financially supported by the German Foundation for Development, was organized for a group of least developed countries in Bonn, Germany, from 1 to 6 October 2001. This event brought together 11 economies (the Economic Union of Belgium-Luxembourg, Cambodia, Eritrea, France, Malawi, Mozambique, the Netherlands, Sudan, Sweden, Uganda and Zambia). It resulted in 13 BITs and five agreed minutes on a text with brackets. The Bonn negotiations were immediately followed by bilateral negotiations between Germany and Malawi in Berlin.

Future activities include another round of BITs negotiations between LDCs and capital-exporting countries. This round, which is organized at the request of several LDCs, is scheduled to take

place in Geneva from 4 to 13 November 2002. An event for the negotiation of double taxation treaties (DTTs) is scheduled for autumn 2002 in New York, in cooperation with the United Nations Department of Economic and Social Affairs.

The BITs and DTT rounds are meant to provide a platform for developing countries to negotiate BITs and DTTs with other interested countries, and among themselves. For that purpose, UNCTAD provides the facilities and technical support, including the services of a resource person. It should be noted that such negotiation events considerably reduce the cost and time involved in negotiating and finalizing BITs among the countries involved, and that they have been highly successful in the past (although in each event negotiations on a number of BITs could not be concluded because of various unresolved issues). Indeed, a number of BITs concluded at these rounds were initiated prior to the round itself. In addition, these facilitation events serve an important capacity- building and experience-gaining purpose for the countries involved. This is underlined by the fact that, in several of these rounds, countries brought additional negotiators at their own cost to benefit from the negotiations. UNCTAD does not participate in the negotiations as such.

d. Background seminars

Background seminars on the politics and economics of FDI, including in particular a seminar on the determinants of investment, are envisioned for the latter half of 2002 and the beginning of 2003. These seminars will be conducted for interested delegates in Geneva to discuss in particular the relative importance of the regulatory environment in the context of the determinants of FDI. They will be build on most recent research findings in this area, based on the *World Investment Report* series and other relevant research undertaken by the Division in this area.

3. Institutional capacity-building

The institutional capacity building dimension of this work programme consists of three elements: (a) national workshops aimed at strengthening the national institutional framework and

negotiation infrastructure (activity 3(1)); (b) technical assistance towards strengthening national investment institutions, including capacity-building workshops and engagement events for civil society (activity 3(2)).

a. National workshops

The national seminar element got underway in May 2002 with a seminar for China, from 13 to 14 May, and a seminar for Indonesia, on 16 May 2002. The national seminar for China was organized in collaboration with the Ministry of Foreign Trade and Economic Cooperation. 32 senior government officials from key ministries and the State Council commissions responsible for regulating foreign investment and WTO negotiations participated in the seminar. The national seminar for Indonesia was organized in collaboration with the Ministry of Industry and the Ministry of Foreign Affairs. Over 40 senior government officials from key ministries participated in the seminar. Similar workshops for Colombia, Guatemala, Sri Lanka, Tunisia and Venezuela are in their planning stages.

b. Investment institution technical assistance

The work programmes' envisioned technical assistance towards strengthening the national institutional infrastructure for foreign investment is embedded in the ongoing technical assistance work of the Division in the area of investment promotion and commercial diplomacy. Within the purview of this project no specific work related to investment promotion institution building has been undertaken until July 2002.

However, the civil society engagement element got underway in February 2001 with a pilot seminar for NGOs from the Southern African region. Jointly organized with the Dutch Foundation for Research on Multinationals (SOMO) and the Labour Resource and Research Institute (LaRRI), the training seminar was held in Namibia from 13 to 15 February 2001. Participants included 20 representatives from 21 non-governmental organizations (NGOs), community-based organizations, and trade unions (report available). Work in this area was given new momentum with the launching

of a joint UNCTAD-CUTS (Consumer Unity and Trust Society of India) project on "Awareness and capacity-building for civil society on investment regimes and international investment issues". This DFID-financed project seeks to address the need for involvement and capacity-building for civil society through the organization of fact-finding research and subsequent national and regional seminars for representatives of civil society. It is being implemented in Bangladesh, Brazil, Hungary, India, South Africa, Tanzania and Zambia. UNCTAD is cooperating by offering its expertise, information and contacts, as well as through active participation in the steering of this project. The project was launched with an inaugural brainstorming session in Jaipur, India, from 13 to 15 December 2001, in which UNCTAD participated. As part of this project, two national and one regional workshop will be organized in the latter half of this year.

Also within this work programme element, a roundtable discussion with business representatives was organized jointly with the WTO in Bangkok, Thailand, on 19 March 2001 to discuss the emerging international legal framework for FDI and outward investment opportunities for Thai businesses.

B. OTHER ACTIVITIES

1. IIA Issues papers

As mentioned above, the activities undertaken within the purview of the Trust Fund complement and continue the UNCTAD work programme on IIAs. Most importantly in this regard, they are building on UNCTAD's pink paper series on Issues in International Investment Agreements. Since Bangkok, this series has grown with the publications of eight further papers, and it now comprises 21 papers (see box 2). (The Executive Summaries of the papers can be found at http://www.unctad.org/ iia/iiapapers/index.htm.)

The newly issued papers are:

- *Flexibility for Development* (Sales No. E.00.II.D.6) deals with the basic challenge that developing-country Governments face when concluding and/or negotiating IIAs: how to achieve

Box 2. IIA Issues Papers published as of January 2002[a]

Admission and Establishment (Sales No. E.99.II.D.10)
Employment (Sales No. E.00.II.D.15)
Environment (Sales No. E.01.II.D.3)
Fair and Equitable Treatment (Sales No. E.99.II.D.15)
Foreign Direct Investment and Development (Sales No. E.98.II.D.15)
Home Country Measures (Sales No. E.01.II.D.19)
Host Country Operational Measures (Sales No. E.01.II.D.18)
Illicit Payments (Sales No. E.01.II.D.20)
International Investment Agreements: Flexibility for Development (Sales No. E.00.II.D.6)
Investment-Related Trade Measures (Sales No. E.99.II.D.12)
Lessons from the MAI (Sales No. E.99.II.D.26)
Most-Favoured-Nation Treatment. (Sales No. E.99.II.D.11)
National Treatment (Sales No. E.99.II.D.16)
Scope and Definition (Sales No. E.99.II.D.9)
Social Responsibility (Sales No. E.01.II.D.4)
Taking of Property (Sales No. E.00.II.D.4)
Taxation (Sales No. E.00.II.D.5)
Technology Transfer (Sales No. E.01.II.D.33)
Transfer of Funds (Sales No. E.00.II.D.27)
Transfer Pricing (Sales No. E.99.II.D.8)
Trends in International Investment Agreements: An Overview (Sales No. E.99.II.D.23)

[a] United Nations Sales publication numbers are provided in parentheses.

the goal of creating a stable, predictable and transparent FDI policy framework that enables firms to advance their corporate objectives, while, at the same time, retaining the margin of freedom necessary to pursue their countries' national development objectives. Flexibility is a concept that can help bridge these two goals by defining ways in which IIAs can be adapted to the particular conditions prevailing in developing countries on the one hand and to the realities of the economic asymmetries between these countries and the developed countries on the other.

- *Transfer of Funds* (Sales No. E.00.II.D.38), prepared jointly with the IMF, examines various provisions in IIAs that concern a host country's obligation to permit the payment, conversion and repatriation of amounts relating to an investment, that is, measures ensuring that a foreign investor will be able

to enjoy the financial benefits of a successful investment. It is noteworthy that all of the principal multilateral agreements permit countries to impose restrictions on such transfers in circumstances in which a member is confronted with a balance-of-payments crisis, while most regional and bilateral agreements do not allow for the imposition of such restrictions. The paper discusses the various advantages and disadvantages of restrictions.

- *Environment* (Sales No. E.01.II.D.3) examines how IIAs can address commitments to protect the environment and to promote the transfer and use of environmentally sound technologies and management practices to host countries. With respect to the transfer of environmentally sound technologies and management practices, one important issue that arises is how to enroll transnational corporations (TNCs) in the provision and use of such technologies and practices to host countries.

- *Social Responsibility* (Sales No. E.01.II.D.4) examines the relatively wide area of issues emerging from the economic and social impact of TNCs that go beyond issues related to employment and environment. (Both of these issues are addressed in other papers of this Series.) In particular, the paper focuses on a number of aspects - including developmental obligations, socio-political obligations and consumer protection issues - that have received some attention in international forums. It also looks at a few others - especially corporate governance, ethical business standards and the observance of human rights - that seem to be emerging issues. The paper observes that social responsibility issues are typically not addressed in IIAs and that, in any event, great care must be taken when dealing with such issues in IIAs.

- *Host Country Operational Measures* (Sales No. E.01.II.D.18) deals with the vast array of measures implemented by host countries concerning the operation of established foreign affiliates. Covering all aspects of an investment (such as ownership and control, hiring of personnel, procurement of inputs and sales conditions), these measures (which usually take the form of restrictions or performance requirements)

are meant to influence the location and character of FDI with a view to increasing its benefits in the light of national objectives and to correcting actual or perceived market distortions. The paper suggests that countries negotiating international investment rules in the future need to take into account the TRIMs Agreement. However, it concludes that options go beyond either covering or not covering certain host country operational measures (HCOMs), and that, ideally, any regulation should be preceded by careful study and by determination of the contribution by a specific HCOM to the development efforts of developing countries. This should extend to the issue of how a certain flexibility can be maintained in IIA provisions related to their use in the interest of development.

- *Home Country Measures* (Sales No. E.01.II.D.19) examines those policy measures taken by the home countries of firms choosing to invest abroad that are designed to encourage FDI flows to other countries. These home country measures (HCMs), which exist at the national, regional and multilateral levels, involve a broad variety of measures, ranging from information provision, technical assistance and capacity-building to financial, fiscal and insurance measures, investment-related trade measures, and measures related to the transfer of technology. The paper notes that most of this assistance remains at the discretion of the home country and is commonly shaped to serve the business interests of that country, along with general development objectives. Pointing out that increased stability, predictability and transparency among these promotional efforts could serve the interests of both host and home countries of TNCs, as well as the firms themselves, the paper develops several options for increasing the beneficial impact of HCMs.

- *Illicit Payments* (Sales No. E.01.II.D.20) examines the topic of transnational bribery in the context of IIAs and how these instruments have been structured and applied to combat transnational corruption through international obligations by States to criminalize such transactions within their national jurisdictions. The paper points out that international anti-bribery agreements seek to give each State party the maximum possible latitude for exercising its jurisdiction in the investigation

of instances of transnational corruption. Thus these agreements require countries to establish their jurisdiction to prosecute such transactions on the basis of the concepts of territoriality and nationality, as well as any other basis that is available under their national legal systems. At the same time, IIAs or related instruments include provisions with respect to international cooperation to minimize conflicts of jurisdiction, in terms of both the simultaneous exercise of jurisdiction by two or more States and extra-territorial application of the laws of one State, and extending to international cooperation in investigation and prosecution of alleged offences, extradition of perpetrators, gathering of evidence, and seizure and confiscation of the proceeds of a transaction. Governments engaging themselves in IIAs need to ensure that TNCs do not benefit from the protection afforded to them in IIAs while resorting to making illicit payments that could reduce the expected benefits from their investment to a host State. On the other hand, TNCs would need to be safeguarded from arbitrary, discriminatory or anti-competitive action that either results from bribery or may be directed towards them under illegitimate funding, thus implicating them in a corrupt transaction. The policy options that present themselves for inclusion in IIAs would need to be considered in light of these factors.

- *Transfer of Technology* (Sales No. E.01.II.D.33) discusses the issue of technology transfer in the context of IIAs. The paper outlines the policies for the encouragement of technology transfer that have evolved over the years and have been the subject of provisions in IIAs. Two broad approaches to technology issues are identified. The first is a regulatory approach, which, though preserving the essential characteristics of intellectual property rights, seeks to intervene in the market for technology so as to rectify perceived inequalities in that market between the technology owner and the technology recipient through regulatory intervention in technology transfer transactions (for example, the outlawing of provisions in technology transfer transactions that may be seen to favour the technology owner unduly). A contrasting approach sees the transfer of technology as being best undertaken in a market-based environment. Thus the emphasis is on the creation of conditions for a free market transfer of technology.

The principal features of this approach are reliance on the protection of private rights to technology based on intellectual property laws; the absence of direct intervention in the content or conduct of technology transfer transactions, save where these violate principles of competition law by reason of their market-distorting effects and/or by their use of unreasonable restrictive trade practices; and by the prohibition, or highly proscribed use, of technology-related performance requirements. Against this background, the paper develops seven options for dealing with technology transfer in IIAs.

Within the first six months of 2002, work on three new papers has been completed. These papers - on *Transparency*, *State-State Dispute Settlement* and *Investor-State Dispute Settlement* - are now entering the internal printing and publication process.

The papers on *Admission and Establishment* and on *Most-Favoured-Nation Treatment* have by now been published in French; *Admission and Establishment*, *Most-Favoured-Nation Treatment*, *Investment-Related Trade Measures* and *Scope and Definition* are now also available in Spanish and Russian; and *Admission and Establishment* has been issued in Arabic.

2. Other publications

The activities undertaken with the support of this trust fund are embedded in UNCTAD's overall research and analytical work in the area of investment. Since the inception of the trust fund, several publications have been issued that have a bearing on the work undertaken in this area:

- The study on *Bilateral Investment Treaties*: *1959-1999* (Document No. UNCTAD/ITE/IIA/2) charts the rapid increase in the number of BITs and provides an overview of the universe of BITs signed by the end of 1999, introduced by a section highlighting significant recent developments in BITs. This report is available on the Internet (www.unctad.org).

- The *Compendium on International Investment Agreements* was complemented with volumes IV, V, and VI. These new volumes of the *Compendium* provide further multilateral

and regional instruments, investment-related provisions in free trade and economic integration agreements, association agreements, bilateral agreements and non-governmental instruments, and, for the first time, prototype bilateral double taxation treaties (Sales Nos. E.00.II.D.13 (Vol. IV); E.00.II.D.14 (Vol. V); and E.01.II.D.34 (Vol. VI)). In addition, advanced copies of three new volumes (Vol. VII, VIII and IX) have been pre-published (sales numbers forthcoming).

- The study on *Tax Incentives and Foreign Direct Investment* (Sales No. E.01.II.D.5) shows that, while the efficacy of incentives as a determinant for attracting FDI is often questioned, countries have increasingly resorted to such measures in recent years. In particular, they have been offering tax incentives to influence the location decisions of investors. The study contains a survey of tax incentive regimes in over 45 countries from all regions of the world. Nearly all countries surveyed offer incentives that target specific industries. The study illustrates the trends as far as different types of fiscal incentives granted: tax holidays or tax rate reductions; accelerated depreciation allowances; allowances for investment in training, research and development or similar types of activities; export incentives, and so on. The analysis also sheds light on other issues related to the use of incentives, such as design considerations, the importance of proper administration of incentives, and home country measures that increase the efficacy of tax incentives offered in host developing countries.

- The *Compendium of International Arrangements on Transfer of Technology: Selected Instruments* (Sales No. E.01.II.D.28) provides a comprehensive overview and verbatim citations of the relevant technology transfer provisions of existing international instruments. The overview proposes a synthesis of the main challenges facing developed and developing countries alike in this field, drawing on the general context of technology transfer before analyzing the important question of the implementation of the international arrangements. The technology-related provisions contained in a number of multilateral, regional, interregional and bilateral instruments reflect the broad variety of forms, policies, practices and effectiveness of implementation with regard to instruments containing provisions on technology transfer. The Compendium

also includes instruments that do not contain specific provisions relevant to transfer of technology but may nevertheless have an impact on access to and transfer of technology, such as intellectual property rights conventions.

- The August 2000 edition of *Transnational Corporations* (vol. 9, number 2), published in February 2001, contains an article by Marinus W. Sikkel on a multilateral framework for investment (pp. 127-152). The August 2001 edition (vol. 10, no. 2) contains a review essay on the IIA series by Christopher Wilkie (see annex 6).

- The *World Investment Report 2001: Promoting Linkages* (Sales No. E.01.II.D.12) examines the continued growth of FDI as one of the major determinants of the process of globalization. In 2000, global inflows of FDI undertaken by an estimated 60,000 TNCs climbed to $1.3 trillion, increasing the global inward stock of FDI to $6.3 trillion. Although unevenly benefiting from this productive core of the globalization process, almost all countries are acknowledging the advantages that FDI can bring to host economies and are actively seeking to attract it: witness the continued unilateral liberalization of the FDI regimes of many countries (of the 150 reported changes in FDI regimes by 69 countries in 2000, 98 per cent were in the direction of more liberalization); witness also the rise of the number of BITs (in 2000, some 78 countries concluded 84 BITs, bringing the total of BITs to 1,941 at the end of 2000) and treaties for the avoidance of double taxation (with the total reaching 2,118 in December 2000).

- The *Investment Policy Reviews* have been carried out for Botswana, Ecuador, Egypt, Ethiopia, Mauritius, Peru, Tanzania, Uganda and Uzbekistan. Follow-up to the recommendations of the Reviews has involved technical assistance in the area of IIAs, for example, inclusion of the concerned countries in the BITs rounds.

In addition, UNCTAD has contributed to the joint WTO/UNCTAD study on Trade-Related Investment Measures and Other Performance Requirements (WTO, G/C/W/307).

C. INTERGOVERNMENTAL ACTIVITIES

UNCTAD's work in this area also supports, and is brought to the attention of, the intergovernmental machinery. During the reporting period, two sessions of the Commission on Investment, Technology and Related Financial Issues and four intergovernmental expert group meetings were held. In chronological order, these were

- The expert meeting on "Home country measures" was held from 8 to 10 November 2000 and focussed its discussion on home country measures, including information provision, technical assistance and capacity-building measures, financial, fiscal and insurance measures, investment-related trade measures, and measures related to the transfer of technology (TD/B/COM.2.27; TD/B/COM.2/EM.8/3). The discussion confirmed that the issue of outward investment and technology transfer promotion has grown beyond the North-South divide, with a number of developing home countries also actively promoting outward investment. Experts also noted that the pursuit of best practices in this area should involve all actors concerned, including home and host county government and private-sector institutions. They emphasized the need for flexible and adaptable measures, as "no one size fits all". The meeting produced an agreed outcome that provides a common definition and contemporary rationale for home country measures; a list of best practices, including a reference to the role that international arrangements can and do play; possible improvements; and recommendations for home and host countries, the UNCTAD secretariat and UNCTAD's intergovernmental process.

- The fifth session of the Commission (12 to 16 February 2001) dealt with two sensitive and difficult issues: mergers and acquisitions (M&As) and HCMs (TD/B/COM.2/31; TD/B/48/4). The policy dialogues were built on the outcomes of the respective expert meetings and the secretariat's issues notes. The negotiations led to agreed recommendations. These call, among others, for member countries to put in place appropriate, transparent and predictable policy frameworks, notably to encourage the positive contribution

of cross?border M&As to development and minimize any negative effects of such transactions with a view to advancing the mutual interests of host countries and transnational corporations. On the issue of HCMs, the Commission recommended, among other things, that best practices in the area of HCMs be emulated, where appropriate, and applied in a cooperative spirit.

- The expert group meeting on "International arrangements for transfer of technology: best practices for access to and measures to encourage transfer of technology with a view to capacity-building in developing countries, especially in least developed countries" was held from 27 to 29 June 2001 (TD/B/COM.2/EM.9/3; TD/B/COM.2/33). The meeting reviewed the coverage of agreements, particularly as regards the spread of provisions for transfer of technology, the effectiveness of their implementation, and possible improvements in what can be done to enhance the impact of such provisions on the transfer of technology. The outcome of the meeting notes that several dozen international instruments include provisions with respect to enhancing the transfer of technology to developing countries, in particular LDCs, as well as their technological capabilities. There has been some success in implementation, but more needs to be done. The outcome provides a list of best practices that could contribute to generating favourable conditions and opportunities for transfer of technology and capacity-building.

- The expert group meeting on "The impact of FDI policies on industrialization, local entrepreneurship and the development of supply capacity" was held from 5 to 7 November (TD/B/COM.2/EM.10/L.1). The meeting examined the policy issues related to the link between FDI and industrialization, export competitiveness and development of supply capacity; FDI promotion in the context of development strategies; specific instruments and tools for FDI targeting; and the promotion of backward linkages to support local entrepreneurship and development of supply capacity. Experts identified a number of best practices in the design of FDI promotion policies and policies to promote backward linkages and drew up a number of actions to be taken by Governments, the international community and UNCTAD aimed at increasing

the benefits that developing countries can derive from FDI in these areas.

- The sixth session of the Commission (21 to 25 January 2002) dealt with the outcomes of these two latter expert meetings, as well as the investment policy review of Tanzania and the implications for the work of the Commission following the Doha Ministerial Declaration (TD/B/COM.2/40; TD/B/EX(28)/3). The policy dialogues were built on the outcomes of the respective expert meetings and the secretariat's issues notes. The negotiations led to agreed recommendations. These call, among others, for member countries to go beyond setting up open and transparent investment policy frameworks nationally and to consider cost-efficient ways to pro-actively promote FDI in light with national policy objectives, notably to encourage linkages between foreign affiliates and local suppliers and service providers. The Commission also called for the creation of a hospitable domestic regulatory environment for foreign investment, together with intellectual property protection, in the interest of encouraging transfer and access to technology. On the issue of the implications of the Doha Ministerial Declaration, the negotiations led to agreed conclusions that call for, among others, the implementation of an enhanced technical assistance and capacity-building programme in close collaboration with the WTO (see box 4).

- The expert meeting on "Bilateral and regional approaches to multilateral cooperation in the area of long-term cross-border investment, particularly foreign direct investment", which was held in Geneva from 12 to 14 June 2002, was the first discussion in UNCTAD after Doha of the issue of international investment agreements (IIAs). The meeting revolved around the similarities and differences in bilateral investment treaties (BITs) and regional investment agreements (RIAs), and the development dimension of IIAs. The discussion suggested that experts can agree on what elements form common ground in the formulation of IIAs (e.g. certain treatment standards), which elements are subject to divergences (e.g. the extension of treatment provisions to the pre-entry stage and the treatment of performance requirements), and in which manner the development dimension can be effectively

addressed in IIAs (e.g. through flexible approaches in treaty provisions, the application of special and differential treatment to IIAs, objective criteria for transition periods, etc.). The discussion yielded a kind of checklist for future reference that could be taken into account when discussing and/or negotiating international investment rules, be it at the bilateral, regional and/or multilateral level. The outcome of the meeting will form an input into the policy dialogue of the seventh session of the Commission in 2003.

Activities under this programme of work were also brought to the attention of the WTO Working Group on the Relationship between Trade and Investment at its sessions of 11 to 12 October and 16 November 2000, 7 to 8 March, 13 to14 June and 5 October 2001; and 18-19 April and 3-5 July 2002. The secretariat, as an observer, made presentations on all issues under discussion. In this context, the secretariat also provided technical support to a number of developing countries in consultations that preceded the WGTI meetings. Work is underway to continue this support to the future meetings of the Working Party in pursuance of the Doha mandate.

D. PRELIMINARY ASSESSMENT

Since the inception of the trust fund, a total of 103 economies (86 of which are developing, 40 are LDCs, 8 are transitional economies, and 9 are developed) have benefited from the activities pursued in its realm (48 from Africa; 34 from Asia and the Pacific; 6 from the Western Hemisphere; and 15 from Europe) (annex 4). Of these economies, 49 were direct beneficiaries of the various BITs facilitation events; 49 participated in intensive training courses; 23 were beneficiaries of the Geneva-based workshop; and 47 participated in the regional seminars. Non-state actors from four countries benefited from the civil society event organized in Namibia, and China and Indonesia benefited from national seminars (see table 1).

As far as the intensive training courses are concerned, a preliminary impact assessment (based on questionnaire responses by individual participants) reveals that the overwhelming number

of participants found the quality, efficiency and usefulness of the courses excellent (between 67 per cent [Alexandria]; 81 per cent [New Delhi]; 84 per cent [Pretoria]; and 52 per cent [Alexandria-II]) and good (between 33 per cent [Alexandria]; 19 per cent [New Delhi]; 16 per cent [Pretoria]; and 48 per cent [Alexandria-II]) (see table 2). For all events, cooperation with co-sponsoring and co-executing institutions was excellent. (Detailed evaluations and questionnaires are available.)

Table 1. Participation in IIA trust fund activities: (February 2000–July 2002), by activity

Event	Economies participating	Number
Activity 1(1b) Regional seminars		
Regional seminar Kuala Lumpur (February 2001)	Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Hong Kong (China), India, Indonesia, Japan, Republic of Korea, Lao People's Democratic Republic, Malaysia, Maldives, Mongolia, Nepal, Pakistan, Philippines, Singapore, Thailand, Viet Nam	20
Regional seminar Singapore (May 2002)	Bhutan, Brunei Darussalam, Cambodia, China, Chinese Taipei, Fiji (Republic of), Hong Kong (China), Indonesia, Korea (Republic of), Lao People's Democratic Republic, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore, Sri Lanka, Thailand, Tonga	21
Regional seminar Gabon (June 2002)	Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Chad, Comoros, Congo (Republic of), Congo (Democratic Republic of), Cote d'Ivoire, Djibouti, Gabon, Guinea, Equatorial Guinea, Haiti, Mali, Mauritius, Morocco, Niger, Rwanda, Sao Tomé and Principe, Senegal, Togo, Tunisia	26
Activity 2(1) Regional intensive training courses		
Alexandria training event (June 2001)	Benin, Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Democratic Republic of the Congo, Gabon, Guinea, Lao People's Democratic Republic, Madagascar, Mali, Mauritania, Mauritius, Morocco, Tunisia	16

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(Table 1, continued)

Event	Economies participating	Number
New Delhi training event (November 2001)	Bangladesh, China, India, Lao People's Democratic Republic, Malaysia, Micronesia (Federated States of), Mongolia, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Viet Nam, Yemen	14
Pretoria training event (March 2002)	Botswana, Cameroon, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Nigeria, South Africa, Swaziland, Tanzania (United Republic of), Uganda, Zambia, Zimbabwe	19
Alexandria training event II (June 2002)	Benin, Burkina Faso, Burundi, Cambodia, Cameroon, Congo (Republic of), Cote d'Ivoire, Djibouti, Gabon, Guinea, Guinea-Bissau, Haiti, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Senegal, Togo, Tunisia	21
Activity 2(2) Geneva-based workshops		
Geneva-based workshop (July 2002)	Bahrain, Barbados, Brazil, Brunei Darussalam, Bulgaria, China, Chinese Taipei, Croatia, Egypt, Estonia, Ghana, Hong Kong (China), Hungary, India, Indonesia, Jordan, Kenya, Korea, Lesotho, Macao (China), Nigeria, Sri Lanka, United States	23
Activity 2(3) Negotiation facilitation workshops		
BITs round, Sapporo (June 2000)	Cambodia, Colombia, Croatia, Egypt, Ghana, India, Indonesia, Iran (Islamic Republic of), Lao People's Democratic Republic, Myanmar, Peru, Philippines	12
BITs round, Kyrgyzstan (January 2001)	Austria, Denmark, Kyrgyzstan, Latvia, Sweden	5
BITs round, LDCs (January/ February 2001)	Belgium, Benin, Burkina Faso, Burundi, Cameroon, Chad, Comoros, Egypt, Ghana, Guinea, Libyan Arab Jamahiriya, Madagascar, Malaysia, Mali, Mauritania, Mauritius, South Africa, Switzerland, Zambia	19
BITs round, India (February 2001)	China, Croatia, Ethiopia, India, Iran (Islamic Republic of), Mongolia, Yemen	7
BITs round, Croatia (April 2001)	Belarus, Croatia, Latvia, Malta, Moldova (Republic of), Pakistan	6

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(Table 1, concluded)

Event	Economies participating	Number
BITs round, Germany (October 2001)	Belgium, Cambodia, Eritrea, France, Malawi, Mozambique, Netherlands, Sudan, Sweden, Uganda, Zambia	11
Activity 3(1) National seminars		
National seminars (March 2001; May 2002)	China, Indonesia, Thailand	3
Activity 3(2) Institution-building seminars		
Namibia NGO seminar (February 2001)	Namibia, South Africa, Zambia, Zimbabwe	4

As far as the BIT facilitation events are concerned, a preliminary impact assessment reveals that the activities have resulted in 73 BITs, negotiated by a total of 105 country negotiators who participated in them (see annex 5). Various participants and other country officials have indicated that the value of the events far exceeds the numeric achievement of BITs concluded, and extents particularly to the experiences gained by individual negotiators and the added capacity at the human resources level that these events entailed. An indicator of this assessment is the fact that various countries have participated in these events with more than one negotiator, with additional negotiators paid for by their respective governments (21 participants from developing countries had their expenses paid by their respective Governments, while 12 participants came from developed countries).

While an assessment of the number of BITs resulting from these events that have actually been ratified and are in force is still under preparation, the broad variety of countries that participated in these events and concluded BITs (including several developed countries) suggests that the organization of such events serves a useful purpose. Work is currently underway in UNCTAD to determine the status of the negotiated BITs.

With regard to the regional seminars in Kuala Lumpur, Singapore and Gabon, participants' assessment ranged between

excellent (31 per cent [Kuala Lumpur], 37 per cent [Singapore] and 15 per cent [Gabon]) and good (47 per cent [Kuala Lumpur], 55 per cent [Singapore] and 50 per cent [Gabon]). Cooperation with the WTO in the organization and implementation of this event has been excellent.[2]

Table 2. Summary evaluations of the intensive training courses
(Per cent)

Question/event	In terms of imparting information and strengthening of understanding of issues related to your official duties, how would you rate the overall effectiveness of the course?[a]	How would you rate the effectiveness and usefulness of the training session as a whole to your official duties?
ALEXANDRIA		
Excellent	67.0	76.0
Good	33.0	19.0
Adequate	0.0	5.0
Less than adequate	0.0	0.0
NEW DELHI		
Excellent	81.3	87.5
Good	18.8	12.4
Adequate	0.0	0.0
Less than adequate	0.0	0.0
PRETORIA		
Excellent	84.0	80.0
Good	16.0	20.0
Adequate	0.0	0.0
Less than adequate	0.0	0.0
ALEXANDRIA II		
Excellent	52.0	86.0
Good	48.0	14.0
Adequate	0.0	5.0
Less than adequate	0.0	0.0

[a] In the Alexandria questionnaires the question was formulated as follows: "Comment evalueriez-vous l'organisation de cette session de formation?" Note: totals may not add up to 100 per cent due to rounding.

With regard to the national seminars, a preliminary impact assessment (based on questionnaire responses by individual participants) reveals that the overwhelming number of participants found the quality, efficiency and usefulness of the courses excellent (between 62 per cent [Indonesia] and 44 per cent [China]) and good (between 32 per cent [Indonesia] and 56 per cent [China]). For both events, cooperation with co-sponsoring and co-executing institutions was excellent. (Detailed evaluations and questionnaires are available.)

The Geneva-based workshop on 2 July was rated by participants as ranging between excellent (18 per cent), good (73 per cent) and adequate (9 per cent) in terms of imparting information and strengthening the understanding of issues.

As far as the NGO training event in Namibia is concerned, participants' assessments indicated shortcomings in the seminar's design and intended purpose. For many participants, the event did not fulfil its role as an advocacy forum. In addition, the capacity-building nature fell short of the organizations' expectations. Partly for this reason, a new approach in conjunction with the Indian-based NGO Consumer Unity and Trust Society (CUTS) is currently being pursued.

UNCTAD's related activities, in particular the IIA Issues Paper Series and the World Investment Report 2001, have continued to receive an excellent reception by Government officials as well as researchers and negotiators in the field. (The recent review article by Christopher Wilkie in Transnational Corporations appears in annex 6.) Executive summaries of IIA Issues papers were made available free of charge on the Internet. The related UNCTAD Web site had registered 36,000 hits as of November 2001. (Hits in 2000 totalled 27,617.)

Finally, the work programme as a whole and its outputs have garnered appreciative comments in numerous statements by Governments in UNCTAD's intergovernmental meetings (the

[2] The Libreville questionnaire was designed and administered by the WTO. The relevant question was formulated as follows: "Veuillez donner votre appréciation globale sur les aspects suivants de l'activité d'assistance technique: a) Acquisition de compétences nouvelles et connaissances utilisable dans la pratique". Participants were asked to answer this question on a 5-point scale ranging from "trop peu" to "plus que prévu".

Commission on Investment, Technology and Related Financial Issues; its expert meetings on IIAs and technology transfer; and the Trade and Development Board) and in the meetings of the WTO Working Group on the Relationship between Trade and Investment.

E. BEYOND DOHA

Members of the WTO recently agreed, in their Declaration of the Fourth Session of the WTO Ministerial Conference in Doha, on a work programme on investment (see box 3). In this context, they also recognized (in paragraph 21) the need for strengthened technical assistance in the pursuance of that mandate.

In response to this mandate, UNCTAD has developed a new technical assistance project that reflects consultations with a wide range of delegations in Geneva, especially from developing countries, and the Secretariat of the WTO. This project seeks to help implement the follow-up to the Doha mandate in close collaboration with the WTO, taking into account UNCTAD's experience with the implementation of its work programme on IIAs. The project involves three areas of activities that emerge, in order of priority, out of the three elements identified in paragraph 21 of the Doha Ministerial Declaration: policy analysis and development, human resources capacity-building and institutional capacity-building (see box 1 above). UNCTAD's proposed follow-up work to the Doha Ministerial Declaration was endorsed by the sixth session of the Commission on Investment, Technology and Related Financial Issues (box 4).

Box 3. Ministerial Declaration of the Fourth Session of the WTO Ministerial Conference, Doha, 9-14 November 2001

(excerpt)

"20. Recognizing 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, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.

/...

(Box 3, concluded)

21. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

22. 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: scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development 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, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest. The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances. Due regard should be paid to other relevant WTO provisions. Account should be taken, as appropriate, of existing bilateral and regional arrangements on investment."

Source: WTO Document, WT/MIN(01)/DEC/W/1, 14 November 2001.

Box 4. Implications for the work of the Commission Following the Doha Ministerial Meeting

Agreed conclusions adopted by the Commission at its sixth session

1. We recognize the contribution of UNCTAD's work programme on investment agreements to deepening the understanding of the issues involved, exploring the range of issues that needs to be considered, identifying the interests of developing countries and, in particular, ensuring that the development dimension is addressed.

2. We recognize the needs of developing countries, in particular least developed countries, for enhanced support for technical assistance and capacity building in this area, including policy analysis and development,

/...

(Box 4, concluded)

so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we emphasize the need for strengthened and adequately resourced assistance to respond to these needs, as specified in paragraph 21 of the Doha Ministerial Declaration, taking into account, where appropriate, paragraphs 42-43.

3. In response to this provision, the Commission calls on UNCTAD to implement an enhanced technical assistance and capacity-building programme that in close collaboration with the World Trade Organization (WTO) responds to the needs of beneficiary countries and addresses the three areas emerging from paragraph 21 of the Doha Ministerial Declaration, namely policy analysis and development, human resources development and institutional development. Work in this connection should examine past country experiences.

4. The Commission calls on donors and countries in a position to do so to provide the necessary means and assistance to undertake such an enhanced programme, whose practical implementation should not be at the expense of the resources devoted to the ongoing work, with full use being made of possible synergies.

5. The Commission further encourages the secretariat to provide substantive support to the WTO Working Group on the Relationship between Trade and Investment, as well as to the WTO work programme on the relationship between trade and transfer of technology.

6. The Commission requests the secretariat to report to its next session about the progress made in this respect.

Source: TD/B/Com.2/40; TD/B/EX(28)3.

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UNCTAD's work on IIAs can be viewed on the INTERNET at:
http://www.unctad.org/iia/index/htm

ANNEX 1
Activities implemented under the trust fund project on "Capacity-building in developing countries on issues relating to international investment agreements" (INT/0T0/BG)
Calendar of events (June 2000 – July 2002)

Date	*Activity*	*Venue*
19-30 June 2000	Activity 2(3): BITs negotiation workshop Sapporo	Sapporo, Japan
11-12 October 2000	WTO Working Group on the Relationship between Trade and Investment: attendance and reporting on UNCTAD's activities	Geneva, Switzerland
16-20 October 2000	UNCTAD Trade and Development Board	Geneva, Switzerland
8-10 November 2000	UNCTAD Expert Group Meeting on "Home Country Measures"	Geneva, Switzerland
16 November 2000	WTO Working Group on the Relationship between Trade and Investment: attendance and reporting on UNCTAD's activities	Geneva, Switzerland
15-19 January 2001	Activity 2(3): BITs negotiation workshop for Kyrgyzstan	Geneva, Switzerland
24 January - 3 February 2001	Activity 2(3): BITs negotiation workshop for Francophone LDCs	Geneva, Switzerland
12-16 February 2001	UNCTAD Commission on Investment, Technology and Related Financial Issues, 5th session	Geneva, Switzerland
13-16 February 2001	Activity 3(2): Joint LaRRI/SOMO/UNCTAD NGO training seminar on IIAs	Windhoek, Namibia
20-28 February 2001	Activity 2(3): BITs negotiation workshop for India	New Delhi, India
7-8 March 2001	WTO Working Group on the Relationship between Trade and Investment: attendance and reporting on UNCTAD's activities	Geneva, Switzerland
14-15 March 2001	Activity 1(1b): Joint WTO/UNCTAD regional symposium on "Investment, trade and development"	Kuala Lumpur, Malaysia

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Annex 1 (continued)

Date	*Activity*	*Venue*
19 March 2001	Activity 3(2): Joint WTO/UNCTAD roundtable with Thai business representatives	Bangkok, Thailand
19-28 April 2001	Activity 2(3): BITs negotiation workshop for Croatia	Dubrovnik, Croatia
5-15 June 2001	Activity 2(1): Intensive IIA training course for Francophone Africa	Alexandria, Egypt
13-14 June 2001	WTO Working Group on the Relationship between Trade and Investment: attendance and reporting on UNCTAD's activities	Geneva, Switzerland
27-29 June 2001	UNCTAD Expert Group Meeting on "International Arrangements for Transfer of Technology"	Geneva, Switzerland
1-6 October 2001	Activity 2(3): BITs negotiation workshop for LDCs	Bonn, Germany
5 October 2001	WTO Working Group on the Relationship between Trade and Investment: attendance and reporting on UNCTAD's activities	Geneva, Switzerland
5-7 November 2001	UNCTAD Expert Group Meeting on "The Impact of FDI Policies"	Geneva, Switzerland
19-20 November 2001	Activity 2(1): Intensive IIA training course for Asia and the Pacific	New Delhi, India
13-15 December 2001	Activity 3(2): Inaugural brainstorming seminar for the joint CUTS/UNCTAD project on awareness-building in civil society	Jaipur, India
21-25 January 2002	UNCTAD Commission on Investment, Technology and Related Financial Issues, 6th session	Geneva, Switzerland
18-29 March 2002	Activity 2(1): Intensive IIA training course for Anglophone Africa	Pretoria, South Africa
18-19 April 2002	WTO Working Group on the Relationship between Trade and Investment: attendance and presentation on technical assistance activities and "transparency"	Geneva, Switzerland

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Annex 1 (concluded)

Date	*Activity*	*Venue*
6-8 May 2002	Activity 1(1b): Regional symposium for Asia and the Pacific	Singapore
13-14 May 2002	Activity 3(1): National seminar China	Beijing, China
16 May 2002	Activity 3(1): National seminar Indonesia	Djakarta, Indonesia
27 May - 6 June 2002	Activity 2(1): Intensive IIA training course for Francophone Africa II	Alexandria, Egypt
12-14 June 2002	UNCTAD Expert Group Meeting on "Bilateral and regional approaches to multilateral cooperation in the area of long-term, cross-border investment"	Geneva, Switzerland
19-21 June 2002	Activity 1(1b): Regional symposium for Francophone Africa	Libreville, Gabon
2 July 2002	Activity 2(2): Workshop for Geneva-based delegates	Geneva, Switzerland
3-5 July 2002	WTO Working Group on the Relationship between Trade and Investment: attendance and presentation on technical assistance activities; "Development provisions"; "Non-discrimination" and "Pre-establishment commitments on a GATS-type, positive list approach"	Geneva, Switzerland

NOTE: Shaded activities refer to events organized within the purview of the Trust Fund project INT/OTO/BG; non-shaded activities refer to other relevant events.

ANNEX 2
Activities forthcoming under the trust fund project on "Capacity-building in developing countries on issues relating to international investment agreements" (INT/0T0/BG)
Calendar of events second half of 2002

Date	*Activity*	*Venue*
12-13 August 2002	Activity 1(1b): Regional seminar for Central America and (spanish-speaking) Caribbean	San José, Costa Rica
13 September 2002	Activity 2(2): Geneva-based workshop (Franco phone countries)	Geneva, Switzerland
16-18 September 2002	WTO Working Group on the Relationship between Trade and Investment	Geneva, Switzerland
7-18 October 2002	Activity 2(1): Intensive training course for Latin America	Lima, Peru
7-9 October 2002	Activity 1(1b): Regional seminar for Latin America	Lima, Peru
October 2002	Activity 3(1): National seminar Columbia	Bogota,Colombia
4-13 November 2002	LDC BITs facilitation round	Geneva, Switzerland
6-8 November 2002	UNCTAD Expert Group Meeting on "The development dimension of FDI: policies to enhance the role of FDI in support of the competitiveness of the enterprise sector and the economic performance of host economies, taking into account the trade-investment interface, in the national and international context"	Geneva, Switzerland
12-13 November 2002	Workshop for national negotiators from capitals (Africa) financed by JICA	Geneva, Switzerland
13 November 2002	Activity 2(2): Geneva-based workshop (Spanish)	Geneva, Switzerland
14-15 November 2002	WTO Working Group on the Relationship between Trade and Investment	Geneva, Switzerland
20-21 November 2002	Activity 1(1b): Regional seminar Anglophone Africa	Gabarone, Botswana

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Annex 2 (concluded)

Date	*Activity*	*Venue*
21-22 November 2002	Activity 3(1): National seminar Sri Lanka	Colombo, Sri Lanka
[November 2002]	Activity 3(2): Joint UNCTAD-CUTS seminar	Jaipur, India
25 November - 7 December 2002	Activity 2(1): Intensive training course Asia and the Pacific	New Delhi, India
28-29 November 2002	Activity 3(1): National seminar India	New Delhi, India
16-17 December 2002	Activity 3(1): National seminar Tunisia	Tunis, Tunisia

Note: Shaded activities refer to events organized within the purview of the Trust Fund project INT/OTO/BG; non-shaded activities refer to other relevant events.

ANNEX 3

Discours du Secrétaire général de l'Organisation internationale de la Francophonie, Monsieur Boutros Boutros-Ghali à la Cérémonie de signature des accords bilatéraux conclus lors de la Ronde de négociations de Genève pour les PMA de la Francophonie

Bruxelles, le 18 mai 2001

Monsieur le Secrétaire général de la CNUCED,
Monsieur le ministre cambodgien du Commerce, Madame la ministre allemande de la Coopération économique et du Développement,
Excellences,
Mesdames, Messieurs

C'est pour moi un grand plaisir de participer à cette cérémonie de signature de conventions d'investissement. Une cérémonie placée, tout à la fois, sous le signe du développement et de la Francophonie.

C'est déjà un événement en soi !

Mais il revêt, dans le cadre de cette 3e Conférence des Nations Unies sur les pays les moins avancés, une importance toute particulière.

Car nous sommes bien conscients, qu'après deux décennies d'efforts internationaux —à l'évidence insuffisants — l'investissement constitue, avec l'aide publique au développement, le principal objectif de mobilisation des ressources financières en faveur des PMA.

C'est dire que les 6 premiers des 7 engagements, qui sous-tendent cette 3e Conférence, n'auraient guère de portée sans le 7e. Sans les moyens financiers nécessaires au développement des PMA. Sans les moyens indispensables à leur capacité de production, et donc d'échange.

Je suis donc particulièrement heureux que ('Organisation internationale de la Francophonie ait pu s'associer à l'initiative de la CNUCED d'organiser, il y a quelques mois, à Genève, une ronde de négociations de conventions bilatérales pour la promotion et la protection des investissements, à l'intention des PMA de la Francophonie.

Je sais que ce fut un succès à tous égards, et même un record, si l'on considère le nombre et la qualité des accords qui ont été élaborés et conclus, en quelques jours.

Cette excellente initiative prend, aujourd'hui, non seulement une forme concrète et visible, grâce à vous, Mesdames et Messieurs les Ministres et Chefs de délégation, mais elle prend, aussi, à nos yeux, une forte signification.

Tout d'abord, la cérémonie qui nous rassemble, témoigne de l'importance capitale de l'investissement pour une meilleure insertion des PMA dans l'économie mondiale.

La Francophonie, qui, par essence, combat toutes les formes de marginalisation sait bien que, sans les moyens matériels de produire, de créer, il n'y a pas d'échanges. C'est la loi du bon sens, sinon celle du marché.

Dans l'équation entre commerce et développement, sur laquelle se basent les activités de la CNUCED, l'investissement étranger apparaît comme l'une des principales variables à prendre en compte.

Or, force est de reconnaître que les PMA sont, malheureusement, restés à l'écart de la progression exponentielle des investissements dans le monde durant la dernière décennie.

Cette cérémonie présente donc, également, pour nous, l'intérêt de manifester la volonté des Etats ou des gouvernements des PMA d'ouvrir largement leur pays aux investissements étrangers.

Bien sûr, il ne suffit pas de multiplier les traités bilatéraux pour attirer des capitaux extérieurs.

Bien sûr, il ne suffit pas de s'ouvrir aux capitaux extérieurs pour se développer.

Mais ces traités traduisent l'engagement des pouvoirs publics en faveur d'une politique institutionnelle, sociale et économique accueillante aux investissements étrangers.

Plus encore, ils sont l'expression du rôle primordial que les Etats doivent jouer dans la définition des règles pour une ouverture économique voulue et non subie, pour une ouverture qui soit fondée sur des relations internationales plus équilibrées, plus équitables, plus démocratiques.

C'est le sens que s'est donné la première Conférence des Ministres de l'Économie et des Finances de la Francophonie, qui s'est tenue à Monaco, en avril 1999, précisément sur le thème «Commerce et investissement».

Dans leur Déclaration finale, les ministres se sont engagés à faire progresser la coopération économique francophone en proposant des initiatives concrètes.

Ils ont, notamment, appelé la communauté internationale à maintenir son soutien sous la forme d'aide publique au développement et d'investissements privés suffisants.

Dans le même esprit, la Communauté francophone a présenté, ici même, à Bruxelles, une déclaration visant à créer un véritable espace de solidarité avec les PMA. Et elle s'est engagée, dans cette optique, à appuyer les efforts des Nations Unies.

À cet égard, je dois dire que je me réjouis sincèrement de la qualité des relations personnelles et institutionnelles que nous avons nouées avec la CNUCED.

Permettez-moi de saisir cette occasion pour redire à notre ami Rubens Ricupero note total soutien dans son combat humaniste pour le développement.

Et je veux encore lui exprimer nos chaleureuses félicitations pour l'organisation de cette troisième Conférence sur les PMA.

Pour ce qui est de nos relations institutionnelles, je voudrais me réjouir du chemin déjà parcouru, depuis la signature, en avril 1999, de l'accord-cadre de coopération entre l'OIF et la CNUCED.

Nous sommes convaincus que notre active collaboration avec la CNUCED, à travers, notamment, notre principal opérateur, l'Agence intergouvernementale de la Francophonie, permettra à nos pays membres de bénéficier davantage des actions de la coopération internationale, notamment pour l'intégration des PMA à la mondialisation et pour la formation au commerce international.

C'est en s'ouvrant elle-même sur l'extérieur et en s'affirmant sur la scène internationale que la Francophonie prend sa pleine dimension, celle d'une communauté plurielle et solidaire.

Croyez bien que nous ne ménagerons aucun effort pour renforcer, encore, notre coopération avec la CNUCED, comme avec d'autres organisations internationales à vocation économique.

Et puisqu'il est ici beaucoup question d'initiatives concrètes et immédiates, je me félicite, moi aussi, de ce que nous ayons, dores et déjà, prévu d'organiser, ensemble, le mois prochain, à l'Université Senghor d'Alexandrie, une session de formation à l'intention des négociateurs francophones de conventions d'investissements.

Gageons que cette vitalité de la solidarité francophone, pour la promotion des investissements, permettra une plus juste mesure des enjeux.

Je vous remercie.

ANNEX 4

Overall participation in IIA events (June 2000-July 2002)

No.	Economy	Events participated in
1	Algeria	Libreville
2	Angola	Libreville
3	Austria	BITs Kyrgyzstan
4	Bahrain	Geneva
5	Bangladesh	New Delhi; Kuala Lumpur
6	Barbados	Geneva
7	Belarus	BITs Croatia
8	Belgium	BITs LDC; BITs Germany
9	Benin	Alexandria; BITs LDC; Alexandria-II; Libreville
10	Bhutan	Kuala Lumpur; Singapore
11	Botswana	Pretoria
12	Brazil	Geneva
13	Brunei Darussalam	Kuala Lumpur; Singapore
14	Bulgaria	Geneva
15	Burkina Faso	Alexandria; BITs LDC; Alexandria-II; Libreville
16	Burundi	Alexandria; BITs LDC; Alexandria-II
17	Cambodia	BITs Sapporo; BITs Germany; Kuala Lumpur; Alexandria-II; Singapore
18	Cameroon	BITs LDC; Pretoria; Alexandria-II; Libreville
19	Cape Verde	Alexandria; Libreville
20	Chad	Alexandria; BITs LDC; Libreville
21	China	New Delhi; BITs India; Kuala Lumpur; Singapore; Beijing; Geneva
22	Chinese Taipei	Singapore; Geneva
23	Colombia	BITs Sapporo
24	Comoros	Alexandria; BITs LDC; Libreville
25	Congo, Dem. Rep. of	Alexandria; Libreville
26	Congo, Republic of	Alexandria-II; Libreville
27	Cote d'Ivoire	Alexandria-II; Libreville
28	Croatia	BITs Sapporo; BITs India; BITs Croatia; Geneva
29	Denmark	BITs Kyrgyzstan
30	Djibouti	Alexandria-II; Libreville
31	Egypt	BITs Sapporo; BITs LDC; Pretoria; Geneva
32	Equatorial Guinea	Libreville
33	Eritrea	BITs Germany; Pretoria
34	Estonia	Geneva

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Annex 4 (continued)

No.	Economy	Events participated in
35	Ethiopia	BITs India; Pretoria
36	Fiji, Republic of	Singapore
37	France	BITs Germany
38	Gabon	Alexandria; Alexandria-II; Libreville
39	Gambia	Pretoria
40	Ghana	BITs Sapporo; BITs LDC; Pretoria; Geneva
41	Guinea	Alexandria; BITs LDC; Alexandria-II; Libreville
42	Guinea-Bissau	Alexandria-II
43	Haiti	Alexandria-II; Libreville
44	Hong Kong (China)	Kuala Lumpur; Singapore; Geneva
45	Hungary	Geneva
46	India	New Delhi; BITs Sapporo; BITs India; Kuala Lumpur; Geneva
47	Indonesia	BITs Sapporo; Kuala Lumpur; Singapore; Djakarta; Geneva
48	Iran, Islamic Rep. of	BITs Sapporo; BITs India
49	Japan	Kuala Lumpur
50	Jordan	Geneva
51	Kenya	Pretoria; Geneva
52	Korea, Rep. Of	Kuala Lumpur; Singapore; Geneva
53	Kyrgyzstan	BITs Kyrgyzstan
54	Lao People's Dem. Rep.	Alexandria; New Delhi; BITs Sapporo; Kuala Lumpur; Singapore
55	Latvia	BITs Kyrgyzstan; BITs Croatia
56	Lesotho	Pretoria; Geneva
57	Libyan Arab Jamahiriya	BITs LDC
58	Macao (China)	Geneva
59	Madagascar	Alexandria; BITs LDC; Alexandria-II
60	Malawi	BITs Germany; Pretoria
61	Malaysia	New Delhi; Kuala Lumpur; Singapore
62	Maldives	Kuala Lumpur
63	Mali	Alexandria; BITs LDC; Alexandria-II; Libreville
64	Malta	BITs Croatia
65	Mauritania	Alexandria; BITs LDC; Alexandria-II
66	Mauritius	Alexandria; BITs LDC; Pretoria; Alexandria-II; Libreville
67	Micronesia, Fed. States of	New Delhi
68	Moldova, Rep. Of	BITs Croatia
69	Mongolia	New Delhi; BITs India; Kuala Lumpur; Singapore
70	Morocco	Alexandria; Alexandria-II; Libreville

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Annex 4 (concluded)

No.	Economy	Events participated in
71	Mozambique	BITs Germany; Pretoria
72	Myanmar	BITs Sapporo
73	Namibia	Namibia
74	Nepal	New Delhi; Kuala Lumpur; Singapore
75	Netherlands	BITs Germany
76	Niger	Alexandria-II;Libreville
77	Nigeria	Pretoria; Geneva
78	Pakistan	New Delhi; BITs Croatia: Kuala Lumpur; Singapore
79	Papua New Guinea	Singapore
80	Peru	BITs Sapporo
81	Philippines	New Delhi; BITs Sapporo; Kuala Lumpur; Singapore
82	Rwanda	Libreville
83	Samoa	Singapore
84	Sao Tomé and Principe	Libreville
85	Senegal	Alexandria-II; Libreville
86	Singapore	Kuala Lumpur; Singapore
87	South Africa	BITs LDC; Namibia; Pretoria
88	Sri Lanka	Singapore
89	Sudan	BITs Germany
90	Swaziland	Pretoria; Geneva
91	Sweden	BITs Kyrgyzstan; BITs Germany
92	Switzerland	BITs LDC
93	Tanzania, United Republic of	Pretoria
94	Thailand	New Delhi; Kuala Lumpur; Bangkok; Singapore
95	Togo	Alexandria-II; Libreville
96	Tonga	Singapore
97	Tunisia	Alexandria; Alexandria-II; Libreville
98	Uganda	BITs Germany; Pretoria
99	United States	Geneva
100	Viet Nam	New Delhi; Kuala Lumpur
101	Yemen	New Delhi; BITs India
102	Zambia	BITs LDC; BITs Germany; Namibia; Pretoria
103	Zimbabwe	Namibia; Pretoria

ANNEX 5

Participation in BITs negotiation rounds

	BITs negotiated	
Economy	Negotiated with	Occasion
Austria	Kyrgyzstan	BIT/Kyrgyz, 15-19.01.01
Belarus	Croatia	BIT/Croatia, 20-26.04.01
	Malta	BIT/Croatia, 20-26.04.01
Belgium	Benin	BIT/LDC, 24.01-2.02.01
	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Cambodia	BIT/Bonn, 1-6.10.01
	Comoros	BIT/LDC, 24.01-2.02.01
	Uganda	BIT/Bonn, 1-6.10.01
	Zambia	BIT/LDC, 24.01-2.02.01
Benin	Belgium	BIT/LDC, 24.01-2.02.01
	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Chad	BIT/LDC, 24.01-2.02.01
	Egypt	BIT/LDC, 24.01-2.02.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Guinea	BIT/LDC, 24.01-2.02.01
	Libyan Arab Jamahiriya	BIT/LDC, 24.01-2.02.01
	Mali	BIT/LDC, 24.01-2.02.01
	Malaysia	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
	South Africa	BIT/LDC, 24.01-2.02.01
Burkina Faso	Belgium	BIT/LDC, 24.01-2.02.01
	Benin	BIT/LDC, 24.01-2.02.01
	Chad	BIT/LDC, 24.01-2.02.01
	Comoros	BIT/LDC, 24.01-2.02.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Madagascar	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
	South Africa	BIT/LDC, 24.01-2.02.01
Burundi	Comoros	BIT/LDC, 24.01-2.02.01
	Egypt	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01

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Annex 5 (continued)

	BITs negotiated	
Economy	Negotiated with	Occasion
Cambodia	Belgium	BIT/Bonn, 1-6.10.01
	Croatia	BIT/Sapporo,19-30.06.01
	Egypt	BIT/Sapporo,19-30.06.01
	Lao People's Democratic Republic	BIT/Sapporo,19-30.06.01
	Myanmar	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
Cameroon	Guinea	BIT/LDC, 24.01-2.02.01
	Malaysia	BIT/LDC, 24.01-2.02.01
	Mali	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
	Zambia	BIT/LDC, 24.01-2.02.01
Chad	Benin	BIT/LDC, 24.01-2.02.01
	Burkina Faso	BIT/LDC, 24.01-2.02.01
	South Africa	BIT/LDC, 24.01-2.02.01
	Malaysia	BIT/LDC, 24.01-2.02.01
	Mali	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
China	India	BIT/India,20-27,02.01
Colombia	Croatia	BIT/Sapporo,19-30.06.01
	Egypt	BIT/Sapporo,19-30.06.01
	India	BIT/Sapporo,19-30.06.01
	Indonesia	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
Comoros	Belgium	BIT/LDC, 24.01-2.02.01
	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Burundi	BIT/LDC, 24.01-2.02.01
	Madagascar	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
	Mali	BIT/LDC, 24.01-2.02.01
Croatia	Belarus	BIT/Croatia, 20-26.04.01
	Cambodia	BIT/Sapporo,19-30.06.01
	Colombia	BIT/Sapporo,19-30.06.01

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Annex 5 (continued)

	BITs negotiated	
Economy	Negotiated with	Occasion
	India	BIT/Sapporo,19-30.06.01
	Indonesia	BIT/Sapporo,19-30.06.01
	Latvia	BIT/Croatia, 20-26.04.01
	Lao People's Democratic Republic	BIT/Sapporo,19-30.06.01
	Malta	BIT/Croatia, 20-26.04.01
	Moldova, Republic of	BIT/Croatia, 20-26.04.01
	Mongolia	BIT/India, 20-27.02.01
	Pakistan	BIT/Croatia, 20-26.04.01
	Peru	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
	Yemen	BIT/India, 20-27.02.01
Denmark	Kyrgyzstan	BIT/Kyrgyz, 15-19.01.01
Ethiopia	India	BIT/India, 20-27.02.01
Egypt	Benin	BIT/LDC, 24.01-2.02.01
	Burundi	BIT/LDC, 24.01-2.02.01
	Cambodia	BIT/Sapporo,19-30.06.01
	Colombia	BIT/Sapporo,19-30.06.01
	Lao People's Democratic Republic	BIT/Sapporo,19-30.06.01
	Mauritania	BIT/LDC, 24.01-2.02.01
	Peru	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
Eritrea	Netherlands	BIT/Bonn, 1-6.10.01
	Sudan	BIT/Bonn, 1-6.10.01
	Uganda	BIT/Bonn, 1-6.10.01
France	Uganda	BIT/Bonn, 1-6.10.01
	Malawi	BIT/Bonn, 1-6.10.01
	Zambia	BIT/Bonn, 1-6.10.01
Ghana	Benin	BIT/LDC, 24.01-2.02.01
	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Guinea	BIT/LDC, 24.01-2.02.01
	India	BIT/Sapporo,19-30.06.01
	Indonesia	BIT/Sapporo,19-30.06.01
	Mali	BIT/LDC, 24.01-2.02.01

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Annex 5 (continued)

	BITs negotiated	
Economy	Negotiated with	Occasion
	Mauritius	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
	Philippines	BIT/Sapporo,19-30.06.01
	Zambia	BIT/LDC, 24.01-
2.02.01Guinea	Benin	BIT/LDC, 24.01-2.02.01
	Cameroon	BIT/LDC, 24.01-2.02.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Mali	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
	Switzerland	BIT/LDC, 24.01-2.02.01
India	China	BIT/India,20-27,02.01
	Colombia	BIT/Sapporo,19-30.06.01
	Croatia	BIT/Sapporo,19-30.06.01
	Ethiopia	BIT/India,20-27,02.01
	Ghana	BIT/Sapporo,19-30.06.01
	Iran, Islamic Republic of	BIT/India,20-27,02.01
	Lao People's Democratic Republic	BIT/Sapporo,19-30.06.01
	Myanmar	BIT/Sapporo,19-30.06.01
	Peru	BIT/Sapporo,19-30.06.01
	Yemen	BIT/India,20-27,02.01
Indonesia	Colombia	BIT/Sapporo,19-30.06.01
	Croatia	BIT/Sapporo,19-30.06.01
	Ghana	BIT/Sapporo,19-30.06.01
	Iran, Islamic Republic of	BIT/Sapporo,19-30.06.01
	Peru	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
Iran, Islamic Republic of	India	BIT/India,20-27,02.01
	Indonesia	BIT/Sapporo,19-30.06.01
Kyrgyzstan	Austria	BIT/Kyrgyz, 15-19.01.01
	Denmark	BIT/Kyrgyz, 15-19.01.01
	Latvia	BIT/Kyrgyz, 15-19.01.01
	Sweden	BIT/Kyrgyz, 15-19.01.01

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Annex 5 (continued)

	BITs negotiated	
Economy	Negotiated with	Occasion
Lao People's Democractic Republic	Cambodia	BIT/Sapporo,19-30.06.01
	Croatia	BIT/Sapporo,19-30.06.01
	Egypt	BIT/Sapporo,19-30.06.01
	India	BIT/Sapporo,19-30.06.01
	Myanmar	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
Latvia	Croatia	BIT/Croatia, 20-26.04.01
	Kyrgyzstan	BIT/Kyrgyz, 15-19.01.01
Libya	Benin	BIT/LDC, 24.01-2.02.01
Madagascar	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Comoros	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
Malaysia	Benin	BIT/LDC, 24.01-2.02.01
	Cameroon	BIT/LDC, 24.01-2.02.01
	Chad	BIT/LDC, 24.01-2.02.01
	Mali	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
Malawi	France	BIT/Bonn, 1-6.10.01
	Mozambique	BIT/Bonn, 1-6.10.01
	Netherlands	BIT/Bonn, 1-6.10.01
	Sweden	BIT/Bonn, 1-6.10.01
	Zambia	BIT/Bonn, 1-6.10.01
Mali	Benin	BIT/LDC, 24.01-2.02.01
	Cameroon	BIT/LDC, 24.01-2.02.01
	Chad	BIT/LDC, 24.01-2.02.01
	Comoros	BIT/LDC, 24.01-2.02.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Guinea	BIT/LDC, 24.01-2.02.01
	Malaysia	BIT/LDC, 24.01-2.02.01
Malta	Belarus	BIT/Croatia, 20-26.04.01
	Croatia	BIT/Croatia, 20-26.04.01
	Pakistan	BIT/Croatia, 20-26.04.01

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Annex 5 (continued)

Economy	BITs negotiated	
	Negotiated with	Occasion
Mauritius	Benin	BIT/LDC, 24.01-2.02.01
	Burundi	BIT/LDC, 24.01-2.02.01
	Cameroon	BIT/LDC, 24.01-2.02.01
	Chad	BIT/LDC, 24.01-2.02.01
	Comoros	BIT/LDC, 24.01-2.02.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Guinea	BIT/LDC, 24.01-2.02.01
	Madagascar	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
Mauritania	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Cameroon	BIT/LDC, 24.01-2.02.01
	Egypt	BIT/LDC, 24.01-2.02.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Guinea	BIT/LDC, 24.01-2.02.01
	Malaysia	BIT/LDC, 24.01-2.02.01
	Mauritius	BIT/LDC, 24.01-2.02.01
	South Africa	BIT/LDC, 24.01-2.02.01
Moldova, Republic of	Croatia	BIT/Croatia, 20-26.04.01
	Pakistan	BIT/Croatia, 20-26.04.01
Mongolia	Croatia	BIT/India, 20-27.02.01
	Yemen	BIT/India, 20-27.02.01
Mozambique	Malawi	BIT/Bonn, 1-6.10.01
	Sudan	BIT/Bonn, 1-6.10.01
	Uganda	BIT/Bonn, 1-6.10.01
Myanmar	Cambodia	BIT/Sapporo,19-30.06.01
	India	BIT/Sapporo,19-30.06.01
	Lao People's Democratic Republic	BIT/Sapporo,19-30.06.01
Netherlands	Eritrea	BIT/Bonn, 1-6.10.01
	Malawi	BIT/Bonn, 1-6.10.01
	Zambia	BIT/Bonn, 1-6.10.01

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Annex 5 (continued)

	BITs negotiated	
Economy	Negotiated with	Occasion
Pakistan	Croatia	BIT/Croatia, 20-26.04.01
	Malta	BIT/Croatia, 20-26.04.01
	Moldova, Republic of	BIT/Croatia, 20-26.04.01
Peru	Croatia	BIT/Sapporo,19-30.06.01
	Egypt	BIT/Sapporo,19-30.06.01
	India	BIT/Sapporo,19-30.06.01
	Indonesia	BIT/Sapporo,19-30.06.01
	Philippines	BIT/Sapporo,19-30.06.01
Philippines	Cambodia	BIT/Sapporo,19-30.06.01
	Colombia	BIT/Sapporo,19-30.06.01
	Croatia	BIT/Sapporo,19-30.06.01
	Egypt	BIT/Sapporo,19-30.06.01
	Ghana	BIT/Sapporo,19-30.06.01
	Indonesia	BIT/Sapporo,19-30.06.01
	Lao People's Democratic Republic	BIT/Sapporo,19-30.06.01
	Peru	BIT/Sapporo,19-30.06.01
South Africa	Benin	BIT/LDC, 24.01-2.02.01
	Burkina Faso	BIT/LDC, 24.01-2.02.01
	Chad	BIT/LDC, 24.01-2.02.01
	Mauritania	BIT/LDC, 24.01-2.02.01
Sudan	Eritrea	BIT/Bonn, 1-6.10.01
	Mozambique	BIT/Bonn, 1-6.10.01
	Uganda	BIT/Bonn, 1-6.10.01
	Zambia	BIT/Bonn, 1-6.10.01
Sweden	Malawi	BIT/Bonn, 1-6.10.01
	Uganda	BIT/Bonn, 1-6.10.01
	Kyrgyzstan	BIT/Kyrgyz, 15-19.01.01
	Zambia	BIT/Bonn, 1-6.10.01
Switzerland	Guinea	BIT/LDC, 24.01-2.02.01
Uganda	Belgium	BIT/Bonn, 1-6.10.01
	Eritrea	BIT/Bonn, 1-6.10.01
	France	BIT/Bonn, 1-6.10.01

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Annex 5 (continued)

	BITs negotiated	
Economy	Negotiated with	Occasion
	Mozambique	BIT/Bonn, 1-6.10.01
	Sudan	BIT/Bonn, 1-6.10.01
	Sweden	BIT/Bonn, 1-6.10.01
Yemen	Croatia	BIT/India, 20-27.02.01
	India	BIT/India, 20-27.02.01
	Mongolia	BIT/India, 20-27.02.01
Zambia	Belgium	BIT/LDC, 24.01-2.02.01
	Cameroon	BIT/LDC, 24.01-2.02.01
	France	BIT/Bonn, 1-6.10.01
	Ghana	BIT/LDC, 24.01-2.02.01
	Netherlands	BIT/Bonn, 1-6.10.01
	Malawi	BIT/Bonn, 1-6.10.01
	Sudan	BIT/LDC, 24.01-2.02.01
	Sweden	BIT/Bonn, 1-6.10.01

ANNEX 6

Review essay: FDI, development and investment rules: a critique of the UNCTAD series on Issues in International Investment Agreements

Christopher Wilkie *

In *Transnational Corporations*, vol. 10, no. 2 (August 2001), pp. 135-159

Since 1998, the United Nations Conference on Trade and Development has published a Series of booklets on issues in international investment agreements. The "Pink Series" addresses a wide variety of subjects, ranging from some of the basic building blocks of IIAs, such as national treatment and most-favoured-nation treatment, to subjects not associated with these agreements until recently, such as employment and taxation. This review article places this important Series in its international political and economic context, including with respect to development issues. Individual booklets are also examined; many explore the growing list of inter-related issues of increasing interest to the international investment policy maker. Issues raised in the booklets point to areas for further research. The Series as a whole is topical given discussions about trade and investment in the run-up to the 2001 World Trade Organization ministerial meeting in Doha, Qatar, and is also relevant to international investment negotiations in other fora. Finally, this essay notes that the Pink Series is likely to prove relevant to the work of the international investment policy researcher and practitioner wherever the merits of international investment rules are deliberated and foreign direct investment issues are discussed.

For well over two years a series of bright pink booklets has become increasingly familiar to international investment policy practitioners

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and researchers around the world. Published periodically as part of its work programme in this area, a total of 27 booklets in this UNCTAD Issues in International Investment Agreements (IIA) Series is planned, over half of which had been issued by July 2001 (see box, below). It covers a wide variety of subjects, ranging from some of the basic building blocks of IIAs, such as national treatment and most-favoured-nation (MFN) treatment, to subjects not associated with these agreements until recently, such as employment and taxation. By its completion in 2002, it will result in a mini-library of documents dealing with a wide variety of subjects with which those interested in international investment policy are increasingly called upon to be familiar.

Box. The Pink Series
The UNCTAD Series on Issues in International Investment Agreements

Booklet titles[a]

- *Admission and Establishment*
- Competition
- Dispute Settlement (Investor-State)
- Dispute Settlement (State-State)
- *Employment*
- *Environment*
- *Fair And Equitable Treatment*
- *Foreign Direct Investment and Development*
- Home Country Measures
- Host Country Operational Measures
- Illicit Payments
- Incentives
- *International Investment Agreements: Flexibility for Development*
- *Investment-related Trade Measures*
- *Lessons from the MAI*
- *Most-Favoured-Nation Treatment*
- *National Treatment*
- *Scope and Definition*
- Social Responsibility
- State Contracts
- *Taking of Property*
- *Taxation*
- *Transfer of Funds*
- Transfer of Technology
- *Transfer Pricing*
- Transparency
- *Trends in International Investment Agreements: an Overview*

[a] Titles published as of 15 July 2001, are in italics. All are United Nations publications. See references, below, for further information.

A synopsis of each published booklet appears on the UNCTAD International Investment Agreement website.[1] Rather than repeat this information, to which the reader is referred, what follows is primarily a review of the political and economic background to the Series, as well as a brief discussion of how it relates to some of the most important issues on the current international investment agenda, particularly in so far as they concern development. A number of individual booklets will also be discussed in this context.

To begin with, it is worth recalling the recent historical background to the Series. In the wake of protracted and unproductive debates about a New International Economic Order (NIEO) that had weighed heavily on UNCTAD's reputation on trade and investment issues since the 1970s, by the late 1980s the Organization was eager to chart a new course. With the launch of annual *World Investment Reports* in 1991, the United Nations Centre on Transnational Corporations (UNCTC – the precursor to UNCTAD's Programme on Transnational Corporations) was well on its way to evolving into a respected centre for research and policy analysis on international investment issues in developing and developed countries alike. By the time of the UNCTAD IX conference in Midrand, South Africa, in 1996, responsibility for these issues had been transferred from New York to Geneva, and from the now defunct UNCTC to UNCTAD. This was a serendipitous series of events that made UNCTAD well placed to offer its services to policy makers in Geneva and elsewhere. It was particularly important to representatives from the developing world, coming at a time of increasing interest by a number of governments and institutions in international investment issues in general, including institutional agreements designed to provide a framework for burgeoning international investment flows worldwide.

This interest had been reflected in a proliferation of bilateral investment treaties (BITs), first between developed and developing countries, though more recently including agreements between developing countries (UNCTAD, 2001).[2] Then, in 1992, the North American

[1] See http://www.unctad.org/iia/iiapapers/index.htm.

[2] A media summary of the recent UNCTAD study on BITs (UNCTAD, 2001), outlining the growth in number of BITs from 385 at the end of the 1980s, to 1,857 involving 173 countries just ten years later, is available at: http://www.unctad.org/en/pub/poiteiiad2.en.htm. UNCTAD also provides technical assistance to developing countries in the preparation for BIT negotiations, and has even assisted in supporting negotiating events at which a number of countries take part in BIT negotiations. In particular, BITs between developing countries have been given further impetus as a result of these meetings. See, for example, UNCTAD, 2000.

Free Trade Agreement (NAFTA) was successful negotiated, encompassing comprehensive rules on international investment in an agreement among developed as well as a developing country for the first time. As the provisions in a number of IIAs negotiated after the NAFTA demonstrated, the significance and influence of the NAFTA investment provisions was considerable (Graham and Wilkie, 1998; Gestrin and Rugman, 1994). And in December 1996, at Singapore, WTO member countries established "a working group to examine the relationship between trade and investment", which, although it continues not to prejudge whether negotiations should take place in the future, continues to meet and discuss related issues (WTO, 1996). At Singapore, WTO Ministers also noted UNCTAD's Midrand Declaration, which gave further impetus to UNCTAD's contribution to an understanding of relevant issues.

Curiously, however, neither the WTO's Singapore Declaration nor UNCTAD's Midrand Declaration mentioned what had quickly become the most ambitious attempt to negotiate investment rules: the Multilateral Agreement on Investment (MAI). For, in the meantime, after several years of discussions, negotiations had started at the OECD for a MAI. The closest to an acknowledgement came at the Midrand meeting in 1996 when, among other tasks, UNCTAD was rather cryptically charged with:

> Identifying and analysing implications for development of issues relevant to a possible multilateral framework on investment, 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. In this regard, the role of OECD and the activities of its outreach programme in explaining recent developments in that organization should be noted (UNCTAD, 1996, paragraph 89b).

Although the announcement of the beginning of MAI negotiations by OECD ministers in May 1995 was greeted with relative indifference, this was to change quickly once negotiating countries began wrestling with the implications of the ambition and scope underlying the prospective

[3] An increasing number of studies from both supporters and detractors of the agreement has begun to point to reasons for the failure of the negotiations in 1998. For varying perspectives, see Clarke and Barlow, 1997; Geiger, 1998; Smythe, 1998; Dymond, 1999; Henderson, 1999; Maybey, 1999; Société Française pour le Droits International, 1999; Graham, 2000; Netherlands Ministry of Economic Affairs, 2000; Schittecatte, 2000.

agreement.[3] Despite neither the WTO nor UNCTAD mentioning the MAI by name in its official pronouncements, it was evident from late 1995 through until the cessation of negotiations three years later that the issues preoccupying MAI negotiators had piqued the interest of international investment policy practitioners and others outside the negotiating rooms as well. In fact there is little doubt that the number of issues dealt with during the MAI negotiations – and their interrelationship – provided considerable inspiration for the UNCTAD IIA Series, as a comparison of titles in what has also come to be known as the "Pink Series" with the table of contents of the draft MAI text reveals (OECD, 1998a). Further impetus came after the first instalments of the Pink Series had been commissioned when the WTO's Working Group on Trade and Investment (WGTI) issued its first report in late 1998 to the General Council of the WTO. The WTO WGTI report addressed a number of issues with the interests of developing countries in mind; indeed elements of Section C ("Substantive Work") of this report lent themselves particularly well to further follow up in the UNCTAD Series (WTO, 1998).

The IIA Series is best approached by first reading three component papers that essentially provide an introduction to the issues dealt with in the rest of the series: *Trends in International Investment Agreements: An Overview*; *Foreign Direct Investment and Development*; and *International Investment Agreements: Flexibility for Development*. All of these accord a high profile to the development dimension of existing or prospective IIAs. Due to their breadth, they are organised slightly differently than most of the other papers.

The first of these booklets, which is the real introduction to the Series, is an overview of IIAs by one of the Series' principal advisors, Arghyrios A. Fatouros of the University of Athens. Fatouros succeeds in linking the increase in international investment activity with the policy response of governments to provide a framework for this activity in the form of international agreements, also noting the antecedents for this in the early part of the twentieth century. Although relatively brief, it is nonetheless a comprehensive survey, and its sweep of historical background is complemented by ample reference information provided for readers wishing to explore issues in further depth. Fatouros also provides a valuable introduction to the key themes underlying the proliferation of IIAs. Chief among these have been the growth in the foreign operations of firms, and the changing perception of

the desirability and contribution of foreign direct investment (FDI) to economic growth and other policy goals. Also worthy of note is the identification of the changing interplay between legal principles of territorial sovereignty, whereby the State is empowered to regulate economic activity (including the taking of private property for a public purpose), and the principle of nationality, under which the State seeks to protect the rights of its economic actors both domestically and internationally. One could add that as FDI flows to developing countries have increased an emphasis on the latter principle has become more prevalent in IIAs.

Trends in International Investment Agreements: An Overview also provides an introduction to the Series as a whole, both in terms of the structure followed by most of the other booklets, as well as to the individual issues themselves. Fatouros addresses how treaties are drafted, and then moves on to note that IIAs traditionally concentrated on what may be termed "standards of treatment" issues such as national treatment, MFN and the absolute standard of "fair and equitable treatment".

Today, however, there is also an increasing recognition of the effect of investment activity on other issue areas. In part, this is a manifestation of the ramifications of the increasing importance of international investment activity itself. Unlike trade activity, traditionally measured and defined as transactions in goods and services between independent States, FDI by foreign firms takes place behind the frontiers of States, and can thereby raise questions that strike at the heart of the domestic polity.[4] This can compound difficult policy issues faced by governments. For example, the implications of an increasing proportion of international investment through mergers and acquisitions rather than greenfield investment may be an issue of concern to competition authorities, as well as investment specialists. Similarly, the taxation of the modern firm, with numerous activities in a number of jurisdictions with different tax rates and methods of taxation, has been dealt with in many cases by governments negotiating double taxation treaties (in effect agreements to help firms avoid being taxed twice on the same income). A closely related tax issue concerns transfer pricing.

4 The implications of this illustration of "deeper integration" (of which sharply increasing FDI flows is just one example) is "systems friction", which occurs when states seek to preserve policy options at a time of concurrent pressures to intensify international policy cooperation. See Ostry, 1990.

While proper transfer pricing is often a requirement of tax authorities, the abuse of transfer pricing norms and rules (whereby prices for transactions within a firm are artificially inflated or deflated in order to unfairly take advantage of differing tax treatment of these various activities by differing jurisdictions) is more problematic – and a thorny problem for taxation advisers and policy makers. These are just a few examples of issues that sovereign States have had to come to terms with as the cross border activities of transnational corporations (TNCs) has intensified.

Fatouros identifies these and a number of other issues for further attention, many of which may be categorized as *additional* aspects of traditional "treatment" issues (e.g. taxation, incentives and intellectual property rights) or "investment protection" issues (such as takings). Other issues concern the efficient operation of markets themselves, such as restrictive business practices and technology transfer; still others include the environment, labour, consumer protection, human rights and bribery and illicit payments. All these issues have received increasing attention recently, partly as a result of concern about the perceived influence of TNCs in a globalizing world economy. Many – but not all – of these issues are the subject of papers in the IIA Series. In addition, reflecting the growing realization that developing country needs have not been adequately addressed in many investment agreements, this dimension figures prominently in most of them.

Indeed, the other two introductory booklets that provide excellent background material both concentrate on developmental aspects of IIAs. The first of these, *Foreign Direct Investment and Development*, is useful as a conceptual introduction to the complementarities between trade and investment flows. A number of recent trends are also identified, including the fact that, in recognition of the benefits FDI can bring, some countries accord "better than national treatment" to foreign firms, and that developing countries themselves are a nascent source of FDI flows. These latter two issues are phenomena that warrant further research for a more complete understanding of emerging policy paradoxes surrounding FDI. Chief among these is a reluctance to agree on the desirability of a comprehensive rules-based framework for FDI while at the same time increasing unilateral liberalization on the part of almost all countries to facilitate FDI flows. Confirming recent FDI research, *Foreign Direct Investment and Development* notes that the FDI flows to developing countries surged over the 1980s

and 1990s, although much of it has been skewed in favour of large developing markets in Latin America and China, while Africa has received commensurately less.[5]

This volume also introduces the idea that not all capital inflows are by definition perfectly congruent with development goals. For instance, large capital inflows to some developing countries in the 1990s cannot be said to have led to increases in total investment or output. While this may be due to natural time lags, this volume points out that "...if foreign savings crowd out domestic savings with no change in the investment rate, the usefulness of foreign capital for capital formation, a key factor in development, can be questioned." (UNCTAD, 1998- *Foreign Direct Investment and Development).* In this regard, however, it is quickly noted that FDI is a distinct form of foreign capital, and that in fact where FDI predominates capital inflows, more significant increases in investment have occurred than where capital inflows have been mostly of the financial variety. In addition, other potential benefits of FDI, including greater technology transfer, management know-how and spin-offs related to more skilled labour, access to international production networks as well as markets, and established brand names are also noted. One of the conclusions of this booklet is that policy choices of developing countries with respect to FDI are not uniform, and may in some cases depend on the size of the domestic economy and market. This is an important contribution to the debate over FDI and development, and also leads naturally to the third of the trio of introductory volumes in this series: "flexibility" for development.

The third of the introductory booklets to the "Pink Series", *International Investment Agreements: Flexibility for Development*, is arguably the most comprehensive and thought provoking booklet published

5 FDI statistics, particularly concerning developing countries, are not as reliable as those concerning trade flows. One reason for this is that they representing fungible capital flows rather than more tangible goods or even services captured in international trade statistics. In addition, statistical agencies are not as well funded in the developing world as in the developed world. And as recent corruption trials in China have revealed, even the reliability of trade statistics is open to question: James Kynge reported from China that the scale of recent tax fraud has been so great in southern China that "...China's overall trade balance is starting to be affected..." and that this increased "...the probability that last year's export figures were artificially inflated by fake customs documents that were used to claim VAT tax rebates." See "China's traders feel pinch in tax crackdown", *Financial Times*, 15 February 2001, p. 4.

thus far in the IIA Series. Not coincidentally, it has also been the most influential. In addressing the underlying thesis of this booklet, one could simply ask: "Do international investment agreements facilitate FDI flows?" If the answer is "no", then it would seem that there is little point in advocating or negotiating agreements covering FDI. If the answer is "yes", one must then ask why developing countries in particular need "flexibility" in order to avoid or postpone the real benefits that FDI can bring. Needless to say, this volume introduces several nuances to this apparent dichotomy to suggest that accommodating flexibility for developing countries in IIAs – particularly in any prospective multilateral agreements – could strengthen the appeal of IIAs for both developed and developing countries. Of course one must address in greater detail what is meant by "flexibility", and this volume goes some way to illustrate that the concept of preserving policy latitude through flexibility is embodied in an number of international trade and investment agreements already. GATS Article IV (Increasing Participation of Developing Countries) and Article XIX (Negotiation of Specific Commitments) are perhaps the most important examples of this, particularly since GATS may be said to be an investment agreement with respect to services industries. One could also add that the "positive list approach" to scheduling commitments (whereby countries commit to market access only in negotiated sectors) under the GATS also encompasses the idea of flexibility to some degree.

The volume also points out that flexibility for development has been accommodated in IIAs in a variety of other ways. It may be noted that many of them do not necessarily formally acknowledge this, since flexibility can be facilitated through the nature of the agreement itself (in essence, how legally binding it is), in its basic structure (i.e. the nature of its provisions), or in the way definitions are worded or exceptions are negotiated (i.e scope of application). Conversely, under some agreements, it has been deemed advantageous to acknowledge the way in which flexibility is encompassed through preambular statements or declarations associated with them, or in provisions that avowedly apply to developing countries differently. One implication of this is that although flexibility – for development purposes or otherwise – is a characteristic of many IIAs, it is often little appreciated. This should therefore be identified and explained more comprehensively by policy makers and analysts in assessing them. In so doing, however, one key question remains: should flexibility necessary to achieve domestic policy objectives require discrimination against foreign investment and, if so, why?

The issue of flexibility has been a very prominent theme in discussions about the desirability of an international agreement on investment in the WTO. At a time when some WTO members are questioning the need for comprehensive rules in the WTO on international investment at all, there are indications that the concept of "flexibility for development" may in fact provide some of the common ground necessary between developed and developing countries to make progress on this issue. For example, nascent signs of agreement on this point between South African and European Union representatives were in evidence at European Commission sponsored seminars on investment and other "new" issues on the WTO agenda in Lima in late 2000 and in Cape Town in early 2001 (European Commission, 2001a). At time of writing, it is premature to say whether the concept is acceptable as a starting point for negotiations on a framework for international investment or will instead serve as a point of departure; nonetheless, it has so far contributed to a more constructive dialogue on the issue. The nuanced arguments outlined in the IIA booklet on *Flexibility for Development* are at least partly responsible for this.[6]

Most of the rest of the booklets in the Pink Series are organized slightly differently from the three introductory booklets. They tend to be organized into four sections: first an "Explanation of the issue" at hand, then a second section on "Stocktaking and analysis", which

[6] In the run-up to the WTO Doha meeting in November 2001, most WTO members are still considering their position on international investment rules in the WTO. Among considerations are linkages with other issues (not only services through GATS, but competition, TRIMs, implementation and other issues as well). It is difficult to generalize about country positions on the desirability of a comprehensive framework for international investment other than to say that they are in a state of flux: some developing countries are in favour of the idea, whereas some developed countries are more equivocal than they were a few years ago. While prospects for the inclusion of investment in the next WTO negotiating mandate are limited, there are some indications that a new WTO round, if any, should concentrate on development issues. OECD Ministers called for a new round of multilateral trade talks at the WTO when they met in May 2001, noting that "a new round is essential for developing countries given the need to stimulate their economic growth, alleviate poverty and promote their integration into the multilateral trading system" (OECD, 2001a). And in his opening statement to the Third United Nations Conference on the Least Developed Countries (UN LDC-III) in Brussels, also in May 2001, United Nations Secretary-General Kofi Annan stated simply: "I believe the best hope for LDCs, and indeed for the developing world in general, lies in a new round of global, multilateral trade negotiations. And this time it must be a true 'Development Round'" (Annan, 2001).

is often simply a further explanation of the issue as outlined in section I, including a summary. Then, in an effort to highlight issue linkages, there follows a third section on "Interaction with other issues and concepts". This contains a table of all issues in the IIA series in which varying degrees of linkages are identified and then commented upon. Finally, a "Conclusion" in light of these inter-relationships follows, which is subtitled "Economic and development implications and policy options". The success of this last section depends largely on how well the argument has been structured in section II of the booklet, which is usually its heart. Let us briefly examine some of these booklets in this vein.

By mid-2001 the IIA series had published booklets on all of the basic building blocks in IIAs, namely (a) *Scope and Definition*, (b) *National Treatment*, (c) *Fair and Equitable Treatment*, (d) *Most-Favoured-Nation Treatment*, and (e) *Admission and Establishment*. All do an excellent job of addressing the most important aspects of these fundamental provisions to any IIA.

National Treatment sets out relevant issues underlying the concept, and fleshes out important institutional examples of the principle in agreements such as the GATS, NAFTA and the OECD's National Treatment Instrument. These important forerunners for comprehensive international investment rules contain provisions that have benefited from, and influenced, IIAs. The volume also illustrates that both national treatment and MFN are concepts with long histories in international investment as well as international trade agreements. Section III of the *Most-Favoured-Nation Treatment* booklet is particularly useful in illustrating that the state of MFN and other treatment issues is still evolving, and can be expected to continue to do so in view of development and other policy priorities. As noted above, the implications of dealing with national and other treatment issues are more complicated in the investment domain than with respect to the traditional border barriers dealt with in trade agreements. (This is arguably less true since the successful negotiation of a number of additional agreements to the GATT, coupled with the provisions of the dispute settlement undertaking as part of the Uruguay Round.) In turn, this has led UNCTAD and others to consider the issue of admission and establishment as separate from that of other treatment issues, particularly national treatment and MFN, as a separate booklet on this subject reveals.

However it could be argued that national treatment should mean nothing more nor less than the same treatment of foreign investors and investments as "national" (domestic) investors, subject to exceptions

as negotiated. To draw an *a priori* distinction between pre- and post-establishment national treatment (as in the Energy Charter Treaty, for example), sets up a false distinction that undermines the very concept of national treatment. This is evident if one conceives of investment agreements as a means of enhancing market access for investors and investments, which can be facilitated through negotiating national treatment, MFN and other treatment to a greater or lesser degree. Thus admission and establishment may be argued to be redundant as separate issues.

Increasingly, IIAs embody "right of establishment" *a priori* (this is also a characteristic of the OECD's Codes of Liberalisation – see OECD, 2000). This is not to say that, in some or indeed all sectors, differences between pre- and post-establishment treatment of investors or investment cannot be accommodated through negotiated exceptions or other means. However, in terms of market access for investors there is little *conceptual* justification for treating investment in the pre-establishment phase on a non-national treatment basis. Doing so leads one to argue that only established companies (which are by definition domestic companies in most jurisdictions in any case) should receive national treatment, which in turn serves to defeat the purpose of national treatment in the investment domain. In some respects this is implicitly acknowledged in the Pink Series in the way in which issues related to admission and establishment are encompassed in the *Scope and Definition* and particularly *National Treatment* booklets.

Finally, the *Fair and Equitable Treatment* booklet is an important complement to the other booklets dealing with the basic building blocks of IIAs. It features an interesting historical background to related concepts of (minimum) standards of treatment which are of increasing importance to investor-state dispute settlement procedures. Even if investment conditions for both domestic and foreign investors deteriorate, a floor for treatment of foreign investors may be established, which in turn can be important to foreign investors where the legal environment is unpredictable. Thus, minimum standards of treatment represent lowest-common-denominator, or absolute, standards rather than the relative standards embodied in national and MFN treatment provisions.

As noted in Fatouros's introductory volume, one issue that has attracted increasing attention in the negotiation of IIAs is "takings". There is little doubt that NAFTA investor-State cases under chapter 11 of the Agreement, which unlike some earlier BITs both pre-authorized unilateral legal action by companies and encompassed comprehensive

investment rules among developed countries, has affected the debate over investor-State dispute settlement and investment rules in general. These cases, coupled with what one author has characterized as an increasing tendency of United States Supreme Court decisions to put property development rights over the right of society to regulate the use of certain types of land for environmental purposes (even when land owners are compensated) have alarmed some critics, particularly – but not exclusively – from the NGO community (Graham, 1998).

The IIA booklet on the subject, *Taking of Property*, provides excellent further background material on this issue. The heart of the matter concerns the definition of a taking, and the booklet notes at the outset that the traditional debates over nationalization or expropriation are less problematic than more recent debates over what may be termed "indirect" takings, i.e. measures either "tantamount" to nationalization or "having equivalent effect" to nationalization or expropriation. It is these indirect takings that tend to be covered by contemporary BITs, chapter 11 of the NAFTA and other IIAs. What has complicated matters still further are the implications of increasing acceptance of the "Hull standard" for "prompt, adequate and effective" compensation to be awarded to investors in the event of a judgement in their favour in an investment dispute.

As also noted in this booklet, as the NAFTA chapter 11 case by Ethyl Corporation over its gasoline additive MMT unfolded, developed countries indicated that they wanted to tackle what was becoming a thorny political problem, particularly given the potential scope of the expropriation and compensation provisions of the MAI.[7] What disturbed critics was that the standard of treatment for regulatory takings under an MAI could have been even higher than the national treatment standard in the United States implied by recent Supreme Court rulings. OECD ministers were sensitive to this possibility, however, as their last statement on the Agreement reveals:

> Ministers confirm that the MAI must be consistent with the sovereign responsibility of governments to conduct domestic policies. The MAI would establish mutually beneficial international rules which would not inhibit the normal non-discriminatory exercise of regulatory powers by governments and such exercise

[7] The "Ethyl case" – which was settled prior to any NAFTA panel ruling – has been subject to much discussion. Official information is the subject of a (Canadian) Internal Trade Secretariat panel report (Canada, 1998a) and an Environment Canada press release (Canada, 1998b).

of regulatory powers would not amount to expropriation (OECD, 1998b).

Unfortunately, negotiations collapsed before this ministerial confirmation could be accommodated in the draft MAI text.[8] It also arguably sidestepped the issue of how to differentiate between "expropriation" and "measures having equivalent effect" as expropriation. Nonetheless, this political declaration should give heart to those who believe that the conundrum raised by provisions relating to expropriation and compensation in contemporary investment treaties vs. the right of sovereign states to "regulate" on a non-discriminatory basis can be further explored in order to find a solution to this question acceptable to all interested parties. Indeed NAFTA countries have already revisited this issue, agreeing in late July 2001 to clarify the potential scope of NAFTA chapter 11 investor-State provisions.[9] This should assist in the process of building the necessary political consensus for comprehensive international investment rules – whether at the regional, plurilateral or multilateral level.

The Pink Series also includes booklets on issues that were not traditionally among those with which the international investment specialist was expected to be familiar. The environment and labour standards issues are the most important of these since disagreement about them, particularly between developed and developing countries, contributed to the failure of the WTO Ministerial Meeting in Seattle. Put simply, many trade theorists – as well as developing countries – fear that grafting provisions on environment and particularly employment

8 In his report to ministers of the same year, the MAI Negotiating Group chairperson had underlined the importance of this issue: "Subject to international law and to international agreements to which it has subscribed, every state reserves the right to prescribe the conditions under which all investors operate within its national jurisdiction. The MAI would not inhibit the normal non-discriminatory exercise of regulatory powers by governments and such exercise of regulatory powers would not amount to expropriation" (OECD, 1998c). Interestingly, tax and financial experts had also noted the potential scope of the draft MAI's expropriation provisions, and most agreed that the following statement as an Interpretative Note should be inserted into the draft agreement: "MAI Parties understand that no taxation measures of the Parties effective at the time of signature of the Agreement could be considered as expropriatory or having the equivalent effect of expropriation" (see "Commentary" to OECD, 1998a).

9 See "U.S., Canada, Mexico Agree to Clarify NAFTA's Investor-State Provision" (also "Text: Free Trade Commission Clarifications Related to NAFTA Chapter 11"), *Inside US Trade*, 3 August, 2001.

issues to WTO agreements could serve to buttress protectionist pressures in developed countries. This could in turn lead to restricted access to developed country markets for goods and services from countries that do not – and cannot – maintain the same employment or environmental standards as developed countries. Ensuring that this does not result, while furthering the causes of environmental and labour standards observance, will be difficult.

The examination of the interrelationships between these issues is further advanced in the trade than in the investment domain. In some respects, however, the debates are similar, since concerns about labour and environmental standards may be said to affect aspects of production processes and end-products of tradable goods and services which in a global economy are often produced as a result of FDI. Nonetheless, as the IIA booklets on employment and environment indicate, the perspectives gained from examining these issues through an investment prism lend themselves to a greater appreciation of the linkages among relevant issues, as well as pointing to new considerations – on technology and competitiveness, for example – that need to be taken into account (see also OECD, 1999).

Several approaches have been identified to assist in reconciling positions in these debates, most of which are dealt with in the IIA booklets. The first of these is a two-pronged approach, containing provisions in an investment agreement not to lower environmental or labour standards in order to attract investment, coupled with commitments to enforce (and work to enhance) domestic laws in these areas.[10] A newer version of this approach, which has enjoyed support from the labour community, is to enshrine these commitments in the treaty itself, as has been done in Articles 5 (Environment) and 6 (Labor) of the recent United States/Jordan Free Trade Agreement (USTR, 2000). A third approach is a political commitment to address these issues with firms directly. One example in this regard is the OECD Guidelines for Multinational Enterprises, which sets out recommendations to enterprises on these and other issues, and couples them with commitments

[10] This may be termed the NAFTA approach, at least as far as the environment is concerned, whereby Article 1114.2 on "not lowering standards" is coupled with a "side agreement" including institutional mechanisms for follow-up on environmental law enforcement through the North American Agreement on Environmental Cooperation (see NAAEC, 1993). Labour issues are also covered by a side agreement to which signatories pledge domestic enforcement of laws and other regulations in this area, assisted by the North American Agreement for Labour Cooperation (see NAALC, 1993).

by adhering governments to assist in ensuring that the recommendations are followed. This approach can be complemented by actions in other areas, including the encouragement of the development of private standards (one of the most successful of which is the ISO 14000 set of environmental standards). How – or whether – to integrate this latter "integrative" approach more formally when negotiating investment agreements is only beginning to be explored and merits further consideration (see European Community and Its Member States, 1999; DFID, 2001; OECD, 2001b).

Ultimately, there is nothing to stop these approaches being combined in any number of ways, including permutations of GATT Article XX or GATS Article XIV type General Exceptions in the mix. Again, this will not be an easy task, but will have to be addressed for prospects of comprehensive international investment rules to be enhanced. Of course environment and labour standards are not entirely analogous, as WTO ministers themselves noted in their recommendations about how they could each be examined in their trade context at the WTO Singapore meeting in 1996. This legacy has continuing implications for these debates, as witnessed by reminders of the role of the International Labour Organization (ILO) for labour standards issues, noted by both proponents and detractors of stronger enforcement of labour standards through the trading system, which is in turn also reflected in their treatment in the Pink Series. Thus, it may be noted that the *Environment* booklet is more comprehensive than the *Employment* booklet in its treatment of analytical and institutional aspects of its issue area, although this, too, reflects the fact that international debate in this field – particularly with respect to an exploration of the linkages to trade and investment issues – is arguably further advanced in the environmental than the employment domain.

For further direction in the politically sensitive domain of IIAs as a whole, one might expect to be able to turn to the booklet on *Lessons from the MAI*. However, among other problems this booklet suffers from a lack of historical distance and hence perspective in addressing what nonetheless is an important set of issues for the investment specialist. As noted above, the political controversy over the MAI continues long after its demise (see fn. 3 above). Nonetheless, unlike many booklets in this series, *Lessons from the MAI* examines its subject matter – soberly, to its credit – in insufficient depth and scope to address comprehensively either the political debate over the Agreement (reviewed very briefly), nor the strengths or shortcomings associated with the provisions of the Agreement itself.

The second section of the booklet, for instance, seeks to narrow the MAI negotiating issues to "outstanding substantive issues". This attempt does not succeed as much as it could, however, not least because it fails to note that all issues in the incomplete Agreement remained outstanding when negotiations were abandoned, but also because the issues that are addressed are dealt with in too cursorily a manner. To take the first of two issues: the "Definition of investment" is fundamentally important to any investment agreement because, in many respects, it determines the scope of the agreement itself. This is implicitly acknowledged in the title to the IIA Series booklet *Scope and Definition*, although even there the explanation of the issue arguably does not do adequate justice to the fundamental importance of the definition of investment (and to exceptions) to the underlying nature and scope of an IIA. In the *Lessons of the MAI* booklet, however, the issue is dealt with in only one paragraph and relies heavily on the MAI negotiating text and accompanying commentary. Not surprisingly, it fails to capture all the nuances associated with the debates over this important provision that has ramifications for continued discussions in many fora. The resolution of how such important issues as whether an investment agreement should cover short-term capital flows, or whether it should otherwise include indirect investment, intellectual property or other assets usually is evident through the definition of investment. These issues remained unresolved during the MAI negotiations, and remain extremely salient to continuing discussions about international investment.

The MAI booklet notes, but does not address in sufficient depth, linkages between the definition of investment and other issues such as investment protection. As the *Transfer of Funds* booklet points out, even if balance of payments and/or other safeguard provisions are not yet a feature of many IIAs, there is growing consensus on the desirability of the principle being included in investment agreements, as it was in the NAFTA and draft MAI. The conceptual relationship between these two issues warrants further exploration, since the broader the definition of investment, the more likely it is that a balance of payments or other safeguards provision may be necessary. Growing unease about the implications of a very broad definition of investment to include portfolio investment and other short-term capital movements was increasingly evident as the 1990s drew to a close – particularly in the wake of the Asian crisis. Recent re-thinking of what is commonly understood as part of the "Washington Consensus" on the desirability of the liberalization of FDI inflows has already had policy implications for the investment rules – particularly the definition of investment. For instance, the European Commission now considers that an "investment

framework [in the WTO] should focus on FDI, leaving aside short-term capital movements (whereas the MAI included all kinds of investment)" (European Commission, 2001b). Further examination of this important issue in this booklet, or indeed in the booklets on *Scope and Definition* or even *Transfer of Funds,* would have been useful.

Similarly, discussion of a second issue (national and MFN treatment, taken together) in the *Lessons of the MAI* booklet is also too brief. It fails to take into account important linkages and implications between the MAI – indeed any investment agreement – and the WTO agreements, in particular as far as MFN is concerned (Wimmer, 1996). While crosswalks between these agreements received some attention during MAI negotiations, it would be safe to say that the implications of "MFN-ing" all MAI provisions, including with respect to dispute settlement, covered by WTO agreements to all WTO members, were not addressed comprehensively by all negotiating parties, and further attention to this matter would have been useful in this booklet.[11]

Nonetheless, *Lessons form the MAI* is an important booklet if only because its inclusion points to the fact that the debate over the MAI had profound implications for the genesis of the IIA series as well as the negotiation of comprehensive investment rules. It also succeeds in identifying several key issues in the negotiating text and commentary over which agreement was less advanced, such as the "REIO" (Regional Economic Integration Organisation, i.e. EU) clause, a cultural exception, incentives, labour and environment issues, regulatory "takings", and dispute settlement. These issues remain to be addressed if there should be any further attempt to negotiate comprehensive international investment rules, some of which could have been added as subjects for investigation in the IIA Series.

In conclusion, while a few minor criticisms may be made of a few booklets in the Pink Series, this should nonetheless not detract from a recognition of the contribution that the Series as a whole makes to the international investment policy debate. The booklets are perhaps a little too varied in quality – most, including those noted in this

11 Even among OECD signatories to the GATS, only two countries (Canada and Poland) exempted investor-state dispute settlement provisions of their investment agreements in their list of MFN exemptions. In the recent review of MFN exemptions in the GATS Council some WTO members have questioned the need for such exemptions in relation to GATS and similar treaties. This interrelationship between bilateral or regional investment agreements and WTO agreements has not been sufficiently explored.

article – are excellent, others are somewhat limited in their treatment of the issue at hand. This variable quality applies in particular to section III of the booklets on "Interaction with other issues and concepts". Whereas almost all booklets treat their subject more than adequately in the first two sections, this is less true when the linkages between issue areas is explored in the subsequent section. Paradoxically, a section III on linkages can serve to downplay interrelationships between issues, particularly since the Series as a whole is largely on individual topics. Many issues, such as scope and definition, or dispute settlement, could be argued to be related to every other concept to a greater or lesser degree, thereby making the tabular format introducing section III as well as the structured comment that follows unnecessarily constraining for adequately addressing issue linkages. Thus, another booklet could have perhaps explicitly addressed issue linkages, including crosswalks between IIAs and other agreements, including WTO Agreements (in particular GATS, TRIMs and the Agreement on Subsidies and Countervailing Measures), the OECD investment instruments, and indeed BITs in general.[12]

Finally, there remains scope for further additions to these booklets, on issues such as intellectual property, cultural policy or the relationship between international investment policy and international governance. Another subject that could be addressed is the growing contribution of the international business community, the labour movement and non-governmental organizations (NGOs) to the debate over international investment issues, to which governments in both the developed and developing world are increasingly seeking to respond. Finally, as far as the production of the Series as a whole is concerned, a numbering system would be helpful for reference purposes, and it could be pointed out more explicitly that reading the three "introductory" volumes as addressed above might prove the best way of approaching the Series.

But these are relatively minor quibbles. It is undeniable that the UNCTAD Series on Issues in International Investment Agreements amounts to a significant contribution for those interested in debates about issues related to international investment. This contribution includes providing considerable background information to assist in addressing the ultimate underlying issue of the desirability of a comprehensive multilateral framework for international investment.

12 For an exploration of how rules on international investment could be further explored through the GATS, see Sauvé and Wilkie, 2000.

Conceived of partly in response to MAI negotiations, the Series is a good illustration of the fact that policy makers are sometimes prone to take what one keen observer has described as a "rear-view mirror" approach to international investment policy making (Ostry, 1997). However, this cannot be said to be a criticism of UNCTAD in successfully seeking to elucidate the issues that must be taken into account when contemplating international investment rules in the future. The Pink Series constitutes valuable reference material for the international investment policy maker and researcher, and can be counted on to be so for many years to come. In addition, the sensitivity to the development dimension in these booklets makes them even more relevant and topical in the run-up to Doha and beyond.

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