

# International Investment Rules

E-Leaders

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## Market access and protection of foreign direct investment (FDI)

Attempts to establish multilateral investment rules

- OECD
- WTO
- World Bank, UN, ICSID

Current situation

- BIT
- Preferential trade agreements
- (WTO Agreements)
- Guidelines (not binding)

## OECD

- Multilateral Agreement on Investment, MAI
- High standards for liberalization of investment regimes and investment protection, including dispute settlement (1995-1998)
- Reasons of failure:
  - Developed countries only, developing countries invited in the middle of negotiations
  - Lack of detailed investment regulation in many countries
  - Top-down approach in negotiations

## WTO

- Havana Charter (ITO) were not ratified
  - ➔ rules for investment were not included into the multilateral trading system based on GATT Agreement
- WTO since 1995: TRIMS, GATS
- Singaporean declaration 1996: trade and investment
- Working Group on Trade and Investment – discussion was frozen in 2003

## WTO

- 1999: proposal for negotiations on multilateral investment rules in the framework of a new round of trade negotiations
  - Bottom-up approach ( X from OECD-MAI)
- Abolished - reasons:
  - Should have been an outcome of the Ministerial Conference in Seattle, but Conference failed
  - Development aspects underlined as conditions for launching new round of negotiations (DDA, 2001)
    - only discussion of investment was acceptable

## Further organization and agreements

- World Bank
  - Guidelines for Foreign Investment - non binding guidelines for behaviour of multinational corporations at target markets
- United Nation Commission on Transnational Corporations
  - Codification of rules of multinational corporations – unsuccessful (refused by developed countries)
- International Centre for Settlement of Investment Disputes (WB)
  - Convention for dispute settlement between host governments and foreign investors

## Current situation: Bilateral Investment Treaties

- Complicated matrix of agreements
  - High number of agreements of each country with partners (e.g.: the Czech Republic has 93 BITs)
- Bilateral compromises → different rules and variable level of protection according to the origin of investments

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## Current situation: WTO - TRIMS

- Investment measures in relation to trade – no investment rules !
- List of investment measures that are distorting for trade (e.g. local content)
- It is not implemented fully by the developing countries and is by their majority contravened

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## Current situation : WTO GATS

- Rules for market entry of legal persons (FDI)
- But: only for services (mode 3, 11 services sectors)
- Problem: commitments of individual states – negotiated and agreed based on the bottom-up approach
  - Individual definition of market access
  - Different for individual sectors and kind of services
  - Limitation to national treatment
  - Possibility not to keep the Most Favored Nation Clause (exemptions)

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## Current situation : Preferential Trade Agreements

- Investment as a part of regional trade agreements (integration agreements of new generation)
- Initiation from developed countries, including EU
- Compensations for investment rules in other trade areas
- Variable rules and levels of protection in individual agreements as a consequence of „balancing interests“ with each partner individually

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## EU Common Commercial Policy

- Investment: included since 1<sup>st</sup> January 2009
- Exclusive competences – supranational level
- All investment agreements of all EU member states have to be re-negotiated (?) and „converted“ into EU Investment Agreements
- New investment agreements only at the EU supranational level – ratification by European Parliament only

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## Conclusion

- Reasons for non-existence of multilateral investment rules :
  - Requirements and expectancy of developed X developing countries
  - Negotiating approaches
  - Global economic development
- Impacts of non-existence of multilateral investment rules :
  - Low transparency and complexity of the system
  - Low level of predictability
  - Obstacle to investment liberalization
- Perspectives: ? (crisis excludes liberalization)

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Thank you for your attention

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