Using Ideas Strategically: Canada and the Negotiation Over Investment Rules at the WTO

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Introduction

Along with agriculture, the so-called "Singapore issues" are widely seen as having contributed to the failure of fifth World Trade Organization (WTO) ministerial meeting in Cancún Mexico in 2003. One of the most divisive of the four Singapore issues was a proposal to launch negotiations on an investment agreement. It was so controversial that discussion of it was finally dropped altogether from the WTO work agenda in July 2004 and only one of the four issues, trade facilitation, went forward as part of Doha Round of trade negotiations. The European Union, especially the Commission, its negotiator, is often blamed for pushing the Singapore issues (Elliot), and investment, in particular, so hard. With the EU identified as the main *demandeur* (along with Japan) on this issue little attention has been paid to Canada's role in trying to add the investment issue to the WTO negotiating agenda. In fact, Canada was one of the most active advocates of launching new negotiations on investment rules at the WTO over the whole seven year period of discussions on investment. Moreover, Canada continued to argue for a decision to negotiate investment right up to the meeting at Cancún, even as Canada's trade Minister was acting as a neutral facilitator on the Singapore issues at the meeting itself .

Some observers might argue that Canada's support for negotiating an investment agreement at the WTO makes sense given Canada's support for multilateral institutions and rules, especially for trade agreements, and the WTO in particular. Moreover as a net exporter of foreign direct investment since 1997 (State of Trade) it made sense for Canadian officials to be pursuing a set of rules designed to enhance access for Canadian investors to other markets and protect those investments, once made, against arbitrary or discriminatory treatment by host states. Yet there are equally many, if not more, reasons to question why Canada continued to pursue these negotiations at the WTO.

First it had been clear from the inception of the WTO that the issue was a divisive one, a fact reflected in the compromise forged in Singapore in 1996 to further study of, but not negotiations on, these four issues [1]. Investment agreements, such as the Multilateral Agreement on Investment (MAI), and the cases launched under the investment chapter (chapter 11), of the North American Free Trade Agreement (NAFTA) had proven by 1997 to be increasingly controversial in Canada.. Even the bilateral imperative of maintaining good relations with the United States did not necessitate pushing an investment agreement at the WTO. Canada's foremost trading partner, having failed in its attempt to get a binding high standard investment agreement at the OECD in the form of the MAI, was not vigorously pursuing this issue at the WTO. Indeed at various points during this seven-year project the US either actively opposed the efforts as a sinister plot of the EU to create a trade-off and avoid future movement on agriculture (a high priority issue for Canada) or saw the effort more benignly, as perhaps laudable, but unlikely to lead anywhere since the issue was not yet ripe for WTO negotiation. Even the business community in Canada has waxed and waned in the priority it has placed on this issue at the WTO. Even more puzzling perhaps is Canada's continued support for negotiations even as a growing number of developing countries made their opposition known (Wolfe) and continued to strengthen it during the run up to Cancún.

[1] The four were trade facilitation, transparency in government procurement, competition policy and investment. All four clearly involved domestic regulation.

This paper attempts to answer the question of why Canada pushed for the negotiation on investment rules and how it did so. It seeks to identify the sources of Canada's interest in launching investment negotiations at the WTO and the ideas that Canadian officials employed to try to make a persuasive argument about the benefits of such rules. Too often studies of trade negotiations take interests as given and do not probe sufficiently into questions about the source of these interests, how they are defined and what role ideas play in the process. The case study of the failed effort to launch negotiations on investment rules at the WTO is a useful one for several reasons. Ideas and arguments were a key element of the strategy members, such as Canada, employed to educate and persuade reluctant countries to negotiate. The extended seven year period. during which Canada was actively engaged is also one where major learning occurred for Canadian officials about investment agreements and Canada's interests in them. This case study also sheds some light on how the nature of Canada's interests alter or are re-shaped depending on the negotiation forum involved, be it bilateral, multilateral and the nature of its membership.

The paper is divided into five sections. The first discusses the concept of interests and how Canada's investment interests have been defined over time. The second section briefly examines the evolution of ideas in the Canadian policy community and in public debates around investment over the past 25 years. While academics, institutes and government officials (in departments such as DFAIT) in Canada have played a role in this, along various domestic groups and organizations, increasingly a broad array of other actors including international organizations such as the OECD, the IMF and the World Bank have as well. The third section examines the case of Canada and investment rules at the WTO with an overview of Canada's role in the creation of the Working Group on Trade and Investment (WGTI) in 1996. It then provides a summary of Canada's activity in the WGTI up to the agreement in 2001 on the Doha Declaration which set out a clear framework for discussion in the WGTI and a timeline for a final decision on the launching of negotiations at the ministerial meeting in Cancún. The fourth section discusses the intensified efforts of Canada and other actors to persuade WTO members of the need to begin negotiations on an investment agreement from the end of 2001 until the September 2003. It examines Canada's strategy and the role of ideas in that process. Finally the conclusion assesses Canada's role in the WGTI and what it reflects about the interests and ideas on investment that have shaped the position which Canada put forward at the WTO.

Canada's Evolving Investment Interests

Interests are usually taken to imply a material source of action, based on the benefit or gain the actor in question will derive. In the case of policies on foreign direct investment and international investment agreements Canada's interests in such rules might be seen to be shaped in a structural way by the economy , particularly the nature of investment flows. Second interests may be shaped though the political processes of aggregation or the trade off of interests of influential domestic actors which stand to gain or lose depending on the nature of investment policies and rules. Put very simplistically Canada's profile regarding foreign direct investment and the interests of powerful economic actors should provide a key to understanding the source of Canadian negotiators' interests in investment rules.

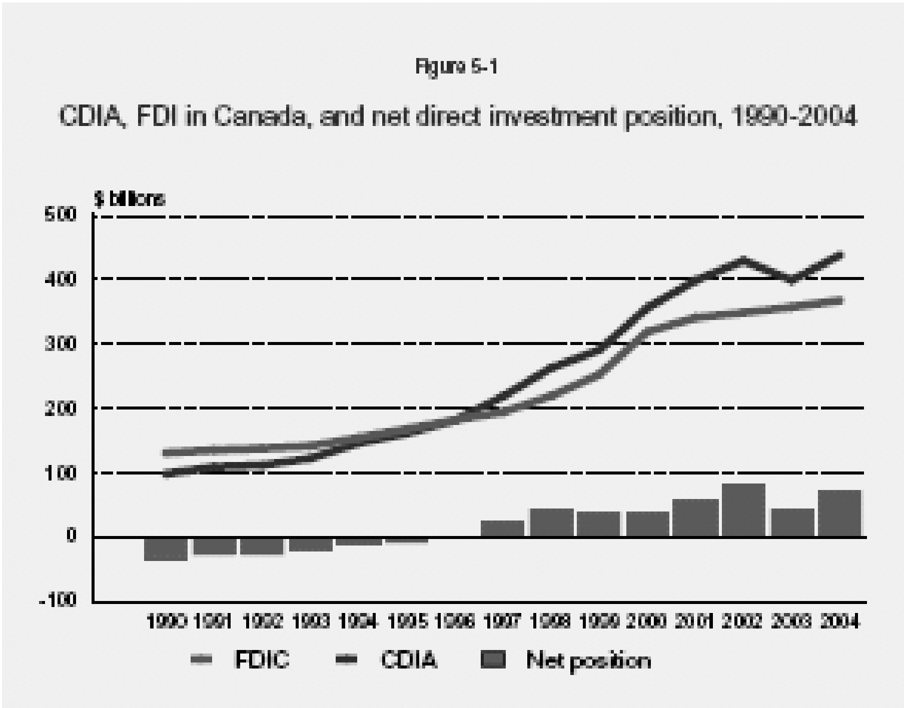
Much of Canada's postwar economic history until the 1980s was that of a major capital importer which had resulted in high levels of foreign (largely US-based) ownership in major sectors of the economy, such as manufacturing and resources. The result was a national debate and a series of policies from the late 1960s to manage incoming FDI. While national policies protected a small number of sectors from foreign ownership, by and large the policy thrust was in the direction of managing incoming FDI by providing for conditional market access to foreign investors in return for commitments to ensure local economic benefits (often called performance requirements) which created backward linkages to the Canadian economy. These negotiations were handled from the mid 1970s to the mid 1980's by a screening agency, the Foreign Investment Review Agency (FIRA).

A number of factors in the 1980s combined to undermine the assumptions of this model of Canada's investment interests. First the United States Administration and powerful US actors became increasingly hostile to Canadian policies on FDI and energy even as Canada was becoming more dependent on the US market. In addition various provinces and business interests in Canada also became highly critical. Federal government officials had concluded, even before a change of government in 1984, that the model of bargaining with foreign investors in return for access was no longer viable for several reasons. First secure access to the US market was a key to economic growth, thus any policies that might put access at risk, such as investment screening became more costly. Second foreign investment was necessary for economic growth and the competition for investment as many economies liberalized globally was becoming too strong and investment screening could put Canada at a further disadvantage. (External

Affairs, 1983). Given the continued sensitivity of high levels of foreign ownership and the persistence of a nationalist critique however, wholesale abandonment of the policies was also potentially costly.

The 1980s then can be seen as the period of transition in how Canada had defined its investment interests at the national level. On the one hand Canada remained, in that decade, primarily a capital importer, albeit with what were perceived to be increased external pressures on its investment policies. These pressures were reflected in the US complaints about energy policy at the OECD and challenges to the FIRA at the General Agreement on Tariffs and Trade (GATT). The decision to launch bilateral trade negotiations in 1985 and talks on Trade Related Investment Measure (TRIMs) at the General Agreement on Tariffs and Trade (GATT) ensured further pressure on investment policy.

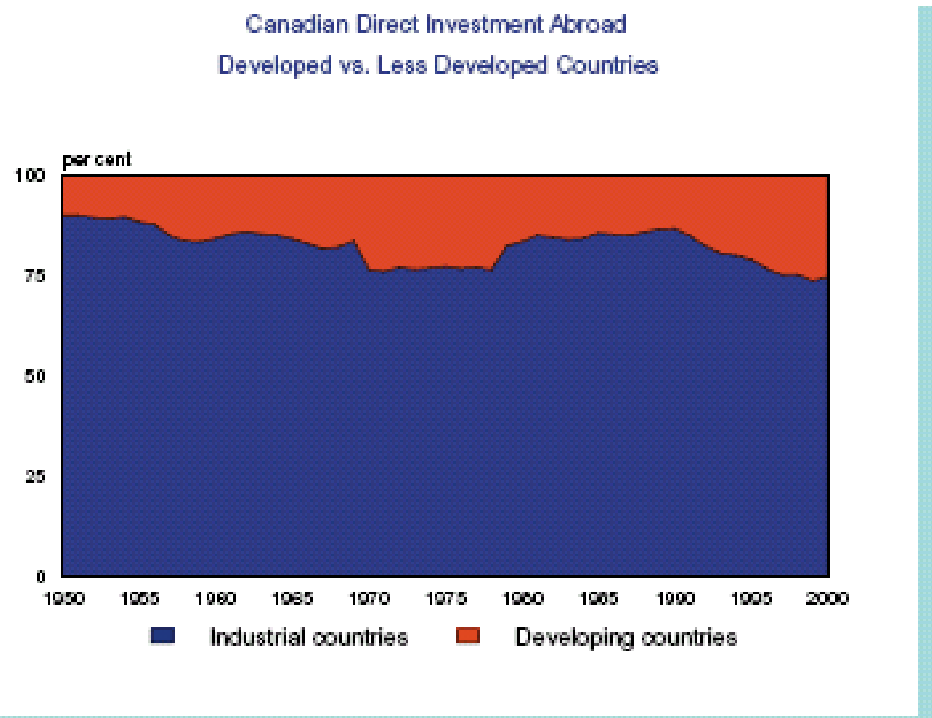
Over the past 20 years Canada's pattern of investment flows has also changed substantially as Canada's outward foreign direct investment also began growing. Inward and outward FDI rose rapidly in the late 1990s outpacing trade and the balance shifted. By 1997 Canada had begun to export more FDI than import, making it a net capital exporter, as the graph below indicates. The overwhelming destination for that outward FDI is the United States, followed by other European, and then other OECD economies.



Source: State of Trade (2005), 45.

At the same time Canada remains host to a large stock of foreign direct investment ($368 billion in 2004) of which about two thirds is US based. Canada (State of Trade), thus in its relationship with the United States is still one primarily of a capital importer. In contrast to outflows of Canadian investment, inflows have been falling in recent years.

Of the $ 434.4 billion stock of Canadian FDI abroad, $191 billion, just under half, is located in the United States. If the rest of the OECD countries are added they account for about 75 per cent. However, as the chart below indicates, non-OECD countries have gone from insignificance two decades ago to being an area of very rapid growth of Canadian direct investment abroad in recent years.



Source: State of Trade (2005), 47.

The list of the top non-OECD destinations for Canadian FDI shown below indicate much of this investment is concentrated in a very few sectors and appears to be tied to offshore financial centres, tax havens or low tax countries and resource sectors.

Table 1 Top 15 non-OECD destinations for Canadian FDI,

(Average from 1999-2003)

Country	**CFDI in Millions of $**
Barbados	23,136
Bermuda	9,823
Bahamas	7,738
Cayman Islands	6,827
Hungary	6,807
Brazil	6,557
Chile	5,704
Argentina	4,924
Singapore	3,730
Indonesia	3,668
Mexico	3,293
Hong Kong	3,134
Peru	1,924
Thailand	918
South Korea	821

Beginning in 1991 Canada began a program of negotiating bilateral investment treaties, with host developing economies and those in transition in Eastern Europe to provide protection and legal recourse for Canadian investors abroad. This followed the pattern of the United States and a number of major European countries that were important exporters of capital. Clearly given the growth of non-OECD outward investment, this might be seen to be a logical response to changing interests. But on the whole the list of countries with which Canada has signed FIPAs bares little direct relationship to the favoured destinations of Canadian FDI over the last 15 years. Only four of these countries, Barbados, Argentina, Hungary and Thailand have investments covered under FIPA's while Mexico, Chile and Costa Rica are covered under trade agreements with Canada.

Table 2
Foreign Investment Protection Agreements

Country	**Date Signed**
Armenia	1999
Argentina	1993
Barbados	1997
Costa Rica	1999
Croatia	2001
Czech Rep.	1992
Ecuador	1997
Egypt	1997
*El Salvador	1997
Hungary	1993
Latvia	1995
Lebanon	1999
Panama	1998
Philippines	1996
Poland	1990
Romania	1997
Russia (USSR)	1991
*South Africa	1995

Thailand	1998
Trinidad and Tob	1996
Uruguay	1999
Venezuela	1998

* agreements signed but not in force.

According to Canada's International market access priorities recently outlined in *Opening Doors to the World* important emerging markets including China (which has now replaced Japan as Canada's second largest bilateral trading partner) , India, Brazil. Canada is currently negotiating a FIPA's with China, India and Peru. While bilateral talks with Brazil are ongoing in the "context of the FTAA."

Changes in flows and stocks of FDI would suggest that Canada's interests on the issue would be changing. Given the rapid growth of outward FDI negotiating rules which would protect Canadian investment abroad would appear to be in Canada's interests. At the same time, however, a large proportion of outward and the majority of inward FDI is with our most significant trading partner, the United States. Thus the bilateral relationship is likely to remain significant, even if the rapid growth of non-OECD Canadian FDI suggests its importance in the future. Clearly the complex nature of integrated global production today and the ebbs and flows of highly mobile capital (often sensitive to exchange and interest rates) require some way to attach meaning and significance to the changing flows. Clearly there is no one to one relationship between the negotiation of agreements and investment patterns, as the case of FIPAs indicates[2].. To fully

[2] A memo to the Cabinet date Oct 22, 2002 (leaked to the Investment Law and Sustainable Development Newsletter (Dec 13, 2002, IISD.org)claims that Canadian business had been lobbying hard for FIPAs with Brazil, India and China. In other cases officials claim a number of developing countries approached Canada to sign bilateral agreements such as Peru. In many cases developing countries are seeking to attract new FDI and qualify for investment insurance from various export development agencies.

understand how investment interests are defined we need to both look at ideas about investment and the institutional context of negotiations.

Ideas, Interests and the Institutional Context

Many scholars in the fields of public policy and international relations have debated the role of ideas and how they interact with and shape interests and ultimately policy outcomes. The sorts of ideas that have been identified as affecting policy vary widely and include norms, frames, policy programs, and more broadly, world views and cognitive paradigms (Campbell). Used as tools ideas have been seen to contribute to the definition of interests, identification of policy problems and preferred solutions, especially in their capacity to posit causal relationships. They have also been seen to be useful in building actor coalitions.

Norms, ideas about what is right or wrong behaviour, can legitimate action or challenge legitimacy. Ideas can also become weapons to undermine prevailing ideas and institutions particularly in periods of economic crisis or uncertainty. (Blyth) Ideas can become so dominant that they are imbedded in institutions and promulgated by those institutions. They can remain then largely unquestioned and taken for granted, playing a subtle background role in shaping and limiting public debate and the articulation of policy alternatives, thus de-politicizing issues. As such ideas can exercise a non-coercive form of power wielded by dominant actors, often called soft power or cultural hegemony. Ideas may also be used however, to frame or re-frame an issue and influence the public discourse around it (Sell and Prakash).

Ideas, like interests, are not static. Uncertainty, crises and unforeseen or unintended consequences of past policies and actions can present opportunities for change, that is, learning. Ideas and interests may also be re-shaped through interactions with other actors. In the case of policy on investment much of the interaction occurred within the context of several relationships and institutions where Canada was a committed partner or member and where rules about state treatment of foreign investors were debated and agreements negotiated. Thus I would suggest attention to the institutional context is also necessary to understanding Canadian interests in investment rules and how they were redefined over time. The following discussion provides a brief overview of how the dominant ideas on investment issues and rules changed both in Canada and in the broader global community. It then examines how the particular institutional context also shaped what were seen to be Canada's interests in investment rules.

The shifts in ideas about FDI revolve around four basic issues: the costs and benefits of FDI to local economies, the right of host states to regulate incoming FDI and its impact on FDI flows, the behaviour of multinational corporations and finally the need for, and form of , any binding multilateral rules governing either/and/or host or home states and foreign investors. Some analysts (Fredriksson and Zimny) have likened changing views on these issues to a swinging global pendulum. The 1960s and 1970s can be seen as a period where the notion of foreign investment inflows as an unqualified good was challenged. Developing countries called for a New International Economic Order, part of which would be the negotiation of a Code of Conduct for Transnational Corporations. After an extended period of negotiation at the UN this ended in failure. In the 1980s the pendulum swung back in the other direction as foreign direct investment soared, out-pacing trade, and integrated global production processes became the norm, aided and abetted by technology and increased access to foreign markets. The latter was a result of several factors including aggressive unilateralism on the part of the US in imposing trade sanctions and opening foreign markets and what might be called aggressive multilateralism on the part of institutions, including the IMF, World Bank and the OECD, dominated by the largest developed market economies.

In Canada's case, as discussed above, a similar pattern prevailed. FDI was never questioned in terms of the benefits it brought but the need for the state to play an active role in managing it in the 1970s was accepted. The 1980s, however, saw the acceptance of the notion that FDI was now complementary to trade, no longer driven by high tariffs and something for which Canada, as a host state, would have to compete aggressively by providing the right investment climate and keeping limits to market access for investors to a minimum. Enhanced market access, national treatment of foreign investors and transparent regulation were all seen to be important norms in the treatment of foreign investors and any deviations from them, necessary evils. Codes of corporate conduct, as a part of the broader notion of an active role for states or international organizations in intervening in markets, were not seen as a legitimate role for government except in a hortatory way in exhorting firms to develop or follow voluntary codes or norms of social responsibility.

On the question of binding rules on host state treatment of foreign investors Canada was, in the 1970s, very sceptical and defensive regarding international rules designed to limit the right of host states to regulate FDI. By the mid 1990s, however, Canada's attitudes on the matter had clearly altered. Part of this change had to do with views about investment flows and the meaning attached to them.

By the 1980s inflows of FDI, in the context of globalization, were seen to be necessary to ensure economic growth and global competitiveness but flows were also as a report card on the Canadian economy, similar in some ways, to the way in which changing values of the Canadian dollar vis a vis the US are seen.. Inflows of FDI and Canada's share of global investment flows were interpreted as a measure of the attractiveness of the Canadian economy. There was an imperative then to promote inward FDI. Canada's attractiveness as a location for FDI had to be maintained and publicized. Outward FDI was seen in a similar way as a negative reflection on Canada's attractiveness as an investment location. Investor protection was therefore, less of a priority.

The United States initiated the effort to establish norms of national treatment and high levels of protection for foreign investors in the early post war period bilaterally and by the 1970s increasingly within multilateral organizations (the OECD) partly to counter the attempt of developing countries to address issues relating to the behaviour of multinational corporations at the UN. In the 1980s Canada's policy of investment screening, although by 1985 much more limited, was a target in bilateral trade negotiations. At the multilateral level at the General Agreement on Tariffs and Trade (GATT) the United States pushed to negotiate limits on host state performance requirements imposed on foreign investors which were seen to have a trade distorting impact. US demands reached their high water mark with the negotiation of Chapter 11 of the North American Free Trade Agreement (NAFTA) in 1993. The US then set its sights on a NAFTA-like "high standards" multilateral investment agreement which would afford foreign investors strong protection against host state regulation to be negotiated at the OECD.

Each context has posed different challenges to Canada. At the United Nations negotiations in the early 1970s, with its large membership of developing country, capital importers Canada sought to balance the right of a host state to regulate incoming FDI with a desire to ensure largely fair and non-discriminatory treatment of foreign investors. However, when the United States sought to counter moves at the UN by negotiating a Declaration on International Investment and Multinational Enterprises in the early 1970s at the OECD which would require host states such as Canada to afford national treatment to foreign investors Canada, on the defensive, fought hard to weaken the agreement or opt out[3]. While the US was not able to attain a binding agreement on national treatment of foreign investors at the OECD in the 1970s the organization has become an important institution in furthering norms of national treatment and transparency through its Committee on Investment and Multinational Enterprise. The committee conducts an annual peer review of member states' barriers to, and treatment of, foreign direct investment which has contributed to the de-legitimization of host state regulation of incoming FDI and strengthened norms of national treatment and investor protection. At the same time norms regarding behaviour of MNCs, as embodied in the OECD's voluntary Guidelines on Multinational Enterprises, have remained weak.

In the GATT negotiations on Trade-Related Investment Measures, during the Uruguay Round, Canada was positioned between the two main sides and worked largely to ensure that any agreement did not impinge on existing policies and practices. Because

[3] For a discussion of Canada's role in UN and OECD negotiations on investment in the 1970s see Elizabeth Smythe, *Free to Choose: Globalization, Dependence and Canada's Changing Foreign Investment Regime* Ph.D dissertation, Carleton University, 1994, chapter 6.

of the determined opposition of a number of developing countries, and more pressing US priorities in the Uruguay Round the agreement yielded limited results, from the US perspective Bilaterally however, in negotiations with the US Canada has been much more on the defensive on investment. Even with the launching of negotiations on the NAFTA Canada's concerns were not driven so much by a desire to protect the very limited Canadian investments in Mexico but rather, as the trade minister indicated to a parliamentary committee in 1992, "to ensure that Canada remained an attractive location for investors wishing to serve the North American market." (SCEAT, Nov 17) Investor protection, transparency and certainty were clearly important issues for the US in relation to Mexico. High levels of protection, despite the array of exceptions and reservations listed in the Annex of chapter eleven, were afforded in the agreement and set a new standard.

In the 1990s outflows of Canadian FDI increased. especially on the part of small and medium sized firms. The rapid growth of outward FDI began to be viewed less negatively as a necessary aspect of maintaining Canada's competitiveness in increasingly globalized systems of production. While multinational firms had been encouraged to accord global product mandates to their Canadian subsidiaries in the 1980s as a way of preserving local production by the late 1990s officials were referring to "global value chains" whereby whole processes of production are broken down and shared either within a firm or among a number of firms with a production process that was tightly managed and integrated . A process which information and communication technology facilitated.

It was clear by the mid 1990s that Canadian negotiators were interested in facilitating and protecting outward investment. The question remained as to how and where to negotiate rules that would achieve the goal? Canadian foreign policy is generally seen to have a built-in multilateral bias, partly because the continental relationship is so asymmetrical. Yet Canada had, because of the high and growing dependence on the US market, engaged in bilateral negotiations, first to try to secure access to that market and then trilaterally in NAFTA to once again preserve access and ensure that Canada remained an attractive location for those seeking to produce in the continental market. In both cases the US played the main role as *demandeu*r on investment rules. Yet Canada's experience in the OECD in 1975 does not suggest that a multilateral organization in and of itself can somehow offset continental asymmetries. More important quite clearly is the nature of the organization's membership, the processes of decision and rule-making and the capacity, once rules are made, to be enforced. These aspects shaped Canada's preference about where rules facilitating and protecting FDI would be negotiated.

Canada and the Origins of the WGTI

Canada's efforts to launch investment negotiations at the WTO in 1996 need to be seen within the context of the debate over the US initiative to negotiate a binding MAI within the OECD. Canada had not been particularly supportive of the OECD[4] as the best venue to negotiate investment rules as Canada's trade minister ultimately made clear in 1998 at the OECD ministerial meeting.

[4] The case study which follows is based on interviews with Canadian officials, officials of the WTO, and delegates to the WTO working group in 1998, 2002 and 2003 along with the documents of the Working Group on Trade and Investment of the WTO.

> To be effective and beneficial any eventual investment agreement must be truly multilateral. Consequently, the MAI process at the OECD must remain open to non-members and, more importantly the MAI's ultimate home should be the WTO" (Marchi)

The preference for the WTO related to its broader coverage of non-OECD countries where Canadian FDI was growing, its credentials as a trade negotiating forum (Canadian officials saw trade and investment as tightly linked) and its strengthened dispute resolution capacity. However, Canada did not oppose the OECD effort seeing its potential as an agreement which could become a model for a broader multilateral effort. Nor did the ongoing process at the OECD mean that Canada would give up the idea of investment rules at the WTO. In fact Canada was one of several WTO members along with the European Commission and Japan which shared this view and worked cooperatively. The European Commission had begun a series of informal discussions in the fall of 1995 with various WTO representatives in Geneva and public endorsement of the idea by its Trade Commissioner Leon Brittan (Brittan). Canada also hosted a meeting in the fall of 1995 with sixteen middle-sized countries where the investment issue was raised. (Smythe, 1998). Despite ongoing negotiations at the OECD these WTO members pushed the issue throughout the spring and summer of 1996, with a view to building momentum for the first full WTO ministerial meeting in December, 1996 in Singapore. The United States remained opposed because the completion of an MAI at the OECD was considered to be the top priority. Given the limits of the TRIMs negotiated in the Uruguay Round the U.S. was pessimistic about the prospects at the WTO. Despite US opposition Canada, the EU and Japan persisted.

In April 1996 Canada presented a proposal to begin an educative work program at the WTO that did not presuppose future negotiations even though the goal was clearly to build a consensus on investment. The strategy simply reflected a recognition that any immediate attempt to launch negotiations would have been doomed to failure. Some developing countries, such as India and Tanzania, were opposed (Ramaiah) and questioned the need to undertake research in an organization like the WTO, others such as Brazil and Mexico, were somewhat more supportive. Eventually the US also supported the proposal largely for its educative value, but insisted at a later Quad trade ministers meeting that Canada, the EU and Japan reaffirm their support for the negotiation of the MAI at the OECD. (*Inside US Trade*, Sept 28, 1996) From the US viewpoint any effort to push investment at the WTO would fail and risked building an intransigence to future investment negotiations among a number of countries. The Director-General Renato Ruggiero and the Secretariat of the WTO also supported the inclusion of investment in a WTO work program as reflected in their annual report.

Efforts to forge a developing country consensus to stop the inclusion of investment and a number of other new issues on the WTO Singapore agenda were spearheaded by India which hosted a meeting of 14 countries in September 1996. The meeting's communiqué was critical of the idea of an MAI, raised the question of the role of UNCTAD, which also had a mandate, as a result of the UNCTAD IX, to study the issue of FDI and pointed out the fact that the TRIMs agreement already called for a review in 1999- 2000. No consensus was achieved among WTO delegates on the investment issue prior to the Singapore meeting and a last minute compromise was forged at the meeting itself.

The Singapore declaration established a working group to examine the relationship between trade and investment" the work of which "shall not prejudice whether negotiations will be initiated in the future". The working group was to be an "educative" process not intended to seek or generate a consensus vis a vis future negotiations. The Declaration reiterated several times that the working group would operate **without prejudice** to any future decisions regarding negotiations. In agreeing to this compromise. however, a number of actors did have specific preferences regarding future negotiations which coloured their activities within the working group as they sought to use it to further their goals. For the European Commission, Japan, Canada and a number of other states which favoured liberalization of investment regulations and the creation of multilateral rules to that end, the idea was to use the working group as a basis to begin the process of building consensus on the need for investment to be included on the agenda of a future round of negotiations. The US acquiesced with the working group only to the extent that the process as educative, allowing them to proselytize on the benefits of investment and liberalization.

The WGTI met in June of 1997 under the chairmanship of the Thai Ambassador with two more meetings in October and December 1997, and then meetings roughly every other month in 1998. After initial submissions a checklist of issues was proposed by the chair and agreed upon and included four aspects:

1. Implications of the relationship between trade and investment for development and economic growth
2. The economic relationship between trade and investment.
3. A stocktaking and analysis of existing international instruments dealing with investment.
4. Based on this research an assessment of the "gaps" in existing instruments and the advantages of multilateral over regional or bilateral rules.

Canada's focus in the early period of the WGTI was to make a case under items 3 and 4 above for the need to negotiate a new set of rules based on identified gaps in existing rules. Canada's case was presented in a written submission of December 1997 which outlined its experience with bilateral and plurilateral agreements. These consisted of FIPA's, the trade agreement with the United States of 1987, succeeded by the NAFTA, and the Canada-Chile FTA. All included provisions not covered by the WTO framework agreements, most importantly "guarantees of protection for our investors in their operations abroad and for foreign investors coming into Canada" (WGTI. Canada 1997) These agreements provided more transparency and thus certainty for investors in their inclusion of clear rules on expropriation. A particular source of pride to Canadian negotiators was that "Investor-state dispute settlement mechanisms are also central elements of these agreements and together with state-to-state dispute settlement, increase the effectiveness and enforceability of these agreements." In contrast, as the submission pointed out, the agreement on Trade-Related Investment Measures (TRIMs) covered only a limited range of trade-related performance requirements. In the case of the General Agreement on Trade in Services (GATs) which does touch on investment as one of four modes for delivering services, there is no investor protection, once firms are established. Thus Canada argued a focus on "investment rights and obligations deepen trade agreements" and offers a more unified set of consistent rules that any alternative WTO or bilateral types of investment treaties. Yet at no time in the six years to follow did Canada outline any obligations of investors beyond a firm's obligation to obey domestic laws. The focus clearly was on the need to provide security to investors.

The European Commission similar to Canada focussed on the growth and significance of FDI in the global economy, the growth of intra-firm trade and that the "current patchwork of rules" in "inefficient" and "non-transparent". The submission pointed out the fact that the WTO already had investment on its agenda as a result of the GATS and the TRIMs and that the WTO is in the best position to "level the playing field" so that small and medium enterprises are more willing and able to undertake the risk of FDI. They also argued that increased competition for FDI could lead to a race to the bottom with incentives that would hurt developing countries and that these countries could gain much from a balanced set of rules. (May 30, 1997) This was followed at a later date by the submission of a survey of UK companies examining purporting to show that one of the factor shaping investment decisions was the transparent and open regime for trade and investment in a host country. Among those supporting the need for new multilateral rules were the EU, Japan, Hong Kong, Switzerland, Korea, Brazil and Mexico. Multilateral rules, on the other hand, they argued, would bring transparency, efficiency and certainty which would enhance flows and ultimately benefit all countries. Clearly many developing countries needed and wanted increased flows of investment. The link, however, between multilateral rules and investment flows is a tenuous one that is hard to demonstrate or support with much research data.

India by far the most strongest opponent of negotiations throughout the seven years (India, June, 1997) reminded members of the Singapore Declaration and the purely educational and non-prejudicial role of the Working Group and argued that the "development perspective should be all-pervasive". Concerns to be addressed in the study should include the impact of FDI on the balance of payments, India proposed an exhaustive list of twelve elements that should be the focus of the study which would include "the business practices and corporate strategies of transnational corporations" and the "interrelationship between mobility of capital and mobility of labour". Opponents of investment rules, also included Pakistan, Egypt, Morocco, Cuba and the ASEAN group Many pointed to particular problems with FDI, or to the fact that many of them already had numerous Bilateral Investment Treaties which provided protection to foreign firms, once established, and which appeared to be operating well. Moreover the ASEAN countries were quick to point to the conflicting research on incentives and the success they had had with incentives that targeted certain sectors and were linked to a firm's performance. Clearly the ASEAN countries could hardly have been seen as countries in the 1990s with difficulties attracting investment.

After eighteen months of work only a few areas of consensus had been identified by the participants. There was an acceptance of the idea that FDI could provide benefits for economic development and that trade and investment were closely linked. Neither meant, however, that FDI was not without problems for some developing countries. Moreover, on the issue of existing agreements and the need for new rules there was much less agreement. to be that FDI was beneficial, that state intervention in the investment process, either in the form of incentives or regulation, caused distortions in the process, inefficiency, and even worse, uncertainty for investors. This, in turn, would ultimately depress investment flows.. The one concrete issue about which the group had to make a decision, that is, deadlines even ended in a stalemate and reflected the two opposing camps. Those who opposed to the idea of investment negotiations were quite happy to see the working group continue far into the future. In contrast those favouring negotiations sought to bring some sort of closure to the group's work which would force some conclusions, preferably in mid 1999, so that they would have an impact on the deliberations leading up to a late fall ministerial in 1999 where a decision on any agenda would be taken. Unable to reach any consensus the group merely recommended that it continue and decided to leave the matter of a timetable to be decided by the General Council

The WGTI continued to meet through 1999 as a result of an extension of their mandate agreed to in the General Council in December 1998. They continued to focus on the checklist outlined above. Several external events had an impact on discussions, however and directly affected Canada.

Ideas, Interest and Learning:

Two key developments which affected Canadian position on foreign investment rules at the WTO occurred elsewhere. The first was the final collapse in December 1998 of the OECD negotiations on the MAI. Already in trouble the previous spring the controversy surrounding the agreement had an impact on Canadian efforts at the WTO. On the one hand Canadian officials hoped the low-key talks of the WGTI would allow them to dodge the "flak". On the other hand the difficulties of the 'like-minded" OECD members to agree on investment rules provided support to opponents of investment rules within the WTO. Outside the halls in Geneva however, the failure of the MAI also meant that the transnational coalition of critics of the MAI, which included a number of Canadian, labour, environmental, cultural and other nationalist groups would now turn their attention to the WTO and specifically to the upcoming meeting in Seattle which would attempt to launch a new round of negotiations including those on investment rules. The MAI had also provided officials with a lesson on the need to consult nationally, more broadly, with a range of groups beyond the traditional business and producer interests (SAGITs) seen to have a stake in trade agreements.

A second trend which had been gradually emerging since 1997 was what can only be described as the unforeseen consequences of the chapter 11 of the NAFTA agreement and the ammunition it provided to critics of strong standards of investment protection, many of whom were already critics of the MAI effort. By March 1999 four cases had been filed against the Canadian government by US investors. Since that time even more cases have been filed against the other NAFTA partners and led to further attempts by officials of the three countries to address the problem. For the purposes of this paper however, it is more pertinent to analyze chapter eleven's impact on the models of investment agreements put forward at the WTO and Canada's negotiating position. For, as one developing country delegate indicated, by 1999 everyone knew about chapter 11 of NAFTA.

Failure of the Seattle Ministerial and the disarray which followed had an impact on both the work of the WGTI and Canada's zeal for investment agreements. This was reflected in a period where the WGTI "spun its wheels". Canadian officials took a low profile on investment issues both at the WTO and elsewhere and provided no written submissions to the WGTI in 1999 and 2000 although they did participate in group discussions. A similar situation prevailed outside the WTO. Despite having been enthusiastic about the inclusion of investment rules at the newly launched FTAA negotiations in 1998 and clearly seeing there an opportunity to secure better investment protection for the rapidly growing stock of Canadian FDI in Latin America Canada put forward no substantive proposals on investment until August 2001 and then only relating to the concept of “Minimum Standard of Treatment”. The heavily bracketed leaked version of the FTAA investment chapter which appeared on the Internet in 2001 was largely based on a US, NAFTA-like proposal. Most of Canada’s proposals on investment came much later in 2003.

At the WGTI even prior to the collapse in Seattle the emphasis had begun to change in recognition perhaps of the growing and increasingly dissatisfied voice of developing countries. It was reflected in discussion of the relationship between FDI and development and the extent to which investment rules would limit the “policy space” and flexibility developing countries needed. This concept of “policy space” was given weight by a series of interventions on the part of UNCTAD which, under the mandate of the Singapore Declaration and its own terms of reference had a clearly defined role in the WGTI in providing much of the research capacity on FDI and more specifically assisting developing countries in assessing the implications of, and negotiating, investment rules and agreements. UNCTAD attended all of the WGTI meetings and also provided informal briefings to a groups of developing countries outside the working group. Inside the group UNCTAD representatives presented their work on the concept of “policy space for development” and the need for flexibility and some of the options to achieve it within the context of investment rules and agreements. Increasingly this concept was picked up by opponents of negotiating an agreement, such as India, which continued to push the relationship between FDI and development in several submissions in 2001.

By early 2001 it was fairly clear that the *demandeurs* on investment rules were going to have to make a compelling case if they had any hope of persuading a sufficient core of developing countries of the need to negotiate an investment agreement at the

WTO. A strategy appeared to be emerging around several sets of ideas to address the three main concerns of developing countries. First the proponents of negotiations would have to justify the need for multilateral rules by showing a positive relationship between the existence of investment rules that afforded investors security and an increased flow of FDI since there was already consensus in the group that FDI could provide benefits and increased flows were an unqualified good. Second, *demandeurs* would need to address the issue of policy space and flexibility so that developing countries, especially the least developed, could sequence and pace implementing new obligations of market access or national treatment to meet their own unique development needs. Third *demandeurs* would need to address the reality that many developing countries were largely marginal to the discussions on FDI in the WGTI and lacked sufficient capacity to engage in ongoing negotiations on agriculture and services, never mind taking on the new Singapore issues, especially the complexity of something like investment rules.

Thus for Canada and other proponents the challenge was to portray their demands for rules to more fully protect investors in a more development-oriented way. In Canada's case it began with a submission in March 2001 which tried to show a link between host state regulation and investment flows. Analysts of investment flows have long recognized the complex factors that affect firms' investment decisions. In order to make the case that host state regulation of foreign investors is discouraging FDI Industry Canada jointly funded a study with the Canadian Chamber of Commerce and presented the results to the WGTI. Surveying 71 firms it indicated that the firms had encountered 110 specific restrictions affecting their investment, primarily in non-OECD countries and that in over 40 per cent of the cases restrictions had resulted in decisions to either scale back or cancel investments. This was followed by reference to Industry Canada's research on the nature and effects of FDI (largely positive).

Canada's efforts were followed up in May by an EU submission to open the debate on technical capacity. The submission admitted that investment rules alone would not ensure FDI flows but that some developing countries would need assistance to develop both an enabling environment for FDI including matters such as good governance and transparent and effective legal systems as well as assistance to increase their ability to "negotiate effectively". The submission argued for an assessment of member needs and development of the required program of technical assistance WTO to be funded by WTOmembers. The final issue of flexibility recognized that the model of a "top down" NAFTA/MAI type of agreement which involved a high level of commitment to standards of national treatment and market access across the board while permitting only limited, narrow reservations or exceptions was unacceptable and alternatives would have to be offered. The answer, which investment proponents began to embrace was the model of a bottom up, positive list approach of the General Agreement on Trade in Services.

To be successful, however, would require a concerted effort by proponents to forge a consensus at the very least on a firm timeline for a final decision on launching negotiations. That would require limiting and ultimately isolating strong opponents. In this the European Union played the leading role. An effort which turned out perhaps to be more costly than was anticipated at the time.

The Ministerial meeting in Doha, Qatar in November 2001 involved many of the tactics for which the WTO had been previously criticized (Jawara and Kwa) including non-transparent processes, chair's texts that did not appear to fairly reflect the range of opinions of member and late night negotiating sessions and, in the case of the EU, particularly heavy-handed arm twisting of a number of developing country delegates. With the aid of the United States, the EU was successful in isolating India and obtaining wording on the Singapore issues which reflected the position of the *demandeurs* including, in the case of investment, a specific mandate which the working group had lacked. Three key paragraphs of the Doha Declaration address investment:

> 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 (**author's emphasis)**.**
>
> 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.

The wording of paragraph 20 however, raised an element of ambiguity. A small group of developing countries, led by India, requested a change to the text to ensure that consensus would be required to launch negotiations and not merely to establish the modalities of negotiations. Proponents and opponents of negotiations on investment rules continued to dispute its meaning and significance. Finally the chair, Finance Minister Kamal, had to further clarify the meaning of these paragraphs at the final formal session,

> "Let me say that with respect to the reference to an explicit consensus being needed, in these paragraphs for a decision to be taken at the Fifth General Session of the Ministerial Conference, my understanding is that, at that session, a decision would indeed need to be taken by explicit consensus, **before** negotiations on trade and investment, and trade and competition policy…..could proceed."
> (Khor, 2003)

The EU, Japan and Canada all interpreted the text to mean that agreement had essentially been achieved and that negotiations would be launched in Cancún. Consensus would only be required on some relatively trivial matters of procedure and timing. In contrast India and other opponents took the view that only after consensus on the broad parameters of the substance of the negotiations could they be launched.

While it was unclear whether proponents had fully achieved their goal to launch negotiations the declaration set the basis for two things, a more focussed effort in the working group and a major program of technical assistance and capacity building among developing countries. Opponents however, had obtained wording on an explicit consensus, itself a reflection of their continuing reluctance to negotiate and more broadly, a growing unease on the part of many developing country members with the whole process of WTO decision-making and its lack of internal transparency. Finally the Doha

Declaration, including the text on investment clearly placed development, at least at the level of rhetoric, front and center in the Doha Round. The onus was clearly on the proponents of an investment agreement to show how negotiations on investment could further development objectives, particularly for the least developed countries.

Ideas, Interests and the Road to Cancún

The period following the Doha ministerial was clearly one of intense activity. In the nineteen month period up until the last meeting of the WGTI in the spring of 2003 there were 56 written submissions including nine from the European Union, eight from Canada, (plus a joint one) and eight from Japan, reflecting the efforts of the *demandeurs* to persuade those still unsure. These efforts were accompanied by a program of technical assistance[5]. A trust fund for technical assistance had been established after Doha funded by member contributions (including Canada) with most of the training provided by WTO and UNCTAD staff. Reports to the WGTI indicate that an extraordinary number of investment training events were held in 2002-3 alone (42), either in Geneva, or in various locations in developing countries.

Canada's WGTI submissions covered all of the areas outlined in paragraph 22 of the Doha Declaration. While the proponents of investment rules had a strategy that did not guarantee that they were of one view on all of the issues listed. On the question of the scope and definition of investments to be covered by the agreement Canada took the position that a very broad range of asset-based investments should be covered by the agreement. In Canada's view this was simply "realistic" and reflected the "contemporary business dynamics associated with investing." While this reflected Canada's investment

[5] For a more detailed discussion of this program and its limitations see Elizabeth Smythe (2005) "What do You Know? Paper presented at the International Studies Association Annual Meeting, Honlulu.

interests, in strategic terms it was probably not helpful to making the case for an agreement. There was a division even among supporters of investment rules on whether or not an agreement should be confined more specifically to foreign direct investment or as the United States and Canada argued cover a wide range of investments. More importantly many developing countries, already nervous about balance of payment issues, fears exacerbated by the massive capital flight seen in the Asian financial crisis, were leery of such a broad definition especially when UNCTAD officials made it clear that in their view it was a bad idea. Opponents pointed to the lack of agreement on this issue among those favouring rules and the complexity of the issue.

Canada's submissions tried to advance the goal of reaching consensus by addressing the issues of flexibility, FDI flows and technical assistance. On the issue of flexibility Canada's submissions indicated an openness to a number of mechanisms in a potential agreement that would allow developing countries to use exceptions or perhaps longer time periods to phase-in implementation. However, the experience of developing countries with special and differential treatment provisions at the WTO and the TRIMs and most recently the TRIPs agreement had created scepticism about any such promises. Canada had not been especially accommodating of special needs in the past.

On the issue of FDI flows the assertions made early on in the WGTI about the link between investment rules and agreements and increased FDI flows to developing countries by the *demandeurs* had been increasingly challenged by opponents in the WGTI and most unhelpfully for proponents by researchers at the World Bank and UNCTAD. The June, 2003 final written submission from Canada, a joint one with Korea and Costa Rica, had to acknowledge this reality and was rather vague on the benefits that would accrue talking vaguely of creating a “framework not only where investment can take place” but also enhancing “economic efficiencies”. For Canada, however, transparency was seen to be the “central tenet” and bottom line of any agreement in creating a predictable and stable climate for investors. Finally on the old thorny issue of dispute resolution and the question of a NAFTA like investor-state system of dispute resolution Canada was clear in stating the obvious, such a system would be “inappropriate” and it could be added totally unacceptable. What had once been a model was now “inappropriate”. The other proponents, especially the EU took on all of these issues as well. The EU even went so far as to call for “a Multilateral Investment for Development Agreement.”(EU April 7, 2003) based on a GATS model. Perhaps it was this sort of over the top rhetoric that made the EU the favoured target of NGO critics of investment rules, who worked long and hard to challenge or try to de-bunk many of the EU’s claims about an investment agreement in the spring of 2003 (Smythe 2005b).

By the final meeting of the WGTI prior to the ministerial it was clear to many observers that there was indeed no consensus. Observers identified several positions on the issue within the WTO membership which are shown in the table below.

Country Positions

Demandeurs: Pro negotiating an agreement	**Friends of Investment- support idea but not necessarily timing**	**Swing countries, may link to other issues or wait and see**	**Opponents of negotiations- very vocal**
European Union	Argentina	Brazil (chair had said little publicly)	India
Japan	Chile	South Africa	Malaysia
Canada	Mexico	Philippines	Zimbabwe
South Korea	Turkey	Indonesia	Tanzania
Switzerland	Poland	Egypt	Zambia

Taiwan	Costa Rica	Cuba	Kenya
Norway	Hungary	Dominican Republic Jamaica	Belize
	Columbia	Thailand	Uganda
	Would support only a narrow agreement	Bangladesh Pakistan Venezuela China	Sri Lanka
	New Zealand	Ecuador	CARICOM
	Hong Kong		
	Singapore		
	Australia		

Source: Adapted from Luke Peterson, Oxfam and WWF May 2003

Canada was one of the small group of proponents who were supported by a mixture of other countries, some developing, some in transition. However, an equally large group of countries were opposed and some very important developing countries, including China and Brazil were on the fence. Brazil, because of its position as chairing the WGTI post Doha had revealed little of its position whereas China had collaborated with the opponents in a submission which roused the ire of proponents in its argument that corporations too had obligations which an investment code ought to address. Beyond an early (1999) EU submission which argued that existing weak and unenforceable guidelines for MNCs such as the OECD's, were more than adequate to ensure corporate social responsibility proponents, including Canada, had not addressed the issue at all. In Brazil's case the suspicion that the EU was using investment and the Singapore issues to be traded off at the final hour against agriculture shaped their strategy as well. A large number of small and least developed countries, which had been the target of much of the technical assistance remained, until near the very end, marginal to the process. It was however, increasingly clear over the summer that strong opponents such as India were working hard to organize them in a series of mini-ministerials which the *demandeurs* on the Singapore issues seem to have all but ignored (Wolfe).

Decision Time: the Cancún Miniserial

If there had been any doubt about the level of disagreement on the Singapore issues going into Cancún a cursory review of the General Council's July, 2003 meeting would dispel it. At that meeting twelve countries directly refuted the continued insistence of the EU that the Doha declaration, in fact, authorized the start of negotiations after Cancún as part of a single undertaking. They reminded delegates of the explicit consensus provision. and concluded that further study and clarification of the issues, not negotiation, was required (Comments on the EC Communication, July 8, 2003).

Once again the draft ministerial declaration discussed by the General Council in August seemed, at first glance, to fully capture divisions[i]. However, the second part of the annex appeared to pre-suppose that negotiations would begin post Cancún and clearly laid out the modalities for negotiations[ii] as they had been outlined in the position papers of the EU and Japan which had never been agreed to in the WGTI. Similar concerns about other issues in the draft text were brought forward at the Council meeting of August 26-27. The chair, Carlos Perez del Castillo, refused to alter the text, but was forced by protests of members to prepare a cover letter to accompany it that reflected the extent of disagreement over it.

Once in Cancún ministers followed the normal practice of the host minister chairing the meeting and appointing facilitators, who critics claim are friendly to powerful members, to work through the issues and report back. For the Singapore issues trade minister Pierre Pettigrew, was chosen as facilitator despite Canada having been an active proponent of negotiating investment rules and the other Singapore issues at the WTO. It was at these smaller meetings that the extent of disagreement on the Singapore issues was evident. Evident too was the link for a number of developing countries between these issues and real progress on agriculture. Agreement on the first was unlikely without the second.

On September 12 a group of about 30 countries plus Bangladesh, representing the least developed countries (for a total of 60), sent a letter to Pettigrew expressing their opposition to negotiations on any of the four Singapore issues and raising concerns about the capacity to both negotiate new issues and implement resulting commitments (Aziz, 2003). They further complained about the process, reminded the Minister of the clear absence of an explicit consensus and offered alternative wording on investment which would simply call for further clarification of these issues. A number of countries also demanded the unbundling of the four Singapore issues.

The following day (Sept 13), however, the second revised text appeared. On a broad range of issues, especially agriculture and cotton the developing countries were disappointed.

The September 13 Chair's draft read as follows:

Investment **14**. We note with appreciation the valuable work that has been carried out in the
Working Group on the Relationship between Trade and Investment under paragraphs 21 and 22 of the Doha Ministerial Declaration.
In accordance with relevant provisions of the Doha Ministerial Declaration, we commit ourselves to provide strengthened and adequately resourced technical assistance to developing and least-developed countries to respond to their needs for enhanced support in this area.

We agree:

- to convene the Working Group in Special Session to elaborate procedural and substantive modalities on the basis of paragraphs 20, 21 and 22 of the Doha Declaration, and other elements raised by Members. We reiterate that 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. Consideration should be given to the relationship of the negotiations to the Single Undertaking;

• **modalities that will allow negotiations on a multilateral investment framework to start shall be adopted by the General Council no later than [*date*]1.** **1 The date will coincide with the date for agreeing on modalities on agriculture and NAMA**.

The text approving negotiations, given the level of opposition, seemed in itself stunning. Tying the start of negotiation on investment to agreements in agriculture meant that many of the proponents of investment negotiations such as the EU, Japan and Korea would have to give way there in order to see talks start. The dissatisfaction with other elements of the text was high. The strategy that Mr Derbez adopted of seeking a resolution first of the impasse on the Singapore issues has been criticized as has the refusal of the EU to un-bundle the issues and drop two issues, investment and competition as suggested by the Pettigrew, until the eleventh hour. When a recess failed to breach the impasse and Botswana informed the chair that the African Union countries would not accept negotiation on *any* of the four issues and Korea (backed by Japan) insisted on all four, the chair called the meeting to an end citing the entrenched positions on these issues. The subsequent decision of the EU to drop all four, and the July decision in 2004 to proceed only on trade facilitation marked the end of the seven-year campaign on investment. The actions of the EU seemed to surprise and confuse Canadian negotiators.

Why was this seven year effort to persuade many WTO members of the need to negotiate on investment undertaken by Canada? What role did ideas and interests play in the process? Why did it ultimately fail/ The conclusion briefly addresses these questions.

Conclusion

This paper began with a fairly simple question of why Canada sought to launch negotiations on investment rules at the WTO in 1996 and why it persisted for seven years in that effort. Part of the answer lies in the changing nature of the Canadian economy and the growing importance of its capital exports to non-OECD countries. Corporate interests in Canada, influential in trade policy, demanded higher levels of investment protection which international agreements could provide. But that does not fully explain the rationale behind seeking such rules at the WTO. Bilateral or regional agreements (FTAA, APEC and FIPA's) might have also served the purpose. Moreover, why would the Canadian state go out of its way to facilitate outward investment and limit the risks of private entrepreneurs? To understand Canada's interest in negotiating investment rules at the WTO we need to go further and look at ideas about investment flows and about the WTO. Second the paper asked how Canada sought to create a consensus at the WTO that would be permissive of negotiations. Here the role of ideas was also important, particularly in the period after the Doha Development Declaration.

By the late 1990s Canadian officials had accepted the view that capital exports were an important part of Canada's overall competitiveness and that trade and investment were closely linked and needed to be deal with in an integrated way. Moreover, international norms disseminated and strengthened through organizations like the OECD, the IMF and the World Bank regarded state intervention to control entry of investment and regulate it as illegitimate. At the same time trade and investment policies have historically been sensitive issues in Canada and the international political economy.

The WTO was seen as the best place to negotiate because of its more universal membership of states, its strengthened dispute resolution system and its experience in negotiating trade agreements. Given its large number of developing country members and its consensus decision processes it would be necessary to persuade many of these members to negotiate, particularly since the most powerful actor, the United States, was not on side.

Canada, along with the EU and Japan began the process of educating other WTO members on the merits of an investment agreement. Because this was not a negotiation but an exercise in persuasion (though clearly linked to and affected by other negotiations) it was very much about ideas, but ideas that were linked strategically to the interests of proponents. Those ideas related to the concepts involved in an investment agreements, such as national treatment but also to causal theories and analyses regarding the reasons for investment and patterns of investment flows. The overarching challenge for proponents after the Doha Development Declaration of 2001 was to make a compelling case that investment rules would facilitate development. This was necessary because what was being proposed was not a traditional reciprocal bargaining process centered around tariffs or market access. Instead states were being asked to accept disciplines on their own domestic regulatory practices in return for the hope that this would result in increased inflows of investment, bringing growth, new technology or increased efficiency. In some cases states had already liberalized in terms of market access for investors and had seen little in return. Proponents such as Canada, could offer little else in return since they do not control the private flows of capital in question.

Moreover many of the states being asked to take on negotiations on these issues were already incapable of dealing with the existing and growing demands of WTO negotiations and the obligations already agreed to. Nor had their experience of the Uruguay Round led them to put a lot of faith into economic analyses and promises of great benefits to come. In order to further convince those who were reluctant proponents also had to champion extensive technical assistance and a promise that any agreement would allow for flexibility and a national right to regulate in the interests of development.

In addition to these challenges Canada's own interests in investment protection were further shaped by the experience of high levels of investment protection accorded by NAFTA. In 1996 Canadian officials had embraced the NAFTA model and preached its virtues at both the OECD and the IMF. By 1999 it was clear that there were indeed conflicts between the high levels of protection afforded investors and the recourse to investor-state dispute mechanisms and the right of states to regulate in the public interest. The MAI experience also had an impact in exposing divisions even among OECD members on these issues (divisions which persisted within the WTO working group) and in political terms necessitating more open consultations after 1999 in Canada on trade and investment agreements. The result was a scaling back of Canada's ambitions for an agreement at the WTO to one which would not model NAFTA, but which would broadly cover many forms of investment but be more shallow in its commitments, the most important of which would be transparency. In its bilateral and regional ambitions on investment a similar process had occurred.

The scaled back ambition along with increasing controversy over the Singapore issues in 2003 led many business organizations to either oppose continuing to push these issues (the US Business Roundtable) or drastically downgrade the negotiation of investment rules at the WTO as a priority (Canadian CCE).

The failure at Cancún on investment seemed to surprise no one except Canadian officials which is in itself one of the more puzzling aspects of this case. Despite extensive consultations with critics, evidence of increasingly well organized developing country opposition, and even the critiques of mainstream economists that investment negotiations at the WTO were a bad idea (Bhagwati) Canadian officials persisted in seeing it as a worthwhile endeavour. The answer to why surely lies in probing further into the role of ideas and their relationship to interests in international economic negotiations. This paper has made a preliminary effort in that direction, and has hopefully made a case for the need to go further.

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[i] *Investment* 13. [Taking note of the work done by the Working Group on the Relationship between Trade and Investment under the mandate in paragraphs 20-22 of the Doha Ministerial Declaration**, we decide to commence negotiations on the basis of the modalities set out in Annex D to this document.]**

> [We take note of the discussions that have taken place in the Working Group on the Relationship between Trade and Investment since the Fourth Ministerial Conference. The **situation does not provide a basis for the commencement of negotiations in this area**. Accordingly, we decide that further clarification of the issues be undertaken in the Working Group.]

[ii] This portion of the annex reads as follows:

Relationship between Trade and Investment

1. The objective of the negotiations **shall be** to establish an agreement to secure transparent, stable and predictable conditions for [long term cross-border investment, particularly foreign direct investment][foreign direct investment], that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area

3. The Chair of the Negotiating Group on Investment shall hold the Group's first meeting within one month from the date of this decision. The Chair of the Negotiating Group shall conduct the negotiations with a view to presenting a draft text by no later than [30 June 2004].

4. On the basis of paragraph 22 of the Doha Ministerial Declaration and the work done thus far under the Working Group on the Relationship between Trade and Investment, the multilateral framework **shall** include the following elements[ii]:
relevant WTO provisions;
(Draft Declaration Cancún Ministerial 24 August 2003)