

Trade and Investment

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Why an Investment Agreement in the WTO?

- Globalisation: investment driving force of world economy
 - an international framework of rules needed
- More than 2000 bilateral agreements plus regional agreements
 - lack of transparency for investors and governments
- Trade and investment closely linked – trade follows investment
 - rules should be coherent
- Not only investors – also host countries need predictability

Scope and Definition

- **For an asset-based definition of investment**
 - **Cross-border investments**
 - **Joint ventures**
 - **Strategic alliances**
 - **Real property**
 - **Intellectual property, Trademarks**
 - **BOT-projects**
 - **Legal rights**
 - **Any other participation (shares, bonds etc.)**
- **Investor: any actor involved in these activities**

Investment Protection

- **Crucial part of any investment agreement**
- **Protection against any kind of expropriation**
- **Clear definition of expropriation needed**
- **Expropriation only as exception (e.g. national security)**
- **If expropriation –then**
 - **Adaequate compensation**
 - **Payable in freely convertible currency**

Pre-Establishment Conditions

- **For a negative list approach:**
„Generally freedom to invest in all sectors if they are not excepted“
- **The GATS-type approach might be easier to start with but will take a long time to get to satisfactory results**
- **In the meantime, insecurity remains predominant**

Non-Discrimination and Transparency

- **National treatment:**

Foreign investors must not be treated worse than national investors

No hidden taxes, retroactive regulations etc.

- **MFN:**

What is granted to one country has also to be granted to others

- **Transparency for national and foreign investors**

Free Transfer of Funds

- **Clear provisions guaranteeing the freedom of transfer related to an investment without delay and in a freely convertible currency**

Settlement of Disputes

- **A multilateral investment agreement needs a well functioning dispute settlement mechanism**
- **Extension of the WTO dispute settlement procedure to the investment agreement**
- **Investor-to-state dispute settlement should be provided**

Outlook

- **Since Singapore investment is on the WTO agenda**
 - **The working group on investment has already done a lot of valuable work**
 - **The WTO will lose importance if it does not deal those issues which are in the focus of international business**
- **In Cancun negotiations for a legally binding, comprehensive multilateral framework have to be launched!**