British Investment Treaties in South Asia: Current Status and Future Trends

Dr Andrew Walter

Senior Lecturer
Department of International Relations
London School of Economics

Report Prepared for the
International Development Center of Japan

January 2000

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Executive Summary

The UK is one of the two most important global investors and in terms of its role in the expanding global BITs network…..

Bilateral investment treaties (BITs) have become one of the main legal and political instruments for the promotion and protection of foreign direct investment (FDI) in the 1990s. By the end of 1997, the number of BITs had increased to 1,513, involving 169 countries and territories. The UK is the second most important country both in terms of outward FDI stock and in terms of the number of BITs with other countries (it currently has 92). While three-quarters of its FDI outflows still goes to other OECD countries, its BITs are mainly concentrated upon developing countries.

The UK's Model BIT focuses on investment protection rather than investment promotion, facilitating agreement with many developing countries…..

Britain began negotiating BITs with developing countries in the mid-1970s (the British term being 'Agreements for the Promotion and Protection of Investments', or 'IPPAs'), response to the threat to British overseas investments posed by the New International Economic Order. The main objective of its 'Model IPPA' of 1974 was to provide adequate legal protection for British foreign property in an increasingly hostile international climate. Although the UK Model is similar to those of other major European countries, compared to the US Model BIT, its emphasis is upon investment protection rather than liberalization of developing country investment policies. This helps explain why the UK has many more BITs with important developing countries than the US, including most of East Asia, Latin America, and South Asia.

British BITs have effectively deterred expropriation…..

Given Britain's dominant investment position in post-independence South Asia, its position was particularly exposed by the increasingly hostile attitude towards FDI in this region in the 1970s. Only recently have the largest economies, India and Pakistan, moved to a policy of greater openness, including the signing of BITs with OECD countries (agreements with the UK were achieved in 1994). Generally, the quality of Britain's South Asian IPPAs, particularly the more recent ones, compare well with the Model IPPA and with those of other OECD countries. Their main benefit has been effectively to deter expropriation by host developing country governments, particularly in capital-intensive sectors such as energy and telecoms. British business is broadly satisfied with the results of the IPPAs programme both in general and in South Asia in particular.

…..but are not a significant determinant of FDI flows…..

As BITs have become increasingly common, their impact on FDI flows has become even weaker than in the past. Various studies have shown that the most important driving factors have been market size, growth, and increasing economic openness. BITs play at most play a very secondary role. The South Asian experience confirms this conclusion: of the top 4 inward investors in India during the 1990s (the US, Mauritius, the UK and Japan), only the UK has a BIT. However, compared to other areas such as ASEAN, China, and Latin America, FDI inflows into South Asia remain very limited.

BITs can play a useful but only a limited role in promoting economic development…..

The limited impact of BITs upon FDI flows suggests that BITs can play only a limited role in promoting economic development. Their main benefits for developing countries is in signaling greater openness towards FDI and in obtaining bilateral or multilateral insurance for development projects.

For UK investors and government, BITs are very inferior to multilateral initiatives in improving market access in developing countries…..

From the point of view of investors and investing countries, BITs/IPPAs have done little to liberalize entry into foreign markets. They place little constraint on host governments in the area of entry restrictions and performance requirements. As a result, the main current priority of both British government and business is to pursue multilateral initiatives through the EU, where bargaining power on market access issues is much greater. UK business lobbies have strongly supported efforts to liberalize market access for investment through various forums, particularly in the GATT/WTO, and the MAI negotiations at the OECD. The collapse of the MAI talks in 1998 and more recently of the Seattle meeting of the WTO is a major setback, but the UK sees little alternative but to persist with this multilateral strategy. Even in the absence of

WTO agreement upon specific investment rules negotiations, the built-in agenda on TRIMs and GATS means that investment will remain on the WTO agenda.

For the UK and Europe, regional agreements are not a viable substitute for a multilateral agreement on investment…..

Regional agreements with developing countries have significant limitations, both for the EU and the UK itself. The increasing controversy of North-South investment agreements means that they would inevitably have to form part of a larger package of development aid and technical assistance. This seems to be the lesson of the Lomé agreements. Even the EU third party agreements with ASEAN and Mercosur have produced limited benefits in investment. As for the UK, although there is interest in the Commonwealth as a supplementary forum, similar political difficulties apply, and the UK is also constrained by its EU membership.

The weakness of regional integration in South Asia further reduces prospects for agreements with OECD countries, and disadvantages the smallest countries…..

In the South Asian case, moreover, regional integration efforts have not so far produced a regional dialogue partner along the lines of ASEAN or Mercosur, and this is unlikely to change soon. It is notable that there are no intra-regional BITs within South Asia, and despite proposals for a regional investment agreement there have been few concrete achievements. Continuing political conflicts within the region have rendered the deadline of 2001 to create a South Asian Free Trade Area (SAFTA) unrealistic. If such integration is achieved in the future, it could work more to the benefit of smaller countries. At present, limited regional integration has meant that BITs and associated liberalization have favoured the largest markets in South Asia, notably India.

Negotiating Japanese BITs with South Asia would be of limited benefit for these countries and Japanese investors without a substantial aid package…..

Although it would not be too costly for Japan to negotiate BITs with South Asian countries, the British and European experience suggests that the benefits for South Asian countries and for Japanese investors would be very limited. If a substantial aid and technical assistance package were linked to such a BITs strategy, it would be more politically acceptable and might promote some regional integration within South Asia. However, this could not overcome the basic political conflicts in the region that constrain regional integration. In the meantime, Japanese policy should focus on obtaining South Asian agreement to trade and investment liberalization through the WTO.

British Investment Treaties in South Asia: Current Status and Future Trends

1 Background: Trends in UK Foreign Investment and IPPAs

Bilateral investment treaties (BITs) have become one of the main legal and political instruments for the promotion and protection of foreign direct investment (FDI) in the 1990s. Their importance has grown in response to the renewed desire of most countries, particularly developing countries, to attract FDI and the perceived benefits this brings. For the large outward investing countries, the rapid growth of FDI in recent years has increased their desire and the ability to protect their FDI and the interests of associated nationals in foreign countries. The first BIT was signed in 1959 between Germany and Pakistan.[1] By the end of 1997, the number of BITs had increased to 1,513, involving 169 countries and territories. More than two-thirds of these treaties have been created since 1990.

Table 1: Outward FDI Stocks, Major Countries, 1985 and 1995 ($ million)

	1985	**1995**
USA	230,287	717,554
UK	100,313	314,340
Germany	36,441	258,142
Japan	43,974	238,452
France	NA	184,388
Netherlands	47,772	177,279
Switzerland	25,093	142,479
Italy	17,713	97,038

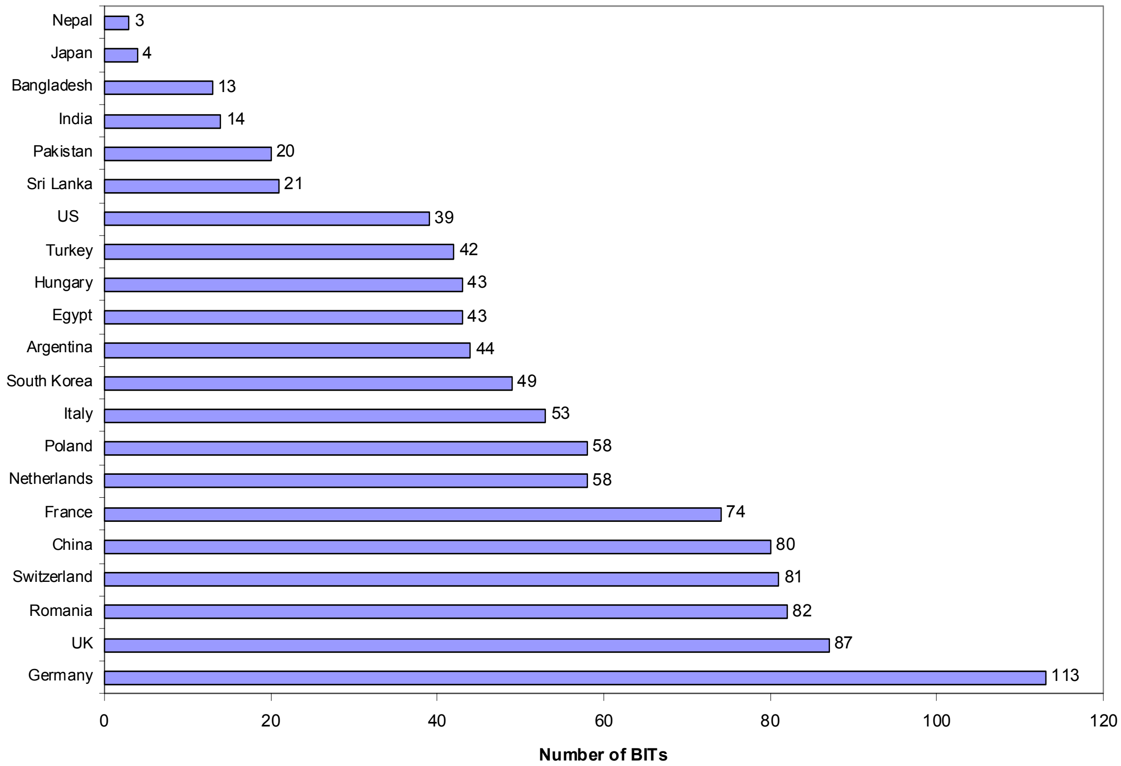
Source: OECD, *International Direct Investment Statistics Yearbook, 1998*.

As table 1 shows, the UK has long been and remains one of the most important global investors. In terms of the size of its outward FDI stock, it remains number two after the US. In comparison with its GNP, its outward FDI stock is by a substantial margin the largest of the G-5 countries. North America and more recently Europe have dominated as host locations for UK

[1] Note, however, that the practice of negotiating bilateral treaties to protect investment is about two centuries old, in the form of treaties of ‘Friendship, Commerce and Navigation’, ‘Amity and Commerce’, etc. In addition, many developed countries have programmes to insure FDI against political risks, and have associated investment guarantee programmes with developing countries.

FDI, and the OECD area still accounted for more

Chart 1: BITs Concluded (end-1996): Country Ranking

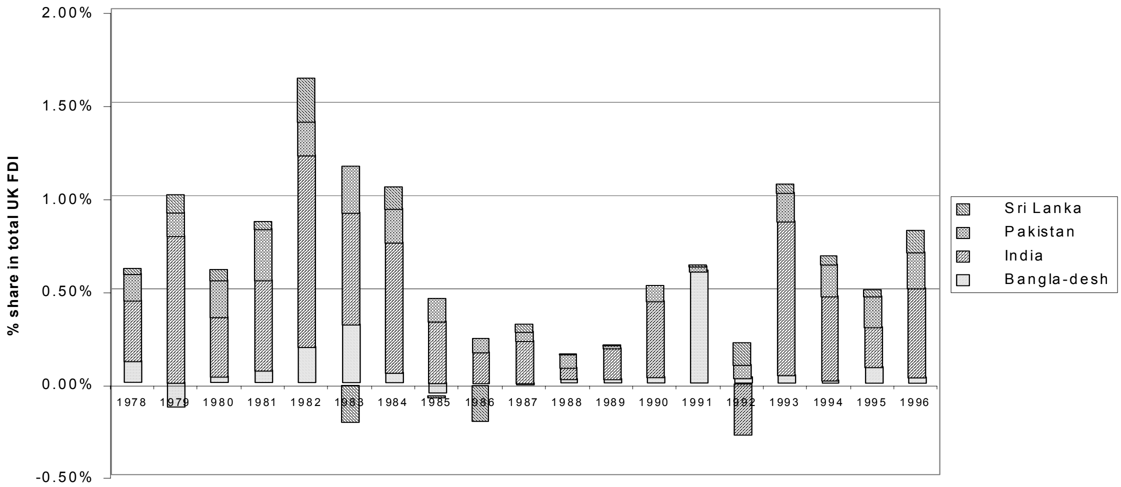


[Source: UNCTAD]

than three-quarters of UK FDI outflows even in the mid-1990s (see table 2, Appendix). However, there is a clear trend for a greater share of UK outward FDI to go to developing countries since the mid-1980s, mainly at the expense of North America.

The main beneficiary of this trend, shared with other OECD countries, has been ASEAN and China. By contrast, South Asia has benefited little. As chart 2 and table 2A [appendix] shows, the share of UK FDI going to South Asia peaked in the early 1980s and fell later that decade, before recovering somewhat in the 1990s.

Chart 2: South Asian shares in total UK FDI outflows, 1978-96



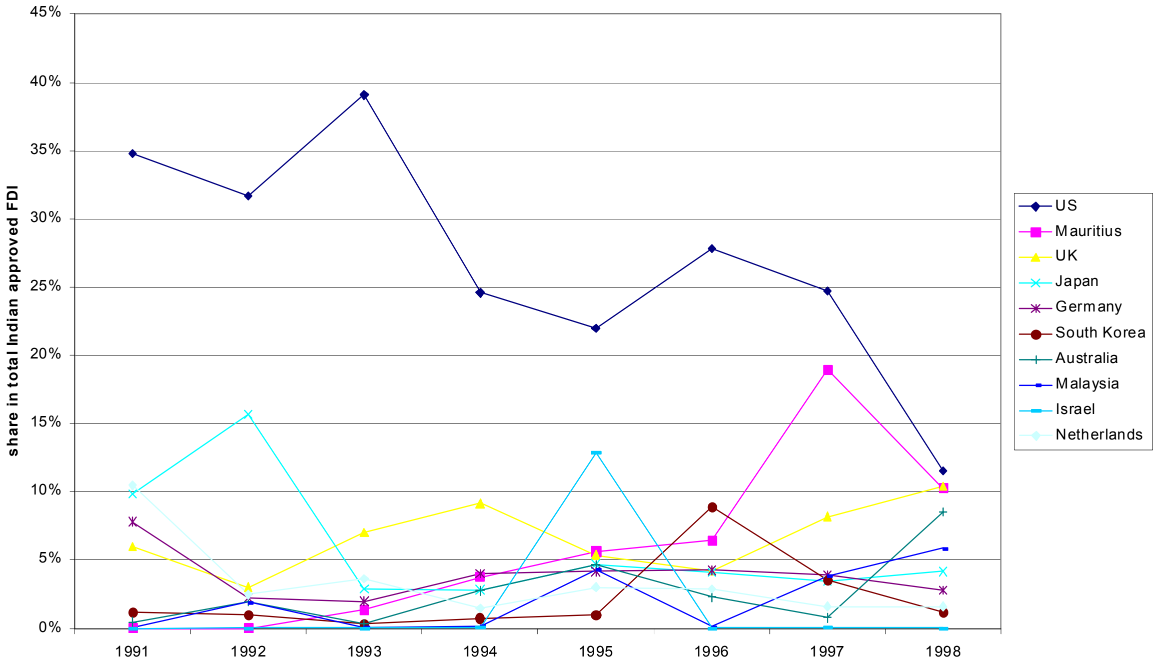
Source: UK Office of National Statistics

Historically, Sri Lanka and Pakistan were most open to FDI (as shown by the ratio of FDI stocks to GNP), while India, Bangladesh and Nepal remained very closed. Although India in particular has received increased inflows in the 1990s, as table 3 [Appendix] shows, all of South Asia began from a low base. Since 1992, India and Pakistan have received 92% of the new FDI flows going into the SA5 countries. The size of India's economy in relation to the SA5 region makes such an asymmetry inevitable. Indeed, despite Indian liberalization, the Indian economy remains relatively untouched by foreign investment compared to many other major developing countries (China's FDI to GDP ratio had reached 25% by 1996, by comparison).

The wide dispersion of UK FDI stocks prompted the British government to embark in the mid-1970s on a programme of negotiating BITs with developing countries. The specific UK term is 'Agreements for the Promotion and Protection of Investments' (hereafter IPPAs).[2] As chart 1 shows, the UK is after Germany the most active country in terms of the number of total BITs it has signed (the UK currently has 92 IPPAs). Germany, which also has full coverage in the SA5, began its BITs programme earlier than other G5 countries. France's coverage is also strong, but as with Germany its BITs are often older than Britain's. As the shift in sentiment in favour of greater openness towards FDI is a relatively recent phenomenon, especially in the major South Asian countries, more recent BITs often offer greater quality of protection and promotion for foreign investors. US and especially Japanese BITs coverage in the region is weak. This is surprising, since as chart 3 and table 4 [Appendix] shows, the US has been the major investor in India, followed by the UK, Japan, Mauritius and Germany (the high Mauritiun share is due to

[2] Throughout, BITs refers to the generic form of the treaty, and IPPAs specifically to the British agreements.

Chart 2: Shares in Indian Approved FDI, 1991-98



shared ethnic links with India).

Historically, South Asia has been much less active than other regions in negotiating BITs, even by the standards of developing countries. The number of BITs concluded by India is particularly small by comparison with China. There are a number of reasons for this. First, negative attitudes and restrictive policies towards FDI have persisted longer in South Asia compared to East Asia and Latin America. This also reduced the interest of the business sector in OECD countries in pushing for the negotiation of BITs. Second, South Asia has offered less attractive growth prospects for MNCs compared to East Asia and Latin America in the 1980s and 1990s. The focus of trade and investment interest in the major OECD countries in recent years, Britain included, has been much more upon East and South-East Asia rather than South Asia.

Until the 1990s, Britain's BIT coverage in the South Asian region was typical in that it was restricted to Sri Lanka and Bangladesh alone. Over 1993-4, however, it added IPPAs with Nepal, India and Pakistan to this list. Thus, Britain now has full IPPA coverage with the South Asian countries on which this report focuses (India, Pakistan, Sri Lanka, Bangladesh and Nepal -- hereafter the 'South Asian 5', or 'SA5').

Table 5: UK Investments and Treaties with South Asian 5

(£ millions)

	BIT Signed	Date Ratified	UK FDI Stock 1996	GNP 1996	NB: Other G-5 BITs
Sri Lanka	February 13, 1980	December 18, 1980	79	8,917	Germany, France, Japan, US
Bangladesh	June 19, 1980	June 19, 1980	70	20,398	Germany, France, US
Nepal	March 2, 1993	March 2, 1993	NA	2,856	France, Germany
India	March 14, 1994	January 6, 1995	524	228,199	Germany
Pakistan	November 30, 1994	November 30, 1994	247	41,563	Germany, France, US

Source: UNCTAD; World Bank; UK Office of National Statistics.

This development reflects South Asian convergence upon a broader international trend towards greater openness towards FDI, improving growth prospects in the region, and falling real aid flows. BITs are increasingly seen as one important means of attracting much-needed investment, as India's finance minister signaled in his budget speech of February 1993. As more developing countries sign BITs, pressure increases on the rest to follow so as to compete for mobile investment projects.

Most important are South Asia's BITs with OECD countries. It is notable that there are no intra-regional BITs within South Asia, if we except Pakistan's 1995 BIT with Iran. Most of South Asia's BITs with other developing countries are with East Asian developing countries, though India has been more active with Central Asia. This pattern reflects the growing importance of outward FDI from countries like South Korea and ethnic links with others like Malaysia. It is also driven by international politics. India's and Pakistan's BITs (which do not always overlap) with Central Asian countries also reflect their regional political rivalry and historic ties to the north.

The changed climate in South Asia is also reflected in the moves to promote regional economic integration. In 1991, the SAARC regional grouping agreed to establish a preferential trading area in South Asia (SAPTA), aimed at promoting regional trade integration on a discriminatory basis. By 1997, ambitions were raised to establish a free trade area, SAFTA, by 2001. Despite some limited trade liberalization, however, this schedule will not be met. At present, intra-regional trade and investment flows remain very small: by 1995, intra-SAPTA trade accounted for only 3.6% of total regional exports, an increase from 3.2% in 1990 (this compared with 22% for the ASEAN FTA in 1995). Furthermore, in spite of Indian support of a draft proposal for a regional investment protection and promotion agreement within SAFTA, the region is a long way from creating such a common policy. Periodic disputes between India and Pakistan, and the common concern in the smaller countries that regional integration might result in Indian domination, have combined to limit severely the prospects for regional integration.

2 British IPPAs Policy: Main Objectives and Strategy[3]

2.1 UK Government Policy

The UK IPPA programme began in the mid-1970s, the first agreement being reached with Egypt in 1975. UK strategy was a direct response to the perceived threat to British investments abroad posed by the New International Economic Order of the early 1970s. By this time, a majority of developing countries, including many former British colonies, held increasingly negative attitudes towards FDI. The UK's position as a former colonial power had given it a strong FDI position in many developing countries, but also left it highly exposed.

The Andean Pact Commission in 1970 issued Declaration 24, setting out the principle that all foreign property should be transferred to majority national ownership. In the UN General Assembly, the growing dominance of the Group of 77 developing countries facilitated declarations hostile to customary international law with respect to the treatment and protection of foreign investments. Most notably, the Charter of Economic Rights and Duties of Nations (1974) asserted national sovereignty over the property rights of foreigners, and the resolution of investment disputes through national (rather than international) courts. Furthermore, there was a broad and accelerating trend towards nationalization of foreign property, and compensation was often delayed and derisory.

Given the weak influence of the UK and other OECD countries in the General Assembly, the UK turned to a strategy of negotiating BITs with developing countries, as other European countries had done for some time. This was explicitly a case of 'cherry-picking': using bilateral

[3] For this and subsequent sections, information was gained through interviews with senior officials in the UK (FCO and DTI) and the European Commission, business representatives, and lawyers directly involved in the negotiation of British IPPAs.

mechanisms to pressure individual countries to provide better protection for British foreign investments. Another motivation was that many OECD governments were responding to these pressures by creating foreign investment insurance schemes (Britain's was adopted in 1972). German and Swiss experience suggested to Britain that BITs could reduce the cost of such schemes by reducing the likelihood of expropriation by a foreign government.

The UK formulated a 'Model IPPA' in 1974, drawing upon the 1967 OECD Draft Convention on the Protection of Foreign Property, the 1965 ICSID Convention,[4] and German and Swiss practice. Although the Model IPPA has since undergone some modification, its basic structure has remained consistent over time (see Appendix 6.3). In common with most BITs, the main objectives of UK IPPAs was to:

1) Facilitate and encourage the entry of British FDI into the other country;
2) Provide high standards of investor protection, including 'fair and equitable treatment' of UK investors, and in addition national and MFN treatment;[5]
3) Provide legal protection regarding transfers of funds and adequate compensation in the event of expropriation;
4) Guarantee the right of investors to international arbitration in the event of a dispute with the host country.[6]

As we will see, the protection of existing British overseas investments was by far the most important of these objectives. Given the learning from existing BITs practice, there are few important differences between UK Model IPPAs and the model BITs of other major European countries. The main difference is rather between the UK (and European) approach on the one hand and that of the US on the other. To generalize, the UK favours protection over liberalization, whereas the US favours the opposite. The US Model BIT contains high standards of liberalization regarding entry and operating restrictions placed upon US MNCs, provisions not present in UK IPPAs.

Specifically, the UK, in contrast to the US, does not insist upon a right of investors to 'pre-establishment' entry. The Model IPPA (Art. 2.i) requires only that each contracting party 'shall encourage and create favourable conditions for nationals or companies of the other Contracting Party to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital'. This allows host governments to restrict the right of entry of foreign firms, though UK officials argue that it obliges governments to make 'best efforts' on the question of entry. Another key contrast with the US Model BIT is that the UK's Model IPPA does not attempt to rule out operating restrictions or 'performance requirements' imposed on MNCs by host countries.

To some extent these differences reflect the greater bilateral bargaining power of the US compared with the UK. They also reflect a more sympathetic attitude towards state intervention for developmental purposes in Europe. Indeed, British lawyers involved in the drafting of the Model IPPA in the 1970s were concerned that the then Labour Government would see the Model as too liberal for the UK itself! Although this is no longer the case, the more sympathetic attitude towards developing country restrictions on MNCs persists in UK official and business circles despite the more ideologically pro-market position of the Thatcher government of the 1980s. It may also be that the as responsibility for the actual negotiation of IPPAs has lain with the Foreign

[4] This convention established a World Bank facility for resolving disputes between investors and host states, the International Centre for the Settlement of Investment Disputes. It has since become one of the primary legal forums for the arbitration of 'investor-state' disputes, and a standard reference in BITs.

[5] 'National treatment' (NT) means treatment no less favourable than that accorded to the host country's nationals and companies; 'Most Favoured Nation (MFN) treatment' means treatment no less favourable than that accorded to the nationals and companies of any third country by the host country.

[6] Typically ICSID (the International Centre for the Settlement of Investment Disputes), or the Court of Arbitration of the International Chamber of Commerce, or an UNCITRAL panel (the UN Commission on International Trade Law).

and Commonwealth Office (FCO) rather than the Department of Trade and Industry (DTI), UK negotiators have been less concerned with questions of market access.

In practice, FCO tactics were to some extent driven by cost considerations. This entailed sending negotiating teams to negotiate IPPAs with a series of countries within a particular region. Sometimes this produced individual failures, including India and Pakistan in 1980. However, in terms of coverage, the UK network compares favourably with all except Germany's. As chart 1 shows, although the US is by far the world's largest foreign investor, it has relatively few BITs compared to the UK and the rest of Europe. Moreover, the UK has BITs with important developing countries that have been reluctant to negotiate with the US. This includes most of East Asia, Latin America, and South Asia.

2.2 UK Business Attitudes and Influence

UK business (primarily through CBI, the Confederation of British Industry), were closely involved in the origin of the IPPA programme and the formulation of the Model IPPA. In the 1970s, the main concern of business was to protect existing foreign investments from the growing threat of expropriation. On this issue, the CBI pushed strongly for higher standards of protection of foreign property than provided in customary international law, including prohibitions against 'creeping expropriation.' However, the Foreign Office felt unable to go too far in this direction and business had to settle for fairly general language. Furthermore, the Model IPPA, in common with most BITs, does not prohibit expropriation, requiring only that it be for an identifiable 'public purpose'. The main emphasis was upon the 'Hull' formula of requiring 'prompt, adequate and effective compensation' in the event of such expropriation. Given concerns about the adequacy of local courts, UK Business was also insistent on a right to impartial international arbitration in the event of a dispute with the host country.

In terms of these objectives, UK business representatives have been broadly satisfied with the efforts of the FCO to implement the Model in actual negotiations. Even though some IPPAs involved major compromises with developing countries, this is generally seen to have been an acceptable cost to pay for broad IPPA coverage. Business does not seem to feel that FCO negotiating responsibility has led to a sacrifice of business interests for broader diplomatic purposes, though it has supported the more recent reorganization, which provides for closer FCO-DTI coordination. The result has been that over time, British business representatives have largely withdrawn from active involvement in the IPPA programme.

The satisfaction of UK business with IPPAs is possibly surprising in view of the limited constraint they impose on host governments in the area of entry restrictions and performance requirements. However, the long historical presence of British firms in many developing countries has led them to take a pragmatic attitude towards such restrictions. Some British firms even see performance requirements as a source of competitive advantage for UK firms if it discourages potential competitors (such as US firms) from investing in a particular country. In addition, performance requirements are often a condition of the receipt of investment incentives from the host government.

The main benefit of IPPAs for British business is that they are seen as having reduced the political risk of investing in developing countries. This is despite the fact that British IPPAs have not been tested in international courts. The number of ICSID cases involving BITs since 1965 has been only 14 (as at April 1998), all since 1987. For the UK, ICSID has only arbitrated one involving a UK IPPA (AAPL vs. Sri Lanka, 1990).[7] One should not conclude from this that IPPAs are a weak instrument. British officials and business point out that the key objective is to *deter* expropriation rather than actively to utilize the dispute settlement mechanism. Thus, British business representatives refer positively to the absence of any serious disputes between UK-based MNCs and host countries with which the UK has an IPPA. UK embassies abroad also tend

[7] The Asian Agricultural Products Ltd (AAPL) case was taken to ICSID and involved a Hong Kong based firm and the issue of whether the Sri Lankan government exercised sufficient due diligence in protecting the company's assets from civil strife.

to report that British companies considering foreign investment in a particular country are most interested in whether double taxation and IPPA agreements are in place.

2.3 The Future of British IPPAs Policy

Despite this general satisfaction with the IPPA programme, British business has become more concerned with questions of market access in developing countries over time. Here, IPPAs have been of little help, particularly in the service sector, but also in many manufacturing sectors as well. *The result is that both British government and business no longer see extending the IPPAs programme as a policy priority.* IPPAs usefully helped to protect British overseas assets against the threat of expropriation in the 1970s and early 1980s. Since then, the marked shift to more positive attitudes towards FDI in the developing world makes expropriation no longer the threat it once was, but problems of market access have risen to the top of the agenda for business and government.

Declining interest in the IPPA programme is partly a product of its success in gaining wide coverage and protection for UK investors, and perhaps in helping to promote less radical policies in developing countries. But the IPPA network has major weaknesses. First, as noted above, they provide little in the way of market access. Second, although there are provisions in IPPAs for renegotiation after 10 years, British business and government see little prospect for the revision of existing IPPAs along the lines of the more market access-oriented US Model BIT. Such a strategy would be highly costly and unlikely to produce major gains in terms of market access. Third, as the IPPA/BITs network has expanded globally, this has created additional problems of inconsistencies between individual BITs, resulting in considerable inefficiencies and legal ambiguities.[8]

These problems have led British policy priorities to shift from the bilateral level to the multilateral, and from investor protection to liberalization. UK business lobbies have strongly supported efforts to liberalize market access for both exports and investment through various forums, particularly in the GATT/WTO. The GATS (trade in services) agreement of 1993 has provided better coverage for investors in terms of market access, but only in service sectors that countries specifically agree to liberalize (GATS is thus a 'bottom up' treaty).

UK business also strongly supported the Multilateral Agreement on Investment (MAI) negotiations at the OECD from 1995-98. The draft agreement that emerged in the course of these negotiations resembled the US Model BIT and NAFTA's chapter 11 much more closely than UK or European IPPAs. This was due to the strong US preference for a 'high standard' multilateral regime on investment that would have provided for substantial liberalization in terms of entry (a 'top down' approach) and prohibition of various performance requirements on MNCs, in addition to other standard BITs provisions. Although market access concerns mainly arise in relation to non-OECD countries, UK business supported the general MAI strategy of encouraging non-members to adhere to the agreement. The collapse of the negotiations amidst political controversy in 1998 therefore represented a major setback at the multilateral level for UK business. This has led British business lobbies to focus upon future liberalization through the WTO (see section 5.1).

3 Britain's South Asian IPPAs: A Comparison

3.1 British Strategy in South Asia

The UK strategy for negotiating IPPAs in South Asia has not differed from its general approach outlined above. South Asia was targeted in the late 1970s, but initially it was possible only to negotiate IPPAs with Sri Lanka and Bangladesh. Despite British willingness to demand

[8] One UK business representative said some MNCs have used foreign affiliates to undertake investment in a particular developing or transition country because the affiliate's host country has a better BIT with the target country.

little in the way of liberalization requirements, India and Pakistan were concerned that IPPAs would limit their sovereignty over national resources. In the 1990s, as South Asian attitudes towards FDI evolved in a more liberal direction, it became possible for the UK to negotiate a second wave of South Asian IPPAs with Nepal, India and Pakistan over 1993-4. The shift in Indian policy by 1993 was a crucial step in facilitating the UK approach, and this in turn facilitated BITs with other OECD countries, with the important exceptions of the US and Japan.

3.2 Comparison with the Model IPPA

Generally, the 1980 IPPAs with South Asian countries offer a lower standard compared to both the UK Model IPPA and the more recent IPPAs of 1993-4. The IPPA with Bangladesh probably provides the weakest overall standard, while that negotiated with India in 1994 compares fairly well with the Model. The following sections provide a brief comparison on the basis of the four objectives outlined in section 2.1 above [see also the texts of the Model and the SA5 IPPAs in Appendices 6.3 and 6.4].

3.2.1 Encouragement of British FDI

As noted above, the Model IPPA requires little from the host country in terms of liberalization of entry for investment, though all SA5 IPPAs do have the Model emphasis on 'encouragement and promotion of investments' by the host state. The Indian and Pakistani IPPAs further qualify the right of entry by defining investment to mean every kind of asset 'established or acquired… in accordance with the national laws of the contracting party' (Art. 1). This means that the provisions of the IPPA only apply to investments approved by the host country in accordance with standard screening and application procedures. All SA5 IPPAs allow (as in the Model) for the extension of protection to a British overseas area via a diplomatic note.[9]

Generally, the presumption is that the provisions apply to both existing and future investments. The India IPPA explicitly provides for this, offering a higher level of protection than some other UK IPPAs which do not give equal treatment to existing and future investors (e.g.: those IPPAs with Indonesia and Vietnam).

3.2.2 Standards of Investor Treatment and Protection

In common with most BITs, the Model IPPA provides clearer relative standards than absolute standards of treatment. The two relative standards of national and MFN treatment are clear enough in international law. IPPAs also provide for absolute standards in the form of 'fair and equitable treatment' and 'full protection and security'. The primary function of these absolute standards is to provide a means for the UK of raising legitimate questions about the treatment of British investment by host countries. It is less clear what concepts like 'full protection and security' require in practice, as the AAPL vs. Sri Lanka case demonstrated.[10]

The most notable exception to the dual standard of NT and MFN treatment is in the Bangladesh IPPA, which does not have a national treatment clause. The NT clause is also less explicit in Sri Lanka's than in the three 1990s IPPAs. It should be noted that all UK IPPAs contain a general exception to NT and MFN treatment in Art. 7, which excepts either contracting party from obligations arising from membership of a customs union (taxation agreements are also excepted). The main concern here is that Britain is unable to pass on the benefits of European Community membership to its IPPAs partners, though this also allows the other party to exclude similar regional agreements from the provisions of the IPPA. As section 5.2 explains, so far this possibility has little relevance for South Asia.

[9] It was Sri Lanka's acceptance of an extension to Hong Kong in 1980 that facilitated the AAPL vs. Sri Lanka ICSID arbitration (see note 6 above). Note that since China's repossession of Hong Kong, this particular extension no longer applies.
[10] See note 6.

3.2.3 Freedom of Transfers and Compensation Provisions

The Model IPPA contains relatively strong language relating to the investor right to full freedom of transfer of investments and all related returns. The main concern of developing countries with this clause has been the constraint it might impose on their ability to impose capital controls for balance of payments purposes. The Sri Lankan and Bangladeshi IPPAs provide for exceptions to this requirement in 'exceptional financial or economical circumstances'. The 1990s IPPAs contain no such exception, reflecting the more recent shift towards the liberalization of exchange restrictions in many developing countries.

On the issue of expropriation, the SA5 IPPAs all refer to nationalization, expropriation, and 'measures having equivalent effect', prohibiting these except for identifiable public purposes related to internal needs. It also obliges the expropriating government to provide full compensation including interest and to provide due process and judicial review upon request. The Bangladesh IPPA is weakest in this area, since it does not provide for interest, and commits each party only to an ambiguous review of the legality of any expropriation 'by due process of law'. The expropriation clauses of the other SA5 IPPAs have more extensive and clearer requirements in this area.

The India IPPA differs slightly from the Model of 'prompt, adequate and effective compensation' including interest 'at a normal commercial rate', referring to 'fair and equitable compensation' and interest set at a 'fair and equitable rate'. Whether this implies a significantly lower standard of compensation, however, is unclear, since virtually no BITs refer to specific methods of valuation of assets for purposes of compensation.

3.2.4 Rights to International Arbitration

The preferred Art. 8 in the Model IPPA refers investor-state disputes to ICSID if these have not been resolved amicably through local remedies after 3 months.[11] The IPPAs with the smaller SA5 countries (Sri Lanka, Bangladesh and Nepal) adhere to this preferred clause, while those with India and Pakistan contain the alternative clause. The latter provides for alternative (and in the eyes of the UK, less desirable) arbitration options through the Court of Arbitration of the International Chamber of Commerce and the UNCITRAL.[12] India's is the most important exception because it has not adhered to the ICSID convention (though it provides for ICSID arbitration if India joins in the future). The Indian IPPA also provides for reference to UNCITRAL by mutual agreement or by one party to the dispute after 6 (rather than 3) months. Essentially, the UNCITRAL procedure allows India greater control over the composition of the arbitration panel.

All IPPAs and virtually all BITs refer to the possibility of binding state-state arbitration in the event of a dispute. However, such mechanisms have never been invoked, not least because one of the objective of BITs is to remove investment disputes from the realm of inter-state diplomacy.

3.3 Comparison with Non-British BITs

Overall, Britain's SA5 IPPAs are fairly representative in that they offer comparatively good standards of protection for existing UK investors and weak standards of investment liberalization. They are also representative in that IPPA standards have tended to improve over time with the development of more positive attitudes towards FDI in developing countries. The main exception to this generalization is the weaker standard of investor-state dispute settlement in the Indian IPPA.

By the standards of other countries' BITs with SA5 countries, British IPPAs offer a fairly high standard of protection. As noted above, the US 'model BIT' provides for relatively high standards

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[11] Note that the Model does not require that local remedies be 'exhausted' before international dispute settlement can be chosen.

[12] UNCITRAL, the United Nations Commission on International Trade Law, provides for the establishment of panels to resolve investor-state disputes.

with respect to market access, particularly in the areas of pre-establishment,[13] performance requirements, and rights to transfer key personnel. However, the US has very poor coverage in the SA5 region, so these high standards are moot.

Note that because British IPPAs also contain an unqualified MFN clause, in principle this means that if other countries were to sign a higher standard BIT with an SA5 country, this country would be obliged to pass on the benefits of this agreement to British investors. So far, however, this clause has limited implications, since British IPPAs compare favourably with those of other European countries, while the US only has a BIT with Sri Lanka, the country in the region most open to FDI. Overall, there is a rough trade-off between the degree of protection and the degree of liberalization BITs provide for investors (another way of putting this is that the UK has preferred ‘widening’ the BITs network, while the US has preferred ‘deepening’). Over the longer term, it is debatable which approach provides better quality of coverage from investors’ point of view.

4 Britain’s South Asian IPPAs: Consequences for Investors and South Asian Countries

4.1 Protection for Investors

From the point of view of British investors and government, the main objective of IPPAs was to provide high standards of protection for British investment against the heightened threat of expropriation or near-expropriation. Countries like India were typical in the 1970s in terms of imposing sometimes draconian restrictions on foreign investors. As with Britain’s other IPPAs, on this score the SA5 IPPAs can be said to be a success. Reducing the political risk of FDI is especially important to capital intensive investments that involve large sunk costs. It is notable that according to the Indian Government, many recent UK investors in India have been in the energy sector. The Indian government claims this sector now accounts for over 50% of outstanding UK FDI stock in India.[14] Major investors in this sector include Rolls-Royce, BP, British Gas, National Power, National Grid, and Shell. Telecoms is another capital intensive sector where inward investment has been growing rapidly, and now accounts for over 5% of total approved UK FDI in India.

There have been no examples of post-IPPA expropriation in SA5 countries. However, during the more difficult years of the 1970s and early 1980s, a major problem for UK investors was that IPPAs with India and Pakistan were not politically possible. Since then, British investors feel reassured by the investor-state dispute settlement provisions in the SA5 IPPAs (even in the Indian form). The possible exception has been in the case of Sri Lanka, where civil strife has sometimes compromised the safety of investments. But BITs in general are poorly equipped to deal with such circumstances.

4.2 FDI Promotion: Effects of BITs on FDI flows to South Asia

Given that IPPAs focus primarily on the protection of existing investments rather than the promotion of new FDI, any effect on FDI flows to the host country are likely to be indirect. To the extent that IPPAs have reduced the political risks of investment, this may have contributed to higher FDI inflows from the UK to South Asia. As noted above, there is some recent evidence of such an effect in capital intensive sectors such as energy and telecoms. In addition, signing

[13] Note, however, that US BITs usually contain annexes listing exceptions from such general provisions for national (or MFN) treatment on entry.

[14] However, it is not yet possible to confirm this by reference to UK statistics. These suggest that in 1996 (the latest year available), the energy sector accounted for only 10% of outstanding UK FDI stock in India, less than food, drink and tobacco (37%) and chemicals (16%). If the Indian figures are correct, this implies a massive sectoral switch in UK FDI flows to India since then. However, given possible differences in calculation, one should be cautious of any such conclusion.

IPPAs/BITs can be an important signal on the part of the developing country government of a more liberal policy stance towards FDI.

However, it is very difficult to associate BITs/IPPAs with increased FDI inflows. First, the recent increases in energy-related FDI in India are more likely to be related to liberalization moves by the government in this sector. Second, in terms of aggregate FDI flows, there is little concrete evidence that the SA5 IPPAs have significantly increased UK FDI to South Asia. One simple measure is the average share in total UK FDI outflows going to each SA5 country, before and after the signing of an IPPA. As table 2A [appendix] shows, only in the case of Bangladesh and Pakistan is there an increase in the share of total UK FDI outflows after the signing of the relevant IPPA (and this may simply be a product of natural variations in annual flows). There is more recent evidence with respect to the UK share of total approved FDI in *India* in the 1990s. This share increased from 5.4% over 1991-93 to 7.0% 1995-98. Again, however, it would be wrong to read too much into such figures (see tables 2, 2A and 4). As chart 2 shows, South Asia's share in total UK FDI outflows peaked in the early 1980s, just after India and Pakistan refused to sign IPPAs with Britain.

Evidence from other countries' investment in South Asia supports the view that the relationship between BITs and FDI is weak. Most notably, in the case of India, the US has been the leading inward investor throughout the 1990s despite having no BIT with this country. (Although the US share has fallen sharply in recent years, it is difficult to generalize about the cause). In fact, of the top 4 inward investors in India in the 1990s, the UK is alone in having a BIT with India. For the top 10 investors in India in the 1990s, 6 signed BITs with India during this period. Of these, 3 experienced an increase in their share in inward FDI after the BIT, while 3 experienced a fall. Most notably, the Netherlands' share dropped by more than half after the signing of its BIT with India in 1995. Thus, the empirical evidence in favour of the proposition that BITs promote FDI flows is very weak for South Asia.

This is consistent with broader global evidence on the effects of BITs on FDI flows.[15] Most statistical studies have concluded that BITs are at most a weak and secondary factor in promoting FDI flows to developing countries. Other factors such as market size and growth, macroeconomic policy, infrastructure, human capital and political instability generally play a much more important role.[16] Such factors help explain the rapid growth in Indian FDI inflows in the 1990s from sources such as the US, Mauritius and Japan, which do not have BITs with India. It is obvious that BITs are by no means a prerequisite for large FDI inflows: East Asia attracted large amounts of FDI from Japan and the US after the 1980s despite neither having BITs with developing countries in the region (Japan's 1988 BIT with China being the exception). Furthermore, as developing countries have converged upon pro-FDI policies and signing BITs, this is likely to have reduced the impact of BITs on FDI flows over time.

4.3 National Economic Development

In the 1970s, the South Asian developing countries tended to see FDI as highly distortionary and largely negative in terms of its effects upon national economic development. Where such views persist, BITs or the MAI more recently tend to be seen as working more to the advantage of developed countries rather than developing countries. However, South Asian countries have been much more willing to negotiate BITs than to support multilateral negotiations on investment. This reflects the incomplete conversion of these countries to the view that FDI always favours development, since BITs continue to allow them significant control over inward FDI. BITs can also facilitate the insurance of major infrastructure projects, such as through the World Bank's Multilateral Investment Guarantee Agency (MIGA), or through national agencies in OECD countries.

[15] The most important recent study is UNCTAD, *Bilateral Investment Treaties in the Mid-1990s* (UN 1998), ch.4.

[16] The UNCTAD study also finds that the lag between the signing of a BIT and any subsequent impact on FDI flows can vary up to 2 or more years.

In terms of development policy, British IPPAs do not significantly constrain national autonomy. As noted above, they do not tend to prohibit local requirements relating to technology transfer, employment and labour training, exports and local content, etc. They do constrain policy in the area of expropriation/nationalization, but such policies were often counterproductive, and few developing countries today would wish to exercise this right. Although IPPAs do not much constrain host country government policy, nor do they entail significant obligations on the part of the UK government. Most importantly, UK IPPAs contain no obligation on the British government actively to promote investment in developing country signatories, unlike some countries' BITs (e.g.: Belgium-Luxembourg's with Cameroon). It is clear that the Model IPPA is not actively portrayed as a development policy, nor is it linked explicitly to UK aid policy.

The evidence also suggests it is unrealistic to expect that BITs alone will significantly improve a country's FDI inflows, especially as they are increasingly common amongst developing countries. Although South Asia has seen aggregate increases in FDI inflow in recent years, the proportion of total global FDI going to South Asia remains small by comparison with East Asian and Latin American shares. For the UK, as for other major OECD countries, the total FDI flows to South Asia pale by comparison with FDI outflows to ASEAN, China and Brazil. South Asia remains, with Africa, one of the least developed areas on earth, and there is little that BITs alone can contribute to the alleviation of this poverty.

Have IPPAs affected the intra-regional distribution of UK FDI flows? It is doubtful that the *differences* between the SA5 IPPAs are important enough to affect such flows. However, there is evidence that the overall SA5 BITs network has worked to the advantage of the largest countries, especially India. As all SA5 countries have now signed IPPAs with the UK, this increases the importance of other factors such as market size and growth potential. Since 1990, India has achieved the largest increase in its FDI to GDP ratio of all SA5 countries, and Nepal and Pakistan follow (see table 3, Appendix). As for Nepal, the large increase can be attributed mainly to the extremely low base in 1990. Limited regional trade integration in the region is an important factor in this respect. The lack of regional preferential market access is particularly problematic for the smallest South Asian countries, both in terms of exports and their ability to attract regionally-oriented FDI (even with strong BITs with OECD countries).

5 Alternatives to IPPAs? Multilateral and Regional Agreements

5.1 Multilateral Investment Instruments

As noted above, the current attitude amongst UK business and government is that IPPAs have been successful in terms of providing good coverage and protection for existing British foreign investments, but that they are no longer a policy priority. As the BITs network has expanded, British industry has become increasingly concerned about discrepancies between different BITs and the legal and managerial costs they can entail. From the point of view of government, renegotiating IPPAs and expanding existing coverage would be very costly and would achieve few benefits.

Accordingly, the UK (and European) priority has clearly shifted in recent years from building a BITs network towards the promotion of a multilateral investment regime. This remains true despite the failure of MAI and of the Seattle meeting of the WTO, both of which represent considerable setbacks to this multilateral strategy. For many in Europe, including many in the UK, the failure of MAI only confirmed their view that such negotiations should have been undertaken within the WTO rather than the OECD. The US, consistent with its general preference for liberal investment rules over breadth of coverage, favoured the OECD over the WTO. Britain, along with the rest of Europe, tended to favour the inclusion of developing countries in the negotiations from the beginning, and therefore felt that the WTO was the appropriate forum.

After the collapse of the MAI negotiations in 1998, Europe continued to push for investment rules negotiations within the WTO, against US reluctance and that of many developing countries.

Europe accepted that this would produce a lower degree of liberalization commitment from developing countries in return for their participation, along the lines of the GATS (services) agreement. The UK view was that as well as providing some form of binding of existing commitments, it could provide a 'ratchet' mechanism for continued liberalization over time. Significant problems remain on coordinating the issue within the EU, however, with France being very cautious and sensitive on the issue of labour standards (as is the US).

Important developing countries such as India and Malaysia have been vocal opponents of the inclusion of investment rules on the WTO agenda, as have many NGOs, who see the EU position as an attempt to reintroduce MAI through the WTO. The failure to agree at Seattle on the WTO agenda for the Millennium Round means that even if such agreement can eventually be achieved, substantial negotiations are now unlikely before mid-2001 at the earliest.

The reason for the opposition of countries like India and Pakistan to the inclusion of investment on the WTO agenda seems clear. BITs have allowed these countries to maintain control of their inward investment policies while providing some positive signaling effects in terms of attracting FDI. They are concerned, however, that a strong multilateral investment regime would erode their national policy autonomy. They also fear the desire in some quarters to link investment rules with labour and environmental standards. Although the UK supports this aspect of the South Asian position, many developing countries still fear that NGOs may force the EU to make such linkages during any future negotiations on investment.

Despite the evident difficulties in the UK and European position more generally, the prevailing view is that some form of WTO investment negotiations are inevitable. UK negotiators argue that the difficulties in Seattle were mainly due to developing countries' general sense of exclusion from the negotiating process than with the agenda. The belief is that contrary to the interpretations of many NGO critics, most developing countries are receptive to promoting inward investment. British business lobbies argue that given widespread developing country commitment to the investor protection aspects of BITs or World Bank financing, there is little reason why a multilateral (WTO) commitment to full legal protection for existing investments should not be possible. This could be done through some form of cross-referencing to ICSID, for example. The obvious difficulty is that some developing countries may feel comfortable making such commitments to investors from specific countries, but not necessarily all members of WTO. Another problem is that environmental NGOs are likely to balk at any suggestion of investor-state dispute settlement being brought into WTO through the back door.

Even if there is no agreement within the WTO in the near future to include investment rules, there is much on the 'built-in agenda' related to investment that will prove controversial. The review of the GATS agreement on services will provide further opportunities for the negotiations over the liberalization of investment in various services sectors. The TRIMs review process is also likely to produce significant difficulties for developing countries, given that its focus on investment-related performance requirements goes to the heart of development policy. Some argue that the TRIMs agreement even has potential implications for investor-state dispute settlement mechanisms in BITs via the MFN clause. Countries like India and Malaysia will strongly resist any such implication.

5.2 Regional and Plurilateral Instruments

Regional and plurilateral initiatives are in British eyes very much a second best to a multilateral agreement. Generally, they offer less coverage with similar problems of coordinating different national positions. And unlike a multilateral agreement, regional initiatives would not resolve the BITs problem of uneven standards.

An additional concern for the UK is that EU regional agreements with developing countries might compromise its existing BITs network. This produces a resistance on the part of the largest countries, particularly the UK, Germany, and France, to providing the European Commission with full negotiating authority in the area of investment. Smaller member states tend to feel that an EC competence in investment would improve their bargaining power vis-à-vis third countries. Large countries like the UK and Germany with extensive BITs networks are concerned that any EU agreement might lower investment protection standards and undermine their existing levels of investor protection.

Another obstacle to the regional route for the EU and more generally is that any agreement with a large number of developing countries that might be seen as an 'MAI 2', raising domestic political difficulties for many governments. France, for example, remains very concerned about the implications of such agreements for national and European labour standards, while the northern European countries (such as Germany and Scandinavia) are most concerned about environmental standards.

The general compromise has been to accept a mixed competence between the member states and the Commission, allowing the latter as a party to negotiations such as the MAI. In the area of third party agreements with developing countries, however, this difficulty has hampered the ability of the EU to negotiate in the area of investment. The third party agreements with groupings such as Mercosur, ASEAN and the Lomé countries are focused upon trade liberalization, with only very general language in the area of investment. In addition, the developing country regional groupings themselves have also found it difficult to agree liberalization in the area of investment. Nevertheless, it is impossible to separate market access negotiations from investment in sectors such as services, and the EU view is that any future agreements within these regional forums to liberalize such sectors should be passed onto the EU on an MFN basis.

Another forum with implications for investment is Lomé, through which the EU deals with many developing countries in the ACP (Africa, Caribbean and the Pacific). Again, the concerns of UK and other countries not to weaken their BITs network limited what is possible here regarding investment. Furthermore, Lomé's traditional focus has been upon *preferential* trade arrangements, but this model is difficult to apply to investment. Indeed, the UK's Development ministry (as elsewhere) has tended to resist the dilution of Lomé's preferential arrangements, a further obstacle to including investment. By way of compromise, the Lomé III Convention (1984) recognized and encouraged the creation of BITs between individual European and ACP countries, and set out broad guidelines for their negotiation. Article 243 (1) even implied that all signatories of Lomé should benefit from existing BITs between individual Lomé countries, but business is reluctant to put this clause to the test. Furthermore, it is difficult to see how the next Lomé agreement will be able to move much beyond this. The British view is that without substantial additional aid to facilitate adjustment in the ACP (as, for example, in the EU's Stability Pact with the Balkans), little more can be achieved.

A further problem relating to South Asia is that regional integration here is very weak, leaving the EU with no real negotiating partner (unlike, say, ASEAN or Mercosur). The UK (and European) attitude towards regional integration in SAARC is very sceptical: progress so far is seen as 'glacial', and there is little hope of any change soon. This view is widely shared in the UK business sector. The likelihood of an intra-SAARC investment agreement is seen as very small despite Indian support. After all, no intra-regional BITs have yet been achieved in the region. This is in part because of the concern in the smaller countries of Indian dominance, but also because the main objective of the SA5 countries is to attract investment from the OECD. As in the automobiles and parts sector in Mercosur, this can create conflicting objectives amongst member countries. The proposed rule of origin of 50% local content for duty-free treatment within SAFTA (and 60% for imported materials from the SAFTA region) could have significant distortionary effects upon the distribution of FDI within the region, for example.

The recent India-Pakistan border dispute is seen in the UK as a major setback to the integration process, and the effects of the recent military coup in Pakistan are as yet unclear. Compared to the interest taken by the UK government and business in Mercosur, ASEAN and Southern Africa, the difference is striking. The South Asia desk in DTI is focused much more on trade facilitation than investment, and is sceptical about the prospects of regional integration.

Considerably more government and business sector interest is shown in the wider Commonwealth forum than in SAARC. There has been support within the Commonwealth Business Council for a broader Commonwealth trade and investment agreement, though it has not been possible to achieve endorsement from the Commonwealth Heads of Government. The UK government strategy has been to encourage the Commonwealth countries to accept similar language to that in the EU third party agreements with ASEAN and Mercosur. However, a major obstacle is that binding specific language in this area would raise problems with Britain's EU partners, and given the opposition of some countries, could also weaken existing IPPAs.

6 Conclusion: Implications for Japan

The consensus within UK official and business circles is that the only viable strategy is to continue to push for broad multilateral negotiations on investment. The regional route raises at least as many if not more problems, and is at present unviable in South Asia. Furthermore, it would be difficult and costly to improve on the existing BITs network, and even then, the UK would be left with the uneven coverage and standards this network provides.

Japan is in a very different position in this respect. Despite Japan's global importance as an outward investor, it has by far the lowest coverage in terms of BITs of any major country. The low profile of the Japanese government on the question of investment protection and promotion is not only because of the historical legacies of Japan's economic and political influence in the Asian region. There are two additional factors that seem to have played an important role: first, a preference for quiet diplomacy and working with locals, and second, considerable sympathy for interventionary development policies in recipient countries. But as we have seen, these attitudes are also widespread in British and European government and business circles.

In the South Asian region, Japan's investment is small by comparison with its position in East Asia. If it desires to improve its investment protection and promotion policies in South Asia, there are three main options open to Japan: multilateral, regional and bilateral. With Europe, it has pursued the multilateral route in the WTO, but it remains unclear how far and how quickly this process can go in the short term. As for the regional option, the major limitations of the SAFTA/SAARC grouping apply to Japan as to Britain and the EU, and for the time being would rule out a Japan-SAFTA trade and investment agreement. APEC also has limited relevance to South Asia, and in any case has proven unsuitable for the negotiation of binding investment rules. This might appear to leave Japan with only the bilateral route to take in the immediate future.

Given the substantial shift in developing country attitudes towards FDI in recent years, such BITs would in many cases be straightforward for Japan to negotiate. However, given Japan's remarkably small existing BITs network, this would involve considerable effort; it would take years to catch up to European levels of coverage. Of course, it would be possible to negotiate a BITs network with the SA5 more quickly given the limited numbers of countries involved. But given the much lower threat of expropriation in most developing countries today, the benefits would be limited. As we have seen, Japan is already one of the top four investors in India without a BIT. In addition, Japanese affiliates based in countries with SA5 BITs already benefit from these agreements. For example, Japanese affiliates in Singapore benefit from this country's BITs with Pakistan, Indonesia and Vietnam.

It may be that a modified regional strategy could achieve greater progress in South Asia. An agreement along Lomé lines that combined trade and investment liberalization with Japanese aid and technical facilitation might be more attractive to South Asia, desperate as these countries are to raise inward investment flows. Compared to the EU countries, Japan would not face similar constraints in terms of weakening an existing BITs network. But the political obstacles to deeper integration in South Asia mean that it would be unrealistic to expect much from such a strategy.

In the meantime, as for the UK and Europe, there is little option for Japan but to persist with multilateral negotiations. The main positive role open to Japan could be to overcome South Asian hostility to investment negotiations within the WTO. In this sense, substantial trade concessions in areas of importance for exporters in South Asia would arguably make a greater contribution to economic development in this region than would the negotiation of new BITs.

Appendices

6.1 Charts and Tables [attached]

6.2 BITs by Country and Date (Britain and the South Asian 5, as at end 1996)

United Kingdom

Country/territory	*Date of signature*	*Date of entry into force*
Egypt	11 June 1975	24 February 1976
Singapore	22 July 1975	22 July 1975
Republic of Korea	4 March 1976	4 March 1976
Romania [j]	19 March 1976	22 November 1976
Indonesia	27 April 1976	24 March 1977
Thailand	28 November 1978	11 August 1979
Jordan	10 October 1979	24 April 1980
Sri Lanka	13 February 1980	18 December 1980
Senegal	7 May 1980	9 February 1984
Bangladesh	19 June 1980	19 June 1980
Philippines	3 December 1980	2 January 1981
Lesotho	18 February 1981	18 February 1981
Papua New Guinea	14 May 1981	22 December 1981
Malaysia	21 May 1981	21 October 1988
Paraguay	4 June 1981	23 April 1992
Sierra Leone	8 December 1981	-
Yemen	25 February 1982	11 November 1983
Belize	30 April 1982	30 April 1982
Cameroon	4 June 1982	7 June 1985
Costa Rica	7 September 1982	-
Saint Lucia	18 January 1983	18 January 1983
Panama	7 October 1983	7 November 1983
Haiti	18 March 1985	27 March 1995
China	15 May 1986	15 May 1986
Mauritius	20 May 1986	13 October 1986
Malta	4 October 1986	4 October 1986
Jamaica	20 January 1987	14 May 1987
Dominica	23 January 1987	23 January 1987
Hungary	9 March 1987	28 August 1987
Antigua and Barbuda	12 June 1987	12 June 1987
Benin	27 November 1987	27 November 1987
Poland	8 December 1987	14 April 1988
Grenada	25 February 1988	25 February 1988
Bolivia	24 May 1988	16 February 1990
Tunisia	14 March 1989	4 January 1990
Ghana	22 March 1989	25 October 1991
USSR (former)	6 April 1989	3 July 1991
Congo	25 May 1989	9 November 1990
Guyana	27 October 1989	11 April 1990
Czechoslovakia (former)	10 July 1990	26 October 1992
Burundi	13 September 1990	13 September 1990
Morocco	30 October 1990	Provisional application
Argentina	11 December 1990	19 February 1993

Country/territory	*Date of signature*	*Date of entry into force*
Nigeria	11 December 1990	11 December 1990
Turkey	15 March 1991	-
Mongolia	4 October 1991	4 October 1991
Uruguay	21 October 1991	-
Bahrain	30 October 1991	30 October 1991
United Arab Emirates	8 December 1992	13 December 1993
Ukraine	10 February 1993	10 February 1993
Nepal	2 March 1993	2 March 1993
Barbados	7 April 1993	7 April 1993
Lithuania	17 May 1993	21 September 1993
Armenia	22 May 1993	-
Trinidad and Tobago	23 July 1993	8 October 1993
Peru	4 October 1993	21 April 1994
Uzbekistan	24 November 1993	24 November 1993
Honduras	7 December 1993	8 March 1995
United Republic of Tanzania	7 January 1994	-
Latvia	24 January 1994	15 February 1995
Belarus	1 March 1994	28 December 1994
Colombia	9 March 1994	-
India	14 March 1994	6 January 1995
Albania	30 March 1994	30 August 1995
Ecuador	10 May 1994	24 August 1995
Estonia	12 May 1994	16 December 1994
Brazil	19 July 1994	-
South Africa	20 September 1994	-
Pakistan	30 November 1994	30 November 1994
Kyrgyzstan	8 December 1994	-
Cuba	30 January 1995	11 May 1995
Turkmenistan	9 February 1995	9 February 1995
Georgia	15 February 1995	15 February 1995
Zimbabwe	1 March 1995	-
Venezuela	15 March 1995	-
Swaziland	5 May 1995	5 May 1995
Lao People's Democratic Republic	1 June 1995	1 June 1995
Côte d'Ivoire	8 June 1995	-
Romania	13 July 1995	-
Kazakhstan	23 November 1995	23 November 1995
Oman	25 November 1995	-
Bulgaria	11 December 1995	-
Azerbaijan	4 January 1996	-
Chile	8 January 1996	-
Republic of Moldova	19 March 1996	-
Slovenia	3 July 1996	-
Nicaragua	4 December 1996	-

Bangladesh

Country/territory	*Date of signature*	*Date of entry into force*
United Kingdom	19 June 1980	19 June 1980
Germany	6 May 1981	14 September 1986
Belgium/Luxembourg	22 May 1981	14 September 1987
France	10 September 1985	3 October 1986
United States	12 March 1986	25 July 1989
Republic of Korea	18 June 1986	6 October 1988
Romania	13 March 1987	31 October 1987
Turkey	12 November 1987	21 June 1990
Thailand	13 March 1988	-
Italy	20 March 1990	13 August 1994
Malaysia	12 October 1994	-
Netherlands	1 November 1994	-
China	12 September 1996	-

India

United Kingdom	14 March 1994	6 January 1995
Russian Federation	23 December 1994	-
Germany	10 July 1995	10 July 1995
Malaysia	1 August 1995	-
Turkmenistan	1 September 1995	-
Denmark	6 September 1995	6 September 1995
Italy	1 November 1995	-
Netherlands	6 November 1995	1 December 1996
Tajikistan	1 December 1995	-
Israel	29 January 1996	-
Republic of Korea	26 February 1996	7 May 1996
Czech Republic	1 October 1996	-
Poland	7 October 1996	-
Kazakhstan	9 December 1996	-

Nepal

France	2 May 1983	13 June 1985
Germany	20 October 1986	7 July 1988
United Kingdom	2 March 1993	2 March 1993

Pakistan

Germany	25 November 1959	28 April 1962
Romania [j]	21 January 1978	26 June 1979
Sweden	12 March 1983	14 June 1981
Kuwait	17 March 1983	15 March 1986

Country/territory	***Date of signature***	***Date of entry into force***
France	1 June 1983	14 December 1984
Republic of Korea	24 May 1988	15 April 1990
Netherlands	4 October 1988	1 October 1989
China	12 February 1989	30 September 1990
Tajikistan	31 March 1994	-
Spain	15 September 1994	-
Turkmenistan	26 October 1994	-
United Kingdom	30 November 1994	30 November 1994
Indonesia	8 March 1995	3 December 1996
Singapore	8 March 1995	4 May 1995
Turkey	16 March 1995	-
Romania	10 July 1995	-
Switzerland	11 July 1995	-
Kyrgyzstan	26 August 1995	-
Iran (Islamic Republic of)	8 November 1995	-
Tunisia	18 April 1996	-

Sri Lanka

Germany	8 November 1963	7 December 1966
United Kingdom	13 February 1980	18 December 1980
Republic of Korea	28 March 1980	15 July 1980
France	10 April 1980	19 April 1982
Singapore	9 May 1980	30 September 1980
Romania	9 February 1981	3 June 1982
Switzerland	23 September 1981	12 February 1982
Japan	1 March 1982	7 August 1982
Belgium/Luxembourg	5 April 1982	26 April 1984
Malaysia	16 April 1982	31 October 1995
Sweden	30 April 1982	30 April 1982
Netherlands	26 April 1984	1 May 1985
Finland	27 April 1985	25 October 1987
Denmark	4 June 1985	4 June 1985
Norway	13 June 1985	13 June 1985
China	13 March 1986	25 March 1987
Italy	25 March 1987	20 March 1990
United States	20 September 1991	1 May 1993
Thailand	3 January 1996	-
Egypt	11 March 1996	-
Indonesia	10 June 1996	-

6.3 Britain's Model IPPA [attached]

6.4 UK-South Asian 5 IPPAs [attached]