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IS IT POSSIBLE TO DEVELOP WITHIN THE MAI?*

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Abstract

The Multilateral Agreement on Investments (MAI) in 1998 can be accepted as a reflection of a paradigm shift on development, the so-called "Washington Consensus", since they have common assumptions that all Multinational Corporations' (MNCs) activity, namely, Foreign Direct Investment (FDI) offers similar spillovers and developmental benefits. This paper aims to evaluate whether it is possible to develop within the MAI or another MAI type agreement on investment by analyzing some important articles of the MAI in terms of developmental perspective. In this respect, both in the literature and in the experience of the developing countries it is pointed out that it is not enough to liberalise the FDI or financial regime for development; governments still play a central role in development. Since the MAI ignores and undermines all these issues a MAI type agreement also will have no meaning at all for development.

Key words- the MAI, globalization, MNCs, FDI, development theory, development policies

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ÇYA ÇERÇEVESİNDE KALKINMAK MÜMKÜN MÜ?

Özet

1998 yılındaki Çok Taraflı Yatırım Anlaşması (ÇYA) kalkınma konusunda "Washington Konsensüsü" diye tabir edilen bir bakış açısı değişikliğinin yansıması olarak kabul edilebilir, zira, ikisinin de tüm Çokuluslu Şirketlerin (ÇUŞ) faaliyetlerinin, yani, Doğrudan Yabancı Yatırım (DYY)' larının benzer yayılma ve kalkınma yararları olduğu yönünde ortak varsayımları bulunmaktadır. Bu çalışma, ÇYA'nın bazı önemli maddelerini kalkınma perspektifi açısından analiz ederek, ÇYA veya ÇYA türünde başka bir yatırım anlaşması çerçevesinde kalkınmanın mümkün olup olmadığını değerlendirmek amacındadır. Bu bağlamda, hem literatürde hem de gelişmekte olan ekonomilerin deneyimlerinde, DYY'ların ya da finansal rejimlerin liberalize edilmesinin kalkınma için yeterli olmadığına ve hala daha hükümetlerin kalkınmada merkezi bir rol oynadığına işaret edilmektedir. ÇYA tüm bu konuları görmezlikten geldiğinden ve altını kazıdığından dolayı ÇYA türü bir anlaşma da kalkınma için çok fazla bir anlam ifade etmeyecektir.

Anahtar Kelimeler- ÇYA, Küreselleşme, ÇUŞ'ler, DYY, Kalkınma Teorisi, Kalkınma Politikaları

1. INTRODUCTION

The Multilateral Agreement on Investments (MAI) in 1998 was more than an agreement. It reflected widespread assumptions concerning the implications of globalisation at the end of the twentieth century, particularly the significance of new information and communication technologies (ICTs), in parallel with the political arena entering a new bipolar world order after the collapse of the Soviet Union.

Moreover, it was a reflection of a paradigm shift on development, the so-called "Washington Consensus"[i], which occurred in the 1980s as a dominant approach to development, recommending governments "to pursue macroeconomic stability by controlling inflation and reducing fiscal deficits; to open their economies to the rest of the world through trade and capital account liberalisation; and to liberalise domestic product and factor market through privatisation and deregulation", by virtue of the stabilisation and structural adjustment policies of the IMF and the World Bank (Gore, 2000: 789-790). However, it has been highly criticised in the literature and also, a new swing from the "Washington Consensus" to the "Post Washington Consensus" has been declared as the following words (Stiglitz, 1998:31):

> The Washington Consensus advocated use of a small set of instruments (including macroeconomic stability, liberalised trade, and privatisation) to achieve a relatively narrow goal (economic growth). The post-Washington consensus recognizes both that a broader set of instruments is necessary and that our goals are much broader. We seek increases in living standards –including improved health and education- not just increases in measured GDP. We seek sustainable development, which includes preserving natural resources and maintaining a healthy environment. We seek equitable development, which ensures that all groups in society, not just those at the top, enjoy the fruits of development. And we seek democratic development, in which citizens participate in a variety of ways in making the decisions that affect their lives.

This paper aims to examine the MAI in terms of the developmental paradigm outlined above. The paper attempts to answer the question as to whether it is possible to develop within the framework of the MAI or a MAI type agreement that would be consistent with the new paradigm given the prospects for a new MAI to be signed in the near future[ii]. In this regard, firstly the globalisation of the 1990s will be examined in order to highlight the background that created the MAI. This leads to a critique of the global circumstances and neoliberal perspective that reach today from the early 1990s, in terms of development policies. In the second part, a literature review analyzes FDI and development and lastly some of the MAI's significant provisions are criticised from the development point of view.

2. THE 1990S, GLOBALISATION AND THE MAI

Contrary to the general view, globalisation experienced in the 1990s was not the first time for the world (Rodrik, 1997:7). However, by the radical changes in both political and economic arenas it covered all the habitats, including economic, social, political and cultural, as becoming a multidimensional phenomenon, which has been never seen before. In addition, trade and financial integration whose changing character is based on the growth of MNCs and the rise in the short term international financial flows have gone further than ever before, by virtue of international financial flows including a greater range of assets and incorporating a wider range of economic activities (Perraton, 2001:675-681). In addition, the asymmetry between mobile capital (physical&human) and immobile natural labour is tackled as a relatively recent practical phenomenon of 1990s' globalisation, although in theory globalisation is defined as the free movement of goods and services, capital and finally labour (Rodrik, 1997:8).

There is no doubt that 1990s' globalisation in today's world, which has already left the "global village" stage, brings new dimensions to the countries whether economic, social and political restructuring, making them "open", never been seen before in the world economy. In other words, "global economic activity is significantly greater relative to domestically-based

economic activity than in previous historical periods and impinges directly or indirectly on a greater proportion of national economic activity than ever before" (Perraton et al., 1997:274). The table 1 below summarizes the 1990s' globalisation tendencies stated above.

TABLE 1

As the table 1 above shows, both international trade (export) and FDI, the indicators of the globalisation of the 1990s, have grown relatively faster than world output since the mid-1980s. Moreover, on a global scale FDI has grown at a more rapid rate compared to international trade. However, by virtue of the global integration of production, proceeded by MNCs, international trade and FDI are no more substitutes of each other, rather they are complements. It is argued that, if production is made in a single country than trade and FDI are substituted, particularly, when FDI is "market-seeking" and host country markets are protected. Indeed, it is noted that top 500 MNCs have the 80 per cent of the international investment, namely FDI and 70 per cent of the global trade. Moreover, it is pointed out that the global increase of the international trade in large measure has stemmed from the intermediate goods, such as automotive components, machinery parts and financial services, which have been conducted within the MNCs. In addition, Mergers&Acquisitions, which will be focused on later, have grown in a remarkably rapid rate through the 1990s (Milberg, 1999: 104-107).

In this regard, the MAI had a key role in this tri-sided globalisation of which first side is liberalisation of trade policies including international trade and economic integrations; the second side is MNCs' operations including international production and third side is liberalisation of financial markets including international finance. In this regard, inspired from David Ricardo's Theory of Comparative Advantages telling that International Trade, a traditional pattern of international economics, is an "Increasing-Sum Game" rather than a "Zero-Sum Game", which means that it maintains benefits for both sides, all tariffs, quotas that obstruct free trade, have been banned within the General Agreement on Tariffs and Trade (GATT) and World Trade Organisation (WTO). Thus; liberalisation of international trade, namely, globalisation in trade was tried to be realised. In addition to this attitude, by means of regional organisations such as European Union (EU) and North American Free Trade Agreement (NAFTA), economic integration among countries was tried to be maintained (Eun and Resnick, 2001:9-15).

MNCs, which can be defined as the engine of globalisation, constitute the vehicle of production of globalisation. They stand at an undeniably important point by reshaping the world economy through organizing their product and sales facilities in more than one country.

In this regard, it is argued that contrary to the theory of comparative advantage mentioned above, international division of labour depends more on MNCs' decisions of location of production (Milberg, 1999: 101). Moreover, it is also criticised as "the borders and regulatory agencies of most governments are caving in to the New World Order of globalisation, allowing corporations to assume an ever more stateless quality leaving them less and less accountable to any government anywhere" (Karliner, 1997:9).

Among these, MAI was the agreement about the second and third vehicles of globalisation, namely free movement of capital. By virtue of liberalisation of capital in all over the world, enhancing the volume, speed and prevalence of capital is aimed, without any barrier. However, this unrestricted movement of capital made the developing countries unstable, crisis prone and crisis spreader, fragile economies (Onis and Aysan, 2000:132-133). In other words, the "openness"[iii] has not meant only "open to growth of output, welfare and international trade" but also refers, ironically, to the negative effects of these international transactions. In this regard, after the debt crises in the 1980s that reduced the foreign bank loans availability as a financial resource and also short term portfolio investment that created several financial crises in the 1990s[iv], for two decades developing countries have been trying to use the FDI as a financial resource (Singh, 2005: 3).

To this end, most developing countries simultaneously adopt very similar policies. They offer incentives, such as "financial and tax incentives" as well as "market preferences" to encourage FDI. However, contrary to these efforts and also the basic growth theory saying that "in the absence of market distortions, capital will flow from where its returns in investment is lowest (developed countries) to where its return is highest (developing countries)", FDI mainly flowed in the developed countries rather than developing ones in the 1990s (See Table 2). Moreover, among the developing countries they mostly went to just ten middle income countries (See table 3) by also having shifted the sectoral composition of their investment from manufacturing to the services without developmental dimension (Milberg, 1999, pp. 103), since the services are accepted as non-traded goods in the theory.

TABLE 2

TABLE 3

On the other hand, these policies can severely destroy economic activity, reducing the efficiency of FDI. Furthermore, "gains arising from these policies tend to be at the expense of other countries, as can be called beggar-thy-neighbour policies, resulting in a wasteful competitive bidding among nations". In this regard, this also points out "a prisoner's

dilemma-type situation, where every country would be better off if each country reduced its incentives by the same amount"(Roberts, 1998:4). This is only possible through multilateral economic policy co-ordination, which could cause all host countries to win extensive welfare gains (Roberts, 1998:4). Otherwise, for the developing countries it would be the "low-level equilibrium" that pointing out the low wages which are not enough to offset low and slow growing productivity for development, which can be stemmed from the MNCs" decision on location of components. Furthermore, MNCs can choose to leave the significant activities such as Research &Development or allocation of retained earnings at the home country. Or they can shift the production locations easily among their subsidiaries because of the changed costs in the host country, leaving the host country with the dead end of its developmental goals (Milberg, 1999: 106). As it is argued, MNCs have highly competitive advantages stemming from the three type of assets as first is having high level of technology, second is "multinationality" itself and third is its transactions within the framework of its "superior intra-firm hierarchies", mentioned above as a possible threat to the developing countries(Lall and Narula, 2004: 454).

In the 1990s, after all these possible and indeed, experienced threats to the developing countries, the paradigm of Washington Consensus on development has been highly criticised in terms of its attitude as "being single-minded and short term goaled, focusing on inflation and budget deficits, lacking long term transformation of economies and societies, namely long-term development" and its assumptions that "markets for knowledge are efficient, and that FDI flows create positive externalities for domestic firms and thus, all MNCs activity offers similar spillovers and developmental benefits, focusing on the 'quantity' of FDI rather than 'quality'" (See Stiglitz, 1998; Gore, 2000, Lall and Narula, 2004). In this regard, this approach has indeed stemmed from an important fallacy of the development theory, which is mostly occurred in the post-world war-II, as accepting that the developing countries are homogeneous, so growth will be realised everywhere at the same rate if "one standard, complementary package of "good" economic policies which will ensure success wherever implemented" are used (Mosley, 2000:633). However, in reality it is experienced that "development is a complex, non-linear, non rational and contextually-dependent (regionally, historically, environmentally, etc.) process" (Aronson, 2006:21).

In this regard, after the late 1980s two significant challenges to the "Washington Consensus", have been realised.[v] One of them is UNDP's sustainable human development (SHD) approach, arguing that the "ultimate test of development practice is that it should improve the nature of people's lives, not just focusing on the promotion of the GDP growth" and the other

is the Southern Consensus, which is the common attitude of the countries undertaking late industrialisation and seeking to catch up with the richer ones in the global arena (Gore, 2000:795).

3. THE LITERATURE REVIEW ON FDI AND ECONOMIC DEVELOPMENT

There have been many empirical studies on the determinants of growth (See e.g. Barro, 1991; Levine & Renelt, 1992; Easterly and Levine, 1997; Sachs, 1997). The common elements of these studies as independent/ explanatory variables that have impact on growth can be listed as follows: Investment, population growth, initial per capita GDP, initial human capital. Apart from these, Greenaway et al. (2002) adds two variables, the terms of trade and liberalisation in his dynamic model and finds that liberalisation may impact favourably on growth of real GDP per capita, but this effect would be lagged and relatively modest (Greenaway et al, 2002:234-235). Mosley (2004) classifies the explanatory variables that have an impact on growth in three categories: First one is Orthodox New Growth Theory variables, base year income, investment and human capital (education enrollments); second is Political Variables, such as democracy (overall and one-party), corruption, vulnerability to political shocks and the last is Institutional Variables, such as expropriation risk, ethnolinguistic fractionalization, inequality (Gini coefficient, financial inclusion and gender inequality indicators). He finds that the political and institutional variables such as ethnolinguistic fractionalization and protection against the risk of expropriation, which he defines as "currently most fashionable", show significance if he adds one further Lewis type variable such as the composite country risk indicator. Moreover, Mosley (2004) argues that all these sophisticated variables that are used in "new growth theories" or present day's studies can be found in Arthur Lewis's noteworthy work of Economic Development with Unlimited Supplies of Labour, published in 1954. Lastly, he points out that if any inequality between the modern and traditional sector stemming from the duality of the economy would not be over countered by political or institutional means, it would cause political instability that threats the long term sustainable development (Mosley, 2004:759-767).

In literature, there also have been large empirical works on FDI and "economic development", which can be handled as "growth of GDP per capita" in a narrow manner. But their results have been accepted as unclear, since FDI itself affects most of the factors that explain the growth as summarized above (Lall, 2000:5). In theory, FDI has several important impacts on economy of the host country, which can be summarized as follows "1-promotes economic growth and development 2-raises employment and wages 3-generates technological spillovers that raise productivity 4-provides export market access 5-leads to improvement in the balance

of payments"(Milberg, 1999:100). It has been argued that in addition to the direct increase of capital formation of the host country, FDI also can help increasing growth by introducing new technologies, managerial skills, ideas, and new varieties of capital goods (Hermes and Lensink, 2003: 143). All these can create spillovers[vi]. In theory, the spillovers can be created by "demonstration and/or imitation", which means new products or technologies of MNCs are imitated by local firms; by "competition", which means local firms get under pressure to adapt new technologies after the entrance of MNCs to the markets; by "linkages", which means transactions between MNCs and local firms, and by "training", which means local firms invest their human capital through developing the skills and knowledge of their employees to make them to adapt the new technologies that MNCs developed (Hermes and Lensink, 2003: 143).

However, it does not seem as a rule that FDI will create these spillovers in every host country, if it is looked at the findings of the empirical studies of county based. In this regard, it is criticised as the benefits of FDI are difficult to measure and also are not uniform, which depend on the conditions of the host countries.

In other words, in literature there is a consensus that benefiting of these spillovers depends on the "absorptive capacity" of the host country, namely, its infrastructure, education system, human resource, institutions, a minimum level of scientific and technical knowledge, which is required to use innovation, dynamic business climate, well-functioning markets, establishment of property rights (especially intellectual property rights), past industrialisation experience etc. (Findlay, 1978; Perez and Soete, 1988; Borensztein et al., 1988; Narula and Marin, 2003; Xu, 2000; Koko et al., 2001; Smarzynska, 2002; Bhagwati, 1978; Ozawa, 1992; Balasubramanyam et al., 1996) Narula (2004), handles absorptive capacity in four categories: 1-Firm- sector absorptive capacity 2-Basic infrastructure 3-Advanced infrastructure 4-Formal and Informal institutions. Thus; it is argued that because of these reasons stressed above there cannot be found any correlation between FDI and economic development in the least developed economies, namely, poor countries such as sub-Saharan Africa, whereas in the middle income developing economies, especially 10 economies such as China, Brazil, Singapore, Mexico, Indonesia, Argentina, Malaysia, Poland, Chile and Peru, some spillovers have been identified.

In this regard, within these empirical studies it is criticised as there is more evidence that direction of causality between FDI and Development is opposite, which means that economic growth influences FDI. This positive relation between FDI and economic development has

been identified statistically significant when higher-income group of developing countries are examined, but not the lower-income group of developing countries. It should not be surprising because of the fact that higher-income developing countries have absorptive capacities that both lead the benefiting of spillovers and attract "market-seeking FDI". It is also consistent with the theory that apart from the aid, FDI has a tendency of seeking higher-income growth and political stability. Thus; it can be drawn that FDI can be a more significant part of a development strategy for middle-income countries, but not for the poor countries which do not have absorptive capacity for both attracting and benefiting FDI (Milberg, 1999:110).

On the other hand, studies point out that for middle-income countries, it is not the only case that FDI has a positive impact on growth. In theory, it is criticised as the spillovers can be few or even negative if the MNCs force domestic firms out of the market because of the scale effect, namely, greater competition causing lower profits, which local firms cannot survive with. Thus; FDI in a host country "crowds out" the existing investment of the local firms instead of "crowds in" the further investment (Singh, 2005:11). There have been also large and controversial results on this issue. As one of them, Agosin and Mayer (2000) examines the effect of FDI on local investments in host country either positive as "crowding in" or negative as "crowding out", by investigating the three developing regions, Asia, Latin America and Africa for the period of 1970-1996. They find that the impact of FDI on development is not uniform, as a strong "crowding in" in Asia, but "crowding out" in Latin America and neutral effects in Africa. These finding about Africa is consistent with the theory of absorptive capacity of the host country, but the other two seem to be inconsistent, while Latin America has absorptive capacity.

In their words, they maintain that (Agosin and Mayer, 2000:17)

> ….Therefore, the assumption that underpins policy toward FDI in most developing countries- that FDI is always good for a country's development and that a liberal policy toward MNEs is sufficient to ensure positive effects- fails to be upheld by the data…..the most far-reaching liberalisations on FDI regimes in the
> 1990s took place in Latin America, and that FDI regimes in Asia have remained the least liberal in the developing world…Nonetheless, it is in these countries that there is strongest evidence of crowding in. In Latin America, on the other hand, liberalisation does not appear to have led crowding in.

So, in literature it is strongly argued that for the host countries which have even absorptive capacities should implement "national development and technological plans" to benefit the FDI, as in Asia. (Dunning, 1994; Freeman and Hagedoorn, 1989; Milberg, 1999; South Centre, 2000 etc.) Moreover, it is argued that governments should play the role of "a market facilitator and provider of complementary assets" (Narula, 2003; Dunning, 1997; Stopford,

1997) and also, governments should play national policies to promote MNCs "into improving and upgrading capabilities to sustain more technologically sophisticated industrial activities, (by not) …only (on) attracting the investment but also (on) deepening its presence in the host economy on the basis of dynamic not static comparative advantages"(Mortimore and Vergara, 2004:525). In other words, they should regulate FDI to promote their economic development on the contrary of the logic of neoliberal approach favoured by the Washington Consensus and the MAI, which is a reflection of it. Thus; they can prevent the market failures, which are defined as following words by Singh (2005):

> …TNC investment process in its relationship to developing countries. The first (kind of market failures) arise from information or co-ordination failures in the investment process, which can lead a country to attract insufficient FDI, or the wrong quality of FDI. The second (kind of market failures) arises when private interests of investors diverge from the economic interest of home countries (Singh, 2005:12).

In literature, it has been started to focus on the "quality" of FDI rather than "quantity" of it in order to be beneficial for economic development of host country. The quality of FDI depends on the "scope and competence of the subsidiary" of the MNCs. All these are partly connected with the "factors internal to MNCs, including their internationalisation strategy, the role of particular affiliates in their global system and the motivation for their investment" (Lall and Narula, 2004:450). Much of these are outside the scope of the effect of the host countries. In this regard, the motivation of the FDI is vital in determining the linkages and externalities. Narula and Dunning (2000) lists four main motives for FDI as 1-seeking natural resources; 2-seeking new markets; 3- restructuring existing foreign production; and 4- seeking new strategic assets. Lall and Narula (2004) classify them into two categories: "The first category includes the first three motives: asset-exploiting, to generate economic rent by using existing firm-specific assets. The second category is the fourth motive: asset-augmenting, to acquire new assets that protect or enhance existing assets." They argue that developing countries mostly attract the wrong quality of FDI as the first category above, instead of attacking the second category of FDI. Because of the fact that all subsidiaries do not offer the same spillovers to host countries they cannot be in the same efficiency for development. For instance, a sales office as an affiliate can have high turnover and employ many people, but its technological spillovers will be limited relative to manufacturing facility (Lall and Narula, 2004: 451). Also, if it were banned to implement performance requirements, such as hiring local people or something else, towards MNCs, as done in the MAI, then that even employing many people would not produce expected spillover benefits for the host country.

When the FDI is realised by acquisition of existing assets in the host country it is called "brown field investment" and it does not create required addition at all to the capital stock, output or employment if they only lead to a change of ownership without adding to productive capacity or productivity, compared to the "green field investment" leading a net addition to the host country"s capital stock. Moreover, in the brown field investment when entirely new productive capacity is not placed, the technology spillover also can be seen in question (Milberg, 1999:107). On the other hand, it is argued that the benefits of the Merger&Acquisitions (M&A) depend on the characteristics of the host country and the conditions in which local firms are acquired. Under those circumstances, they could increase output by raising productivity through better technology and/or management (Lall, 2000:14).

It is argued that if developing countries want to attract the right kind of FDI, in the right amounts, and to be able to maximize the benefits from FDI for developing, there should be effective states that manage the process (Singh, 2005:12). Otherwise, if the government is weak in both regulating and bargaining FDI, then it will cause "unequal distribution of benefits or abuse of market power" by MNCs (Lall, 2000:8).

After the financial crises that experienced around the world in the 1990s, in literature, a consensus is maintained partly on the Portfolio Investments' namely international financial flows' role in these crises because of their highly liquid manner.[vii] Thus; FDI with its relatively stable and "non paper", namely real structure, is handled as a sole reliable source for financing developing countries, "providing a non-volatile source of capital that requires neither a fixed interest payment nor a repayment of principal at a specified date" (Milberg, 1999:100). However, if FDI is a "brown field investment" as buying the stocks of the local firm at the stock market, then it is not clear to differentiate the portfolio and direct investments.

Moreover, by the virtue of derivatives it is easy to hedge the FDI and make them liquid and constitute a threat to the host country"s exchange rate and balance of payments both in the short run and in the long run, like portfolio investments. It is no more said to be that for home country the risks of FDI are usual risk associated with any capital investment and also, foreign exchange risk, because of the fact that MNCs have the opportunity to access the international capital markets to hedge the risk of foreign exchange by domestic liabilities (Singh, 2005:9). On the other hand, it is claimed that there is a direct linkage between high interest rates that developing countries use as a tool to attract foreign capital and FDI, which causing the developing countries to a vicious cycle. In this respect, the high interest rates are not because

of only attracting MNCs' profits to reinvest in host countries, but also attracting the funds of MNCs, which "act as "megacorps" using FDI to generate future investment funds internally rather than borrow externally" (Milberg, 1999:108).

Another argument related to the potential negative effects of FDI on developing countries is that FDI surges can cause undesirable results, such as exchange rate appreciation, decreasing developing country's competitiveness on international trade (Singh, 2005:9). To sum up, with the development and high liberalisation of financial markets of the developing economies, FDI can easily be hedged, which help to eliminate the difference between them and the portfolio investments than ever before; thus, it gives FDI the capability of creating financial crises, by being unstable and volatile (Milberg, 1999:101). So, it is argued that to avoid the financial fragility, stemming from the "unfettered FDI", which bases the economic structure prone to crises, the governments would need to monitor and regulate the amount and timing of FDI. Because, it is argued that aggregate foreign exchange inflows and outflows, both in the short and long run, might be stemmed from the large FDI projects, which may generate a "time profile" of these outflows, in the form of dividend payments or profits transaction, and inflows that can be time inconsistent. In this regard, this time inconsistency can cause liquidity crises and even solvency crisis with worse consequences for economic development as seen in Asia (Singh, 2005:9-10).

4. WHAT WAS THE MAI[viii] TELLING IN TERMS OF DEVELOPMENT?

Parallel to the arrangements related to liberalisation of international trade, all the issues regarding investments and investors were handled in a manner welcoming the countries which are non members of OECD, with the aim to overcome the problems stemming from the different regulations for international capital by the governments, to fill the gap of international law which is thought to be there, and to bring a unified implementation to international capital.[ix] However, Singh (2005) argues that without the MAI, FDI was still high in the 1990s under the regime of bilateral investment treaties (BIT), which he claims are more useful in terms of both development and international capital friendly provisions; he noted 1337 BIT over 162 countries by 1997 (Singh, 2005:17-18).

The MAI was tackled with the concern that although international investments are necessary and closely related to international trade, there is no comprehensive and uniform framework governing investments on a global scale. In other words, that there are no certain rules of the game creates highly important problems, such as transaction costs and insecure framework. However, the investor really seeks transparency and in the long run, stable rules and

procedures, open economies and regulations in which they can compete with domestic investors (TRPMUT, 1999:4). It has been firstly criticised with this logic that MNCs themselves do have the considerable market power, which can manipulate the markets in the host countries. Even with the international mergers MNCs can make the markets more unequal, in terms of barriers to entry (Singh, 2005:15).

The attempts intended to form multilateral investment arrangements before the MAI were limited to the rules related to particular sectors or certain foreign investment procedures, and did not constitute a comprehensive framework.[x] In this regard, according to the OECD officials, the MAI negotiators were considering rules that would "go well beyond the provisions of other agreements" and would "provide path-breaking disciplines on areas of major interests to foreign investors" (Sforza et al, 1998:2). It can be concluded that the primary aim of the MAI has been to build the uniform rules for the MNCs and their FDI in host countries, without any developmental dimension or concern, because it is believed that with uniform regulations more FDI would inflow to developing countries and it would create development automatically. However, having examined in the literature, FDI inflow to the developing countries which have high level of per capita income, rate of growth and political stability. Moreover, to benefit the FDI for development, developing countries should have absorptive capacity such as human capital, physical infrastructure, qualified institutions etc. Even in that case, FDI should be the most efficient one with the motivation of seeking new strategic assets to achieve strong positive spillover benefits, not only seeking natural resources or seeking new markets or not to be mostly "brownfield investment".

MAI was a comprehensive agreement that was prepared "up to bottom"[xi] because of the reason that there are no uniform rules and implementations that are binding everybody in international law on international investments and that this gap has been blocking the efficient allocation of resources in the world (OECD, 1998:1). This means that although they were not participatants in the negotiations of the whole agreement, developing countries would sign up to the whole agreement and negotiate individual exemptions for particular sectors, contrary to the GATS's "bottom to up" approach (Oxfam, 1998: 5). In addition, it had provisions beyond the ones in the same purposes that have been already placed in the WTO, NAFTA and EU(Sforza et al, 1998:2). In other words, its provisions were designed to go further in restricting development policy options of the developing countries.

As in most international agreements, a number of rights and responsibilities were determined within the MAI. However, unlike the other agreements, only foreign investors and

corporations were empowered to obtain the rights maintained in the agreement, while the governments and their development concerns were ignored by just giving them responsibilities. In addition, in contrast to all existing agreements, the terms of the MAI were binding for 20 years for the governments after accessed into the MAI (Wallach, 1998a:2). It has been stated within the Final Provisions Chapter(XII), under the name of Withdrawals as follows "At any time after five years from the date on which this Agreement has entered into force for a Contracting Party, that Contracting Party may give written notice to the Depositary of its withdrawal from this Agreement"(MAI Chapter XII, Withdrawal, (1)) and "The provisions of this Agreement shall continue to apply for a period of fifteen years from the date of notification of withdrawal to an investment existing at that date" (MAI Chapter XII, Withdrawal, (3)).

It was formed as a legal regulation that let international capitals to move freely, without facing any auditing and restrictions, from having limitless property in every field that would like to, from production to marketing, to transferring its profit and investments to every country that it would like to. This attitude is limiting the governments' regulatory actions whose importance is highlighted in the literature part to attract the right amount and right kind of FDI to benefit the FDI for development. Moreover, it prevents governments to regulate both short term investments and FDI's aggregate foreign exchange inflows and outflows to avoid the financial fragility, constituting the base of prone to crises economies, which can cause financial crises as experienced before.

Within the framework of General Provisions Chapter(I) of the MAI in the Preamble Section, whose language was non-binding like Ministerial Declaration's according to treaty law, and also in the other parts of the agreement, there have been positive statements regarding labour and environmental standards. However, these were participating in the square brackets, "[ ]", not in parentheses, "( )", meaning that there was no complete consensus on it. Like this, footnotes or interpretive notes would not necessarily have binding effects within the framework of the MAI, as told in the Footnote 29 of the MAI text. So, it should be carefully observed that both the statement that "expropriation rules do not cover regular government actions" and the statement that "performance requirement restrictions do not limit investment targets for minorities, poor regions and women" were placed in the footnotes of the MAI. These all have constituted the legal tricks of the MAI which should be careful on (Wallach and Doctor, 1998:2-3).

In the Scope and Application Chapter(II), there were highly comprehensive definitions, which has not ever been seen before, about “investor” and “investment”. In this regard, beyond direct investment and portfolio investment, financial rights and royalties have been also included to the definition of investment (MAI Chapter II, Definitions, (2)). Although it is criticised that (before the MAI) under the existing protection regime of the Agreement on Trade-related Investment Measures (TRIMs) or the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs), it is not possible to use traditional policy instruments that provide learning and promote reverse engineering, which developing countries use for “catching up” the developed countries as a policy tool (See Lall et al, 2004; Singh, 2005).

In the Part of Treatment of Investors and Investments, “National Treatment” and “Most Favoured Nation Treatment” have been placed. In this regard, within the context of National Treatment, the restrictions on production conditions or employment rules that are implemented to foreign investors by host countries would be obstructed (MAI Chapter III, National Treatment And Most Favoured Nation Treatment, (1)).

In this regard, it would be forbidden to implement facially neutral laws that can be indicated to have an “unintended discriminatory impact on foreign capital”. This means that neutral laws restricting on the widening of “extractive industries such as mining or forestry” would be vulnerable on the fact that they discriminate in effect against foreign investors trying to gain new access to the resources, compared to the domestic investors who already have access. Similarly, the policies worldwide benefiting small businesses or preferential treatment aimed at contributing to the development of certain categories of investors or investments, such as “the EU”s program promoting development in economically stressed regions or land redistribution programs in developing countries aiming at getting farmland into the hands of local residents”, could be attacked if a disparate impact can be shown. Thus; this would not be difficult given that it is not large multinational investors, but local entrepreneurs generally obtain the tax breaks or other favourable government treatment (Wallach, 1998b:5). However, it is argued that “catch up by infant industry promotion”, which is no more available by “national treatment”, has been always the milestone of the industrial development. (See Chang, 2002; Wood et al., 2003; Lall, 2000) Moreover, Singh (2005) argues that national treatment, which aims to give the equal rights to market powered MNCs with the local firms, would both harm economic development in developing countries and cause global economic inefficiency (Singh, 2005: 15).

On the one hand, within the context of Most Favoured Nation Treatment, a state had no rights to implement a restriction as a sanction to an investor of a state that is in political conflict with her (MAI Chapter III, National Treatment And Most Favoured Nation Treatment, (2)). It means that this would prevent governments from distinguishing between foreign investors or foreign investment targets, in terms of countries' human rights, labour or other criteria. There has been a common example of this issue telling that "if the MAI had been law in the 1980s, Nelson Mandela would still be in jail." This is, tragically, said because the MAI would demand cancellation of investment boycotts or restrictions, except those defensible under a narrow "essential security" exception (Wallach, 1998b:6). On the other hand, according to the MAI's founders the policy that governments treat all foreign countries and all foreign investors equally with respect to regulation laws was aimed by this treatment (OECD, 1998:2).

One of the most notably article was in the Performance Requirements Section. By this detailed article, all efforts and measures of governments towards establishment, acquisition, expansion, management, operation or conduct of an investment were prohibited (MAI Chapter III, Performance Requirements, (1)), although these measures have been used to shape investment to benefit public interest by many countries. For instance, for a developed country the laws that designed to protect the natural resources as "the requirement that glass or plastic containers are made from a minimum percentage of recycled content and the preferential purchasing of materials made with recycled content" or for a developing country the laws that are designed to strengthen domestic economic growth that the government would demand from an investor to transfer technology or to export a given level or per cent of goods or services or to require foreign investors to form partnerships with local firms would be prohibited (Wallach, 1998a:3). Thus; on one side, the work of investors gets a highly easier manner, on the other side, it seems for developing countries the FDI phenomenon, which is used for development and enhancing economic and social welfare, becomes useless. Contrary to the literature, governments cannot do anything to realize the benefits from existing FDI for development. In other words, "the MAI would seriously limit the ability of governments to regulate investment in the public interest and transfer control over investment decisions from governments to unaccountable companies". It is argued that this would particularly affect developing countries, preventing them from implementing the kind of policies which involve a significant degree of state intervention and were adopted by the successful OECD and East Asian economies in their early stages of their development (Oxfam, 1998: 3).

In this regard, the MAI with the article stressed above was highly criticised as “all rights, no responsibility” or “investor rights without investor responsibilities” (Sforza et al, 1998:8). Because some required provisions on this issue, such as an accompanied list of obligations or accountability for investor practices or even for the prohibition of anti-competitive business conducts under which citizen could sue for compensation from firms, did not participate in the MAI. In this respect, the MAI has lacked binding provisions on “corporate responsibilities vis-a-vis labour practices, local communities, or ethical behaviour” (Wallach, 1998b:4).

In the Investment Protection Chapter(IV), under the name of Transfers, all payments related to an investment would be feely transferred into, and out of, its territory without delay. (MAI Article IV(4.1)) In this regard, it was highly criticised as accelerating of the short term speculative investments, the so called “hot money”, on the world and causing the financial crises world wide. In this respect, the MAI would undercut countries’ authority on regulating capital flows. This clearly would prevent countries from applying provisions on portfolio investment, such as “speed bumps” requirements that investors hold onto financial instruments for a certain length of time. As can be remembered, such mechanisms have helped some countries to prevent from calamities like the Mexican peso crisis. For instance, it is argued that by virtue of the policy of investment speed bumps Chile alone avoided the so-called tequila effect of regional economic turmoil, started with the collapse of the Mexican currency in 1995 (Wallach, 1998b:6).

Even in an environment that George Soros, famous multi-billionaire speculator, pointed out the “social disintegration” as a product of rapid economic deregulation in his article in the Atlantic Monthly and said that “The main enemy of the open society, I believe, is no longer the communist but the capitalist threat”(Soros, 1997:45). In addition to another billionaire Sir James Goldsmith as wrote in the London Times of Feb. 1994, “What an astonishing thing it is to watch a civilization destroy itself because it is unable to re-examine the validity, under totally new circumstances, of an economic ideology”(Sahtouris, 1997:13).

The “expropriation and compensation” rules have been handled as the MAI’s most dangerous provisions. Because it was believed that they have armed every foreign investor or corporation with the power to challenge nearly any government action or policy from taxes to environmental or labour rules to consumer protections as a potential threat to their profits. For instance, within the framework of Investment Protection Chapter(IV), under the “protection from strife” provision, governments were liable to investors if there was “civil disturbance” to say nothing of “revolution, states of emergency or any other similar events”(MAI Article

IV(3.1)). This clearly meant that governments have been under an obligation to foreign investors to ensure that there has been no “strife” that could diminish their profitability such as protests, boycotts and labour strikes. This has been criticised as to encourage governments, under cover of MAI rules, to restrict social freedoms (Wallach, 1998a:2). This issue points out the development approach of the post-Washington consensus, stated at the beginning of the paper, that it should be more than the measurement of the economic growth.
Within the framework of Dispute Settlement Chapter(V), under the name of Investor-State Procedures the MAI would confer on private investors and corporations the same rights and legal standing as national governments to enforce the MAI’s terms (MAI Article V(D)(1a)). Thus; the MAI has empowered private investors to initiate MAI enforcement actions when they choose at the tribunals of their choice against governments (MAI Article V(D)(1b)). In this regard, the International Chamber of Commerce, criticised as a biased arbiter, has participated in the list of arbitral panels where investors and firms can sue the national governments. Moreover, investors had rights to claim compensation from governments based on the fact that they have not maintained all the benefits promised under the treaty, before the arbitration procedure. This dispute resolution system would be binding on governments with enforcement through monetary fines as the MAI text included a provision that binds governments to “unconditional consent to the submission of a dispute to international arbitration” (Wallach, 1998b:7). This issue is critical for two terms. Firstly, corresponding rights to counter-claim are not granted to the citizens who can be adversely affected by the FDI”s procedures, which points out the unequal manner of the MAI attitude. Secondly, high costs that cannot be affordable for the poorer developing countries and unpredictable length of the procedure in the arbitration mechanism can make developing countries choose to negotiate off-tribunals, where the results would be more costly for the developmental perspective (Oxfam, 1998:6).

In addition, the MAI has contained provisions called “standstill” and “rollback” which would have binded governments to take no further actions in areas covered by the treaty (standstill) and to systematically eliminate non-conforming laws that do exist (rollback) (Wallach, 1998b:8). Thus; the right to put reservations, as in 1997 Draft, or exceptions, as in 1998 Draft, for national purposes by states seemed to be taken back by these provisions, as these reservations or exceptions would be temporary (MAI Chapter IX, Lodging Of Country Specific Exceptions, (A)(a-b)). In other words, when a country claimed a law or policy area as a “reservation”, it would be admitting that such law or policy area has conflicted with the terms of the MAI. As well, when a country claimed a law or policy area as an “exception”, it would be meaning that a country has specified the circumstances or fields when she may

violate a term of the MAI without penalty. (Other than the General Exceptions when the circumstances were listed for all signatories) In anyway, the “roll back” of the laws, inconsistent with the MAI, would eliminate the reservations or exceptions, as, by this attitude, the MAI would obligate the governments to liberalise in the future (Wallach and Doctor, 1998:5-6). In this regard, the right of national states especially undeveloped countries, which have been tried to survive, and developing ones, which need more promotion, seem to be ignored. In this regard, from the perspective of the MAI it is believed that more the liberalisation more the FDI. However, both the literature highlights that liberalisation, namely non regulatory constraints on FDI, is not enough to attract FDI and the experiences of some countries such as China and Malaysia show that although there are significant control and regulation over FDI, FDI still inflows in large amounts to these countries (Singh, 2005: 10).

To sum up, in the MAI there had been notably articles on various subjects from the prohibition of regulations such as golden shares that enable the capital to spread the ground, to the obligation of implementation of international arbitration and to the compensation of, the so called “civil disturbance”, which could be protestations and strives, from government. In this regard, it has been argued that the MAI would contribute to “growing job insecurity and downward pressure on labour, environmental and consumer standards” by increasing the freedom of investors to buy, sell, and move their operations wherever and whenever they want without government restriction (Oxfam, 1998:3).

5. CONCLUSION

When it is considered the both positive and the negative effects of all kinds of foreign capital, which accelerated in amounts through the 1990s’ globalisation, on the developing countries, it is believed that a multinational framework for international investments is needed. However, this multinational framework should be in a balanced approach as while preventing MNCs from loosing and providing them gains from their investment, it should also maintain developing countries benefits from FDI in terms of development. In other words, “it is the role of international regulation to ensure that the economic benefits are maximised while social and environmental standards are not sacrificed” (Oxfam, 1998:3).

If it is returned to the question at the beginning that “Is it possible to develop within the framework of the MAI or any MAI type agreements that would be signed in the future?”, the answer should be negative in terms of the unbalanced attitude of the MAI, ignoring developing countries and its highly liberalised approach without developmental dimension.

Indeed, both in the literature and in the experience of the developing countries it is pointed out that it is not enough to liberalise the FDI or financial regime for development. Moreover, governments have still highly important roles in development process, by pursuing efficient policies both to attract "the right FDI", which is most useful for development, in the "right amounts" and to enhance the absorptive capacity of the economy as human capital and physical infrastructure. In addition, their regulatory mission is still vital to avoid the financial fragility that can cause financial crises. However, the MAI ignores and undermines all these issues.

It is argued that for a new MAI the basic fundamental rules about environment, human rights and consumer standards should be replaced with the new and beneficial ones, instead of just adding a new social charter to the ex MAI, as follows:

1-A provision should be introduced allowing developing countries to sign up to the new MAI on a sector by sector basis rather signing the whole agreement and then negotiating individual country-exemptions.

2-If a dispute settlement mechanism is established; citizens and other stakeholders must have the right to present evidence to the tribunals and bring claims for damages caused by an investor.

3- Internationally funded arbitration tribunals and pools of experts be provided to assist developing countries, citizens and other stakeholders with representation on claims for damages caused by an investor.

4-Prohibitions on performance requirements be removed from the new MAI or reduced significantly in scope.

5-The requirements for governments to commit to broad standstill, rollback and withdrawal clauses be removed.

6-The definition of expropriation in the new MAI be narrowed by the inclusion of a general exception for legitimate national policies.

7-Governments should retain the right to regulate investors moving capital in and out of a country in order to reduce destabilizing and unproductive short term capital flows (Oxfam, 1998:15-16). Moreover, they should have the right to regulate and

monitor the amount and timing of FDI, which had been newly criticised in terms of time inconsistency of inflows and outflows that it creates.

In conclusion, only a balanced and harmonised agreement can overcome the challenges and risks of a globalised economy. Because it is argued that the MAI, if ratified, would serve as a "Charter of Rights and Freedoms for MNCs against citizens and the earth", and constitute an unforgivable threat to the democracy after the United Nation's historic Universal Declaration of Human Rights, which have been a milestone in the long international adventure to declare the supremacy of human and citizen rights over political or economic tyranny of any kind, standing as a twentieth century Magna Carta together with the International Covenant on Economic, Social, and Cultural Rights (Clarke and Barlow, 1997:7-8).

Otherwise, there will remain sharp disagreements over the likely impact of the MAI or another multilateral agreement, a comprehensive framework, on development in terms of living standards, income distribution, democracy and the sovereignty of national governments. Even worse, this sharp disagreement would be reshaped as terrorist attacks, seen before, ironically, to the WTO Twin Centers which were the great symbols of globalisation and second institution where the MAI was handled. Thus; terrorised global atmosphere, one of the main nightmares of the imagined world within the globalisation, would eliminate the globalisation itself.

Notes

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APPENDIXES

Table 1. The Indicators of the Globalisation of the 1990s

Item	Annual growth rate (per cent)			
	1986-1990	1991-1995	1996-2000	2000
FDI inflows	22.9	21.5	39.7	27.7
FDI outflows	25.6	16.6	35.1	8.7
FDI inward stock	14.7	9.3	16.9	19.1
FDI outward stock	18.1	10.7	17.1	18.5
Cross-border M&As	25.9	24.0	51.5	49.3
Sales of foreign affiliates	16.0	10.2	9.7	16.7
Gross product of foreign affiliates	17.4	6.8	8.2	15.1
Total assets of foreign affiliates	18.2	13.9	20.0	28.4
Exports of foreign affiliates	13.5	7.6	9.9	11.4
Employment of foreign affiliates (thousands)	5.6	3.9	10.8	13.3
GDP (in current prices)	10.1	5.1	1.3	2.7
Gross fixed capital formation	13.4	4.2	2.4	3.8
Royalties and licence fee receipts	21.3	14.3	7.7	9.5
Exports of goods and non-factor services	12.7	8.7	3.6	11.4

Source: UNCTAD, World Investment Report 2004: The Shift Towards Services

Table 2. FDI Inflows

(Billions of dollars)

Region/country	FDI inflows						
	1992-1997 (Annual average)	1998	1999	2000	2001	2002	2003
Developed countries	180.8	472.5	828.4	1 108.0	571.5	489.9	366.6
Western Europe	100.8	263.0	500.0	697.4	368.8	380.2	310.2
European Union	95.8	249.9	479.4	671.4	357.4	374.0	295.2
Other Western Europe	5.0	13.1	20.7	26.0	11.4	6.2	15.1
Japan	1.2	3.2	12.7	8.3	6.2	9.2	6.3
United States	60.3	174.4	283.4	314.0	159.5	62.9	29.8
Developing economies	118.6	194.1	231.9	252.5	219.7	157.6	172.0
Africa	5.9	9.1	11.6	8.7	19.6	11.8	15.0
Latin America and the Caribbean	38.2	82.5	107.4	97.5	88.1	51.4	49.7
Asia and the Pacific	74.5	102.4	112.9	146.2	112.0	94.5	107.3
Asia	74.1	102.2	112.6	146.1	111.9	94.4	107.1
West Asia	2.9	7.1	1.0	1.5	6.1	3.6	4.1
Central Asia	1.6	3.0	2.5	1.9	3.5	4.5	6.1
South, East and South-East Asia	69.6	92.1	109.1	142.7	102.2	86.3	96.9
South Asia	2.5	3.5	3.1	3.1	4.0	4.5	6.1
The Pacific	0.4	0.2	0.3	0.1	0.1	0.1	0.2
Central and Eastern Europe	11.5	24.3	26.5	27.5	26.4	31.2	21.0
World	310.9	690.9	1 086.8	1 388.0	817.6	678.8	559.6

Source: UNCTAD, *World Investment Report 2004*.

Table 3. FDI Inflows to Developing Countries, Top 10, 1992-1997

	$ Million	As percentage of FDI inflows to All Developing Countries	As percentage of World Inflows of FDI
China	32 799	27.7%	10.6%
Mexico	9 619	8.1%	3.1%
Singapore	8 295	7.0%	2.7%
Hong Kong, China	7 781	6.6%	2.5%
Brazil	6 615	5.6%	2.1%
Malaysia	5 816	4.9%	1.9%
Argentina	5 430	4.6%	1.7%
Indonesia	3 518	3.0%	1.1%
Chile	2 932	2.5%	0.9%
Poland	2 889	2.4%	0.9%

Source: UNCTAD, World Investment Report 2004, based on annex table B.1.

[i]The term “Washington Consensus” was invented by Williamson (1990). His original ten point definition of the Washington Consensus was as follows: “1-Fiscal Deficits (Fiscal discipline) 2-Public Expenditure Priorities (A redirection of public expenditure priorities from subsidies toward primary health care, primary education, and infrastructure) 3- Tax Reform (To lower marginal tax rates and broaden the tax base) 4- Interest Rates (Interest rates liberalisation) 5-The Exchange Rate (A competitive exchange rate) 6- Trade Policy (Trade liberalisation) 7-Foreign Direct Investment (Liberalisation of FDI inflows) 8-Privatisation. 9-Deregulation 10-Property Rights (Secure property rights)”(Williamson, 1990: 8-17). He maintains that having become “a synonym for neoliberalism or market fundamentalism” the term has gone further than what he had intended (Williamson, 1999). In this paper, the term is used in “the neoliberal” sense, which is the popular or dominant usage.

[ii]A MAI type agreement is on the agenda of the developed countries, as some last attempts the proposed regime on international investment of the European community (EC) and Japan in the WTO in 2003 with the backing of the United States and/or OECD’s Policy Framework for Investment, welcomed by Ministries at their annual meeting in May 2006. For a comprehensive critic of the new proposal of EC and Japan see Singh (2005).

[iii]The term “openness”, used here, is defined in the most general sense as “trading of a country with the other economies or borrowing or lending fund with the rest of the world” by Abel and Bernanke (1995):145. The proxies for openness which are used in the empirical studies are varied. For a detailed literature review on openness indexes see Edwards (1998): 383-398.

[iv] The severest sign that the new era of capital flows could bear the high risks for national economies was the financial crisis experienced following the devaluation of the Mexican peso in December 1994. In addition, the Thai financial crisis and devaluation in July 1997 by the characteristic of financial contagion in East and Southeast Asia confirmed that even economies with high rates of growth and stable and open economic policies could be deeply influenced by the sudden outflow of foreign investment. That they have been sensitive to global economic circumstances and advanced economies” interest rates made developing countries more vulnerable to capital account shocks more than ever, even not of their own making, which points out the increasing importance of “interest rate and expectation- sensitive portfolio equity flows” (Kahler, 1998: 5).

[v]For a detailed discussion of the two challenges to the Washington Consensus, see Gore (2000).

[vi]The term “spillover”, used here, is defined as “the beneficial effects of inward FDI are contagious in host countries, both within and across countries” by Milberg , (1999): 109.

[vii]Short-term international capital movements are also criticised from a longer-term growth perspective as follows: “The pattern of economic growth generated on the basis of IMF-induced neoliberal restructuring is a pattern seems to be heavily based on external debt and inflows of foreign capital, notably short-term capital.” (Onis, 2006: 256).

[viii]The last version of the MAI draft text (OECD, “The MAI Negotiating Text (as of 24 April 1998)”) can be seen on http://www.oecd.org/dataoecd/46/40/1895712.pdf .

[ix]The idea of a “free-standing, enforceable multilateral investment agreement” arose during the GATT Uruguay Round negotiations in the mid 1980s and highly mentioned in the creation of the WTO. Some WTO members offered to negotiate an investment agreement within that venue in the early 1990s. But WTO members of both developed and developing countries had been unable to agree on the terms of reference to initiate negotiations. So, it was not until May 1995 that formal and secret discussions on the MAI were initiated far away from the public awareness by using the OECD as a body. During the time when the MAI was negotiated by 29 countries, members of OECD, in 1995, its draft was decided to be discussed and opened to be signed by the members on 28 April 1998. However, when first France and then other countries withdrew from the negotiations after the noteworthy efforts in coordination of a “global community”, the MAI had to be frozen on December 1998. See Fogal, 1998. (A detailed list of this community or movement can be found under the name of Organisations and Political Parties on http://www.flora.org/flora/archive/mai-info/webinfo.htm#orgs) For a comprehensive history of the MAI see T Clarke and M Barlow, 1997.

[x]MAI was the product of a long run action plan of OECD, of which attitude coming from the 1960s, when member countries adopted two binding codes on investment liberalisation: “The Code of Liberalisation of Capital Movements and the Code of Liberalisation of Current Invisible Operations.” That they have been highly limited in context, compared to the MAI and the lack of a “supranational legal institution within the OECD” made the implementation very hard, although all OECD members must follow these codes. Members had traditionally reckoned on “peer pressure” to promote obeying. See Roberts, 1998. In this regard, Sforza et al (1998) argue that the MAI, which would be enforceable thanks to dispute-resolution mechanisms and opened to accession by non-members, would significantly differentiate from the previous OECD agreements.

[xi]According to treaty law, the term “up to bottom” means the agreements involving everything (every relevant sector) that is not clearly leaved outside of the agreement, which is known as “negative list approach”. In practice, it refers signing up to the whole agreement and negotiating individual exemptions for particular sectors, contrary to the “bottom to up” approach, which is known as “a positive list” approach assuming no sector is included unless it is listed as being excluded.