Globalization and policy convergence:

the case of direct investment rules

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1. GLOBALIZATION AND DIRECT INVESTMENT RULES[1]

It is commonly claimed that increasing capital mobility, an important aspect of globalization in the world political economy, has eroded the ability of governments to make policies that constrain the activities of 'transnational' corporations (TNCs[2]) within their jurisdictions. This view is widespread amongst both critics and supporters of globalization. As in the early 1970s, there is today a thriving populist literature on the growing power of TNCs in the world economy and the associated loss of power on the part of states and communities.[3] Such critics fear a 'race to the bottom' in real wages and in labour and environmental standards, as well as lower corporate taxes and higher subsidies to mobile firms. Supporters of globalization also often argue that the competition for foreign direct investment (FDI) between states explains the trend towards the liberalization of inward FDI rules. For them, globalization produces a beneficial 'race to the top' in regulatory and policy standards. For example, the Financial Times recently editorialized that 'fierce worldwide competition for capital means that countries that discriminate unfairly against foreign investors risk severe market sanctions. That is a powerful incentive for host governments to stick to the straight and narrow.' (Financial Times, 1998a). From both sides of the debate, there is agreement that TNCs enjoy increasing amounts of influence or 'structural power' over national policies.

This chapter asks how much evidence there is for this claim, which I term the 'convergence hypothesis'. This hypothesis claims that *the enhanced mobility of TNCs in the world economy confers structural power upon such firms, resulting in a process of convergence of national policy regimes upon TNC policy preferences*. Specifically, is the apparent trend towards the liberalization of rules and policies towards TNCs a product of their increasing structural power in the world economy? Do TNCs ‘arbitrage’ policy regimes, compelling states to compete for ‘footloose’ capital through such liberalization?

The chapter leaves aside, among others, two related questions. The first is the extent to which the structural power enjoyed by TNCs produces policy convergence in the broad range of macroeconomic, microeconomic and other regulatory policies that affect business and investment, or in factor market prices and conditions across countries. The focus of this paper is only upon rules relating to the regulation of inward FDI. It leaves aside questions such as whether globalization is responsible for eroding real wages or higher unemployment in unskilled sectors, for the claimed erosion of environmental or labour standards, or for declining capital taxation rates.[4] The assumption made here is that if the convergence hypothesis is true, we ought to find a clear link between actual FDI inflows and policy liberalization in capital-importing states.

The second issue largely left aside the political lobbying role of TNCs in the setting of policies in both home and host countries.[5] Many environmental, development and consumer NGO critics argue that recent OECD negotiations on a Multilateral Agreement on Investment (MAI) reflect a shift in power away from governments and citizens towards global firms.[6] Space considerations are one reason, but there are other grounds to think it secondary. First, while globalization theorists often suggest that structural power ‘…may be supplemented by direct lobbying, and gentlemanly arm-twisting’ (Gill and Law, 1988: 87), they tend to argue that the structural power of TNCs is primary.[7] Second, while some argue the threat of exit associated with TNC mobility enhances their direct political voice, the literature is unclear on how to separate the effects of mobility from the effects of political lobbying (Sklair, 1998). Third, if the structural power deriving from mobility is as strong as many claim, it is unclear why TNCs need bear the costs of substantial political lobbying. Even in home countries, political lobbying is time-consuming and costly for business; we would expect the transaction costs (and the potential damage which may result from 'politicizing' their preferences) of lobbying to be even higher for firms operating in foreign political jurisdictions. This implies that exit and voice are largely substitutes, so that significant political lobbying activities by TNCs would be evidence in favour of the weakness of structural power.[8]

The chapter has the following structure and argument. First, the convergence hypothesis is outlined, and a strong and weak version are distinguished. A second section asks if TNC preferences relating to FDI rules are coherent and consistent, as is required for the convergence process to work. Focusing upon the policy preferences of US-based TNCs, it argues that there is an identifiable and largely consistent set of international business preferences relating to FDI policy. A third section focuses on the evidence of FDI regime change in developing countries, since it is here that most convergence should occur.[9] I suggest that the empirical evidence is inconsistent with the claims of the convergence hypothesis in both its strong and weak forms. In particular, many of the most important developing host countries have attracted large amounts of FDI while maintaining policy regimes at odds with TNC preferences. This suggests that structural power (or, for that matter, the effects of political lobbying by TNCs) is weaker than claimed in the globalization literature.

A final section asks why this is so. It argues that this literature has exaggerated the actual mobility of most FDI. Even for relatively mobile projects, the degree of competition between firms tends to limit the loss of power suffered by many host states. Globalization literature has underestimated the collective action dilemma that confronts firms in oligopolistic sectors; the evidence suggests that globalization often *increases* rather than reduces the ability of host states to maintain policies at odds with TNC preferences. A conclusion suggests this remains true even in the midst of financial crises. I also conclude that the structural weakness of TNCs reduces the ability of governments in advanced countries to negotiate stronger investment treaties with important developing countries.

2. THE CONVERGENCE HYPOTHESIS

Globalization as a fact and an explanation of change in the international political economy is much in dispute, and it is difficult to locate a narrow set of hypotheses associated with it (Hirst and Thompson, 1996; Boyer and Drache, 1996; Keohane and Milner, 1996). However, a core element of 'globalization theory' is that enhanced capital mobility in a world divided into separate states constitutes a structural constraint upon national economic policy. The 'convergence hypothesis' goes further to assert that this constraint upon policy has increasing bite: *policies at odds with the preferences of mobile capital agents are undermined by the actuality or threat of exit*. While this claim is most often made with regard to portfolio capital flows (Andrews, 1994), it is now commonly made with respect to FDI flows as well. For example, Scholte argues that '[global] firms can…with relative ease relocate production facilities and sales outlets to other jurisdictions if they find a particular state's regulations overly burdensome. Usually this threat alone is sufficient to make a state amenable to, *inter alia,* privatization and liberalization.' (Scholte, 1997: 443). Korten also argues the result of increased mobility has been a regulatory race to the bottom:

> The dream of the corporate empire-builders is being realized. The global system is harmonizing standards across country after country – down towards the lowest common denominator (Korten, 1995: 237).

The hypothesis can be divided into the following two propositions. First, the policy preferences of TNCs as a group are coherent, and these firms act in ways consistent with their preferences. Second, states suffer from a collective action problem that constrains them to converge upon TNC policy preferences through a process of regulatory and incentive-based competition.

The first proposition is usually implicit rather than explicitly stated. Claims about the 'power of transnational capital' imply an ability of internationally mobile capital agents to achieve a set of coherent preferences. Those who regard the 'competition state' as a response to capital mobility assume that TNC preferences are widely known, and that entrepreneurial politicians respond directly to them (Cerny, 1995: 610). Rarely is this assumption explored in the literature; nor is it asked if the preferences of owners and managers, or those of parent-based managers and affiliate-based managers, differ. The main argument is that 'capital agents', presumably managers acting according to the wishes of shareholders, favour policies that enhance profit opportunities, including those now commonly associated with the term 'liberalization'. Fewer regulatory constraints upon business of all kinds, such as lower tax rates and fewer trade and capital account restrictions, are associated with a 'retreat of the state' in accord with international business preferences (Strange, 1996).

Unfortunately, 'liberalization' (and 'state retreat') is ambiguous, and in certain respects TNC preferences are likely to diverge from what are commonly understood as liberal policies and institutions. If firms are assumed to maximize profits and lower the costs of business in and across different political jurisdictions, they will prefer certain aspects associated with 'strong states', such as transparent and enforceable rules. A weak and corrupt judicial and political system clearly raises the costs of doing business, particularly for 'outsiders'. At the same time, however, they are likely to favour states open to business influence, rather than those where other social groups such as labour have entrenched influence. It also follows that TNCs will prefer jurisdictions that invest in productivity-enhancing infrastructure (including both physical and human capital), though they ought to prefer that immobile taxpayers bear the cost of its provision. They are also likely to prefer subsidies (such as investment incentives) funded by sources other than business taxation. Thus, when we talk of 'policy convergence', it should be defined in reference to the actual preferences of TNCs.

The second proposition, that state competition for mobile investments results in regime convergence, builds on the first. Productivity is often said to be increasingly firm-specific, so that TNCs in effect are minimizing costs across different countries (Cerny, 1995). In this view, TNCs prefer to invest in countries that offer the most favourable operating conditions at lowest cost. As Rodrik argues, globalization exacerbates this tension, and the real question is not whether such institutional differences between countries matter, but how much (Rodrik, 1997). Restrictions on the entry and exit and the operational flexibility of TNCs by political authorities raise the cost of doing business, and mobile corporations will 'vote with their feet'.

Why states may value mobile investment projects so highly is related. Most authors emphasize the firm-specific advantages TNCs provide to host states, particularly the technological and managerial assets necessary to compete in world markets (Dunning, 1993: 557-8). The debt crisis was also important in changing attitudes towards FDI in many developing countries. More generally, the perceived failure of state-led development in many parts of the developing and former communist world is seen as having enhanced the ability of business to achieve its policy preferences. Radical scholars argue that a key element of the structural power of global capital is the dominance of the new liberal orthodoxy itself, which asserts the bankruptcy of such developmental strategies (Gill, 1995; Scholte, 1997). For a variety of reasons, states compete aggressively for FDI via unilateral policy liberalization and the provision of various incentives for mobile firms. While in principle states could cooperate to prevent such policy arbitrage, in practice the competitive international political system means that there is an acute collective action problem preventing such regulatory coordination (Gill and Law, 1988: 92; Gill, 1995: 399; Stopford and Strange, 1991: 215). The exit option of TNCs provides them with an enormous advantage over immobile states and relatively immobile labour and small business, and it provides states with a powerful incentive to defect from a coordination coalition.

What remains unclear, however, is the degree of convergence predicted by the hypothesis. A strong form, apparently put forward by Korten (quoted above), is that *the degree of existing convergence is great and policies increasingly reflect TNC preferences*. Policies inconsistent with TNC preferences are rendered unsustainable by the threat or actuality of capital flight. Other authors are vague on this question. As noted above, Scholte suggests the threat of exit by TNCs has made states 'amenable to privatization and liberalization'. I take as a weak form of the hypothesis, which claims only that the direction of policy change is towards convergence, without suggesting the process to be complete. This makes it more difficult to test empirically. However, it does appear to claim at least that *FDI flows will be increasingly biased towards countries where the degree of policy convergence is greatest.*

3. TNC PREFERENCES

Are the investment policy preferences of TNCs coherent, as the convergence hypothesis assumes? For reasons of space, I concentrate here upon US TNC preferences, as revealed by their stance on the MAI negotiations, one of the key policy issues for American firms in the last few years. Some qualifications follow from this. Clearly, it would be wrong to generalize on the basis of TNCs from one major host country. However, the importance of US TNCs as a 'national' group means that they are the obvious first point of reference. The openness of the American political process and the high degree of political organization of business in the US may also be exceptional, but this also makes it easier to identify the relevant policy preferences of TNCs.

3.1 BROAD BUSINESS COALITIONS

'Preferences' relating to many complex policy issues are more often the province of the industry organization and the legal specialist than the senior executive. The result is that most firms in the US, as elsewhere, tend to rely upon general sectoral or broad industry organizations to formulate detailed policy preferences and lobbying strategies. As Bauer et al. found in their major study on the role of business in US trade politics, the function of pressure groups was often precisely 'to define the interests of its partisans.' (Bauer et al. 1963: 339).

Broad overlapping US business associations have been the lead lobbies on international investment rules, at home and abroad. The most relevant here is the US Council for International Business (USCIB), the American affiliate of the International Chamber of Commerce (ICC), of the Business Industry Advisory Committee (BIAC) to the OECD, and the International Organization of Employers (IOE). Its main task is representing international business interests in US government and intergovernmental organizations, and accordingly it has taken the lead on investment issues, including the MAI negotiations (USCIB, 1996a; Williamson, 1998). A USCIB Investment Policy Committee has led delegations on MAI to Japan, and to US regional centres, state governments, and governors' associations. USCIB also has overlapping memberships with other business umbrella organizations such as the US Business Roundtable (BR), which led in lobbying on the Uruguay Round (Freeman, 1996).

Another important forum is one of eight US Trade Representative Policy Advisory Committees, the Investment and Services Policy Advisory Committee (INSPAC), which provides USTR with specific advice in this area. The broader Advisory Committee on Trade Policy Negotiations (ACTPN) comprises 45 members from representative parts of the US economy with international commercial interests, devised to provide broad guidance from the private sector to the administration on trade (and now investment) policy. In a report released in September 1996 (USTR, 1996b), it argued that investment is probably 'the most important post-Uruguay Round new issue', bemoaning the lack of international discipline on governments' investment policies and supporting the US MAI strategy.

One other broad US business organization worth mentioning for its stance on investment rules is the Organization for International Investment (OFII).[10] OFII represents over 50 US affiliates of major foreign TNCs in the US. Most are European and Japanese manufacturing firms, but there are some general services and insurance firms in the organization. While OFII's main concern has been US adherence to international investment regimes, it liases closely with other groups such as the BR and USCIB, since these latter groups are able to take a higher profile on MAI in Washington than can OFII. Also, firms such as Unilever, BASF and Sony are all active on MAI in both OFII and in USCIB (USCIB, 1996b). OFII shares the objective of the other main US business organizations of prioritizing the binding of developing and transition economies to 'high-standard' investment rules.

3.2 SECTORAL COALITIONS

Given the crucial importance of FDI in the global strategies of services firms, it is not surprising that many services industry associations also tend to have clear stated positions on MAI. The Coalition of Service Industries (CSI) is a strong supporter of MAI, as it was of the GATS in the Uruguay Round. Support for MAI was pushed by the Securities Industry Association (SIA) in 1996, which chaired the CSI and wished to use the broader forum to push its views. The SIA/CSI lobbied especially hard to include portfolio as well as direct investment within the scope of the agreement, but the overall differences with the broader coalition positions are unimportant. The commercial banking industry appears to have been less vocal than the securities industry in its support of the MAI, though individual banks such as Citicorp have major supporters. This may partly reflect the relative competitiveness of the US securities industry compared to commercial banks. Asia has been the biggest problem for many US financial services firms, as for US TNCs in general. Initially, the SIA supported the APEC process in the hope that it might make progress in this area, but the lack of progress led it to shift its attention to the MAI (SIA, 1996). Over 1997 the SIA again shifted its attention to the ultimately successful WTO financial services negotiations, given the more direct relevance of these negotiations to the industry and their overlap with MAI on the issue of investment access.

The US manufacturing sector lobbies have appeared less vocal on the issue than the services sector. However, the National Association of Manufacturers (NAM) has been broadly positive, and there are individual firms which are highly globalized, such as IBM and Procter and Gamble, which have been supportive in various organizations mentioned above. The US electronics and automobile industries, which have increasingly globalized in recent years, are strong supporters, not least because they are among the most affected by restrictions such as performance requirements.

3.3 US Business Preferences on Investment Regimes

Despite some differences across the groups identified above, US business speaks with a fairly consistent voice on the question of international investment regimes. The key objectives are consistently enunciated by different business organizations, from active individual firms through sectoral organizations such as SIA to the broad umbrella groups such as USCIB and OFII. Broadly speaking, US business preferences amount to the desire for standard, consistent and enforceable rules which secure their access and property rights, and maximize their operating flexibility.

Specifically, these preferences are as follows. First, non-discriminatory treatment (the better of national and MFN treatment) for US investors and their international investments, with limited and specified exceptions. This demand includes, importantly, pre-establishment as well as post-establishment treatment, which amounts to a 'right of establishment' clause. Second, high standard investor protection, which include clear limits to expropriation and the right of the investor to due legal process and compensation. This includes the demand that investors have the right to impartial international arbitration in the event of a dispute with a host government ('investor-state dispute settlement'). Third, full operating freedom for investors, including the right to all investment-related financial transfers, prohibitions upon the imposition of performance requirements, and the right to transfer managerial personnel.

To summarize, US international business organizations have formulated clear preferences relating to international investment rules, in part because they have been in a position to influence government policy and negotiation strategies in the US and elsewhere in the OECD.[11] The clear priority of all groups is to bind the main developing and transition countries to high-standard investment rules, as these countries are seen as the main problems for US (and other) investors. While US TNCs have specific complaints about investment policy in the main OECD countries, which still account for over 90% of the stock of total US FDI abroad, these are not the main targets of US business pressure. Groups such as USCIB see the establishment of a binding international investment regime to which all countries would adhere as the ultimate objective, and have put most of their lobbying effort into the MAI negotiations. Again, East Asia has generally been seen as the hardest nut to crack on the investment regime issue, and is identified as the main US international business concern by lobbies (USCIB, 1996b; USTR, 1996b).

4. MEASURING CONVERGENCE IN DEVELOPING COUNTRIES

If TNCs have reasonably clear preferences relating to FDI policies in host countries, are these increasingly reflected in national policy practice? And if so, is the strong or the weak version of the convergence hypothesis valid? Inward investment policy regimes in developing countries are the focus of this section for the following reasons. First, developing countries attitudes towards inward FDI in the 1960s and 1970s were often hostile, and we could interpret the broad shift towards a more positive stance since then as supporting the convergence hypothesis. Second, as developing countries as a group are large net recipients of FDI, their FDI policy regimes are comparatively uncomplicated by the politics of outward investment. Finally, developing countries have not been as constrained by international investment-related agreements and norms developed in bodies such as the OECD, EU or GATT/WTO. For these reasons, they ought to provide the best case for the convergence hypothesis.

There is considerable evidence that policies in the developing world have moved towards a more positive stance towards inward FDI in recent years. The UN *World Investment Report* provides evidence for this in Table 1.

Table 1: Change in inward investment regimes, all countries, 1991-6

(number)

Item	1991	1992	1993	1994	1995	1996
No. of countries introducing changes in their investment regimes	35	43	57	49	64	65
Number of changes	82	79	102	110	112	114
Of which:						
In the direction of liberalization/promotion[a]	80	79	101	108	106	98
In the direction of control[b]	2	-	1	2	6	16

Source: UN, *World Investment Report, 1997*, p.18.
[a] Including measures aimed at strengthening market supervision, as well as incentives.
[b] Including measures aimed at reducing incentives.

These aggregate figures do not separate the adoption and enforcement of liberal rules on inward FDI from the various incentive measures, such as direct subsidies or tax breaks. In fact, fully 29% of the total changes in investment regimes in 1996 involved net new incentives for inward investors, slightly more than the 27% accounted for by more liberal operational conditions for TNCs (UN, 1997: 18). A further 9% of changes were new promotional measures other than incentives. Overall, 33% of the total changes for 1996 provided for net liberalization of operating conditions and of ownership and sectoral restrictions. This appears consistent with TNC preferences and the convergence hypothesis.

However, these figures do not show how these trends, and the remaining differences in the absolute levels of restrictiveness, differ across countries. Most high-income countries have had relatively liberal inward investment regimes for some time, though they too have moved in the direction of liberalization in recent years. This is presumably in part a matter of reciprocity, since these countries are large outward investors as well as having the largest inward flows. The OECD accounts for about 85% of total world FDI outflows (and about 65% of total world inflows) today, and the other biggest investors include Hong Kong and Singapore. Many developing countries, however, remain wary towards FDI and considerably more restrictive than Western Europe and North America, even if they have moved in the same direction. Most of the newly industrializing countries of East Asia fall into this category, though as we shall see this has not prevented them from enjoying high rates of FDI inflow.

Attitudes in Taiwan and particularly South Korea are considerably less liberal than the OECD average because of strong nationalist and developmental traditions, despite the fact that these countries are becoming significant outward investors themselves. Others such as Indonesia, Thailand, China and Malaysia are major host countries, but are also heavy users of performance requirements, sectoral prohibitions, screening, equity requirements, and other restrictive measures (see table 2). In Thailand, for example, the Alien Business Law of 1972, still unrepealed, requires every registered business in Thailand to have majority Thai ownership, and prohibits minority foreign ownership in up to 68 specific industries (Financial Times, 1998d).[12] While most developing countries have moved away from the traditional dependency view of unrestricted foreign investment as a form of imperialism, some such as India retain remnants of this position. Others, like Brazil and especially Argentina, which traditionally fell into the same category, have moved in recent years to liberalize substantially their inward investment regime. Nevertheless, Brazil also remains considerably more restrictive than the OECD average.

To get an idea of the outstanding levels of restrictiveness in the major developing countries, table 2 provides a rough qualitative assessment of the relative restrictiveness of their inward investment regimes for US investors in 1995-96, based upon reports from US embassies in host countries. This annual source, supplemented by reports by the USTR, is one of the most consistent assessments of individual countries' investment regimes available. The table shows key aspects of the investment regimes of the top 15 developing and transition economies in terms of US FDI inflows in the 1991-95 period. These countries accounted for almost 20% of total US FDI flows in this period, and received more than the rest of the developing/transition world combined.

It would be wrong to take the overall measure of restrictiveness for each country too seriously. First, measures have been ranked according to high, medium and low levels of relative restrictiveness, with 'low' approximating average practice in the advanced industrial countries. Second, policies and practice has been evolving in recent years in a number of developing and transition countries, and this provides an indication of the position in 1995-96. Finally, the source of the data is concerned with restrictiveness for US TNCs rather than TNCs in general. However, non-US TNCs usually enjoy lower standards of protection and liberalization in host countries than US firms.

Table 2: Restrictiveness of Investment Policy Regimes for US Investors: Top 15 Low and Middle-Income Recipients of US FDI, 1991-95

Country/region	Cumulative USFDI Flows, 1991-95	% Total USFDI Flows, 1991-95	Inward Investment Regime Characteristics: Important Sectoral Prohibitions	Restrictive Equity Require-ments in other sectors	Non-transparent/ arbitrary Screening	Discrimin-atory Treatment	Investment Incentives	Perform-ance Require-ments	Poor intellectual property protection	Difficulties in repatriating profits	Inadequate Arbitration Mechanisms	OVERALL SCORE
Brazil	14,106	4.7%	M	M	L	M	M	H	M	M	M	18
Mexico	11,597	3.9%	M	M	L	L	L	L	M	L	L	15
Argentina	5,530	1.8%	L	L	L	L	M	L	M	L	L	11
Panama	3,826	1.3%	L	L	L	L	M	L	M	L	L	11
Venezuela	3,801	1.3%	M	M	L	L	M	M	M	M	M	16
Chile	3,018	1.0%	L	L	L	L	L	L	M	M	M	14
Thailand	2,689	0.9%	M	M	L	L	M	M	M	L	M	15
Indonesia	2,620	0.9%	H	M	H	H	M	H	M	L	H	22
South Korea	2,038	0.7%	M	M	M	M	L	M	M	M	M	19
Taiwan	2,011	0.7%	M	M	L	L	M	L	L	L	L	12
Malaysia	1,981	0.7%	M	H	M	M	M	M	L	L	L	16
China	1,851	0.6%	H	H	H	H	H	H	H	M	H	24
Hungary	1,758	0.6%	L	L	L	L	M	L	L	L	L	10
Saudi Arabia	1,339	0.4%	H	M	H	H	M	M	M	L	M	20
Philippines	1,135	0.4%	M	H	L	L	M	L	M	L	M	15
Top 15 Low and Middle Income Countries	59,300	19.8%	1.9	1.9	1.6	1.6	2.1	1.7	1.9	1.3	1.7	16
World	299,074	100.0%										

Sources: US Department of State, *Country Commercial Guides* (various); USTR, *National Trade Estimate* (various); Report of the Commission on United States-Pacific Trade and Investment Policy, *Building American Prosperity in the 21st Century* (Washington, April 1997).

Note: H=high restrictiveness (=3); M=medium restrictiveness (=2); L=low restrictiveness (=1). The scores are reversed for Investment Incentives.

Nevertheless, table 2 shows that despite significant liberalization in a number of countries, FDI policy regimes remain very restrictive in some. China is the most conspicuous case. Despite the ad hoc opening of particular sectors to foreign investment since 1978 and the boom in inward FDI which began in the late 1980s, it remains highly restrictive on almost all measures. Across the Asian region in general, as has been highlighted in the recent crisis, important sectors such as financial services have remained much more closed than average, and as compared to Latin America (OECD, 1998: 45-50). Also, while many have liberalized (though hardly completely) entry and exit restrictions on TNCs, the use of operating restrictions in the relatively interventionist states in East Asia remains high on average. This is consistent with evidence of a general shift in developing countries in the 1970s and 1980s away from entry and exit restrictions towards the use of performance requirements aimed at enhancing the contribution of FDI to the host economy.[13]

Another indication of relative restrictiveness in a different group of countries is given in table 3. This shows countries with which the US has negotiated a 'high-standard' BIT, which provides formal rules of the kind US TNCs prefer.[14] By 1998, the US had concluded 42 BITs since 1982 (the first was with Panama), of which 31 were in force (Bureau of Economic and Business Affairs, 1998a). There are only two countries in the top 15 (Argentina and Panama) identified in table 2, though Mexico provides approximately similar treatment through NAFTA. The other 40 countries with which the US has negotiated BITs are not important recipients of US FDI flows.

Table 3: US Bilateral Investment Treaties

	Country	Date of Signature	Date Entered into Force
1	Albania	January 11, 1995	January 4, 1998
2	Argentina	November 14, 1991	October 20, 1994
3	Armenia	September 23, 1992	March 29, 1996
4	Azerbaijan	August 1, 1997	*(See note 2)*
5	Bangladesh	March 12, 1986	July 25, 1989
6	Belarus	January 15, 1994	*(See note 4)*

7	Bolivia	April 17, 1998	*(See note 1)*
8	Bulgaria	September 23, 1992	June 2, 1994
9	Cameroon	February 26, 1986	April 6, 1989
10	Congo, Democratic Republic[6]	August 3, 1984	July 28, 1989
11	Congo, Republic (Brazzaville)	February 12, 1990	August 13, 1994
12	Croatia	July 13, 1996	*(See note 1)*
13	Czech Republic[5]	October 22, 1991	December 19, 1992
14	Ecuador	August 27, 1993	May 11, 1997
15	Egypt	March 11, 1986	June 27, 1992
16	Estonia	April 19, 1994	February 16, 1997
17	Georgia	March 7, 1994	August 17, 1997
18	Grenada	May 2, 1986	March 3, 1989
19	Haiti	December 13, 1983	*(See note 1)*
20	Honduras	July 1, 1995	*(See note 1)*
21	Jamaica	February 4, 1994	March 7, 1997
22	Jordan	July 2, 1997	*(See note 1)*
23	Kazakhstan	May 19, 1992	January 12, 1994
24	Kyrgyzstan	January 19, 1993	January 12, 1994
25	Latvia	January 13, 1995	December 26, 1996
26	Lithuania	January 14, 1998	*(See note 1)*
27	Moldova	April 21, 1993	November 25, 1994
28	Mongolia	October 6, 1994	January 1, 1997
29	Morocco	July 22, 1985	May 29, 1991
30	Nicaragua	July 1, 1995	*(See note 1)*
31	Panama	October 27, 1982	May 30, 1991
32	Poland	March 21, 1990	August 6, 1994
33	Romania	May 28, 1992	January 15, 1994
34	Russia	June 17, 1992	*(See note 3)*
35	Senegal	December 6, 1983	October 25, 1990
36	Slovakia[5]	October 22, 1991	December 19, 1992
37	Sri Lanka	September 20, 1991	May 1, 1993
38	Trinidad & Tobago	September 26, 1994	December 26, 1996
39	Tunisia	May 15, 1990	February 7, 1993
40	Turkey	December 3, 1985	May 18, 1990
41	Ukraine	March 4, 1994	November 16, 1996
42	Uzbekistan	December 16, 1994	*(See note 2)*

Notes:

1. Entry into force pending ratification by both parties and exchange of instruments of ratification.

2. Entry into force pending U.S. ratification and exchange of instruments of ratification.
3. Entry into force pending other Party's ratification and exchange of instruments of ratification.
4. Entry into force pending exchange of instruments of ratification.
5. Treaty signed on October 22, 1991, with the Czech and Slovak Federal Republic and has been in force for the Czech Republic and Slovakia as separate states since January 1, 1993.
6. Formerly Zaire.
7. U.S. investment in Canada and Mexico is covered by Chapter Eleven of the North American Free Trade Agreement (NAFTA) which contains provisions similar to BIT obligations, though with more exceptions and reservations.

Source: Bureau of Economic and Business Affairs, US Department of State, *U.S. Bilateral Investment Treaties (BITs)*, mimeo, April 27, 1998.

This must be interpreted cautiously. There is inevitably a big difference between formal investment rules and the actual treatment of foreign investors. Focusing only upon formal FDI policies might provide a misleading picture if on the ground these rules are ignored (Haggard, 1990: 214). However, the categories in table 2 take into account both formal rules and actual practice, since US embassy reports take note of the practical difficulties raised by American businesses investing in the host country. Also, in sectors where FDI is prohibited or severely restricted by formal rules, individual TNCs cannot begin to bargain for better treatment. Finally, it is unlikely that growing divergence between formal FDI regimes and state policy in individual cases can be sustained over long periods of time; liberalization is often due to a recognition that formal rules were being undermined by increasing numbers of specific deals.[15]

Is the liberalization that has occurred consistent with either version of the convergence hypothesis? It is clearly at odds with the strong version, since it is evident that convergence of policies upon TNC preferences is lacking, even in the most ‘liberal’ developing countries. More interestingly, the evidence also casts doubt upon the weaker version. There are conspicuous exceptions to the prediction that FDI flows favour countries with liberal FDI regimes. This appears to be true not just for US FDI. Table 4 ranks the major host country recipients of world FDI inflows over the period 1990-96. China, which has a highly restrictive FDI regime compared to most middle income developing countries, received more FDI in the 1990s than any other country except the (much more liberal) US, and about 1/3 of total non-OECD FDI inflows. Even leaving aside China as an exceptional case, there are at least 4 of the next 6 most important developing country recipients that exhibit medium to high levels of restrictiveness towards FDI: Malaysia, Brazil, Indonesia, and Thailand. This is consistent with the strongly stated concerns of TNCs and business lobbies that key developing country investment regimes, particularly in East Asia, remain a major problem for international firms. It is contrary to the predictions of both the strong and weak forms of the convergence hypothesis.

Table 4: Total FDI inflows by principle host country, 1990-96

	Host country	Cumulative FDI inflows, 1990-96 ($million)
1	*US*	327,074
2	**China**	**158,462**
3	*UK*	146,671
4	*France*	124,850
5	*Belgium-Luxembourg*	68,526
6	*Spain*	62,737
7	*Netherlands*	47,881
8	*Canada*	44,921
9	*Australia*	44,468
10	**Mexico**	**40,222**
11	*Singapore*	39,176
12	*Sweden*	38,188
13	**Malaysia**	**31,967**
14	*Italy*	26,534
15	**Brazil**	**22,876**
16	**Argentina**	**22,409**
17	*Germany*	21,663
18	**Indonesia**	**20,773**
19	*Denmark*	15,810
20	*New Zealand*	15,286
21	*Switzerland*	15,170
22	**Thailand**	**14,238**
23	**Hungary**	**12,508**
24	*Hong Kong*	11,639
25	*Portugal*	11,081
26	**Poland**	**11,075**
27	*Norway*	10,720
28	**Chile**	**10,152**
29	**Colombia**	**9,814**
30	**Peru**	**9,540**
	Top 30 total	1,436,431
	World	1,659,092

Source: OECD, *Foreign Direct Investment and Economic Development: Lessons from Six Emerging Economies* (OECD, 1998), table 2, p.16; UN, *World Investment Report 1997.*

Note: High income countries in italics, others in bold.

We would expect a negative relationship between the levels of FDI inflows and the score of restrictiveness in table 2. In fact, it is -0.35, which provides limited support for the weak form of the convergence hypothesis. However, this low negative correlation should be interpreted cautiously, due to the likelihood of omitted variable bias and the low number of observations, not to mention the dubious nature of the restrictiveness scores. Only a multivariate regression analysis, which controls for other variables that determine the geographic pattern of FDI flows, could estimate the marginal influence of FDI policy regimes on such flows. This line of enquiry is plagued with difficulties and is pursued elsewhere rather than here.[16]

The larger group of countries with which the US has BITs provides less support for the convergence hypothesis. Of the 22 developing countries whose cumulative FDI inflows from the US over 1991-96 exceeded $1 billion, only 3 had negotiated BITs (Panama, Argentina, and Jamaica) and a further 3 belonged to NAFTA (Mexico) or joined the OECD (Korea and Hungary). For the other 112 developing countries for which figures are available, cumulative US FDI inflows over this period were less than $1 billion for each, but 31 of these had negotiated BITs with the US. In other words, using $1 billion as the cutoff point, the conditional probability the host country has a high standard investment regime is approximately the same above and below this point. Indeed, 24 of the 31 countries with BITs each received less than $100 million in cumulative FDI inflows over this period. Overall, US BITs cover only about one-seventh of the total US FDI stock in developing and transition economies. If Panama (2.3% of total US FDI stock in 1996) is excluded, BITs coverage is even more negligible.

In sum, although there are some examples of considerable convergence over the past decade, there is little evidence of a systematic bias of FDI flows towards countries with investment regimes favoured by TNCs. This means that the nature of this convergence is inconsistent with both strong and weak versions of globalization theory. It is more accurate to say that FDI has been rising rapidly in some important developing countries in spite of, rather than because of, liberalization of the regulations on inward FDI. An immediate and obvious implication is that much globalization theory has exaggerated TNC power over host states.

5. EXPLAINING OUTCOMES: THE LIMITS OF STRUCTURAL POWER

5.1 MOBILITY AND STRUCTURAL POWER

Why is the evidence at odds with the convergence hypothesis? One possible explanation is that policies and policymakers exhibit inertia and do not respond rapidly to market signals. As Frieden and Rogowski have shown, one can predict liberalization as a rational policy response to globalization using standard neoclassical assumptions (Frieden and Rogowski, 1996). As the costs of closure increase with international economic integration, economic pressures to move towards more laissez faire policies should increase. In this view, the main explanation for the asymmetrical pattern of liberalization across countries noted above is that domestic institutions block or channel the responses of interest groups to international price signals in ways which inhibit such policy reform (Milner and Keohane, 1996). However, one problem with this line of argument is that neoclassical assumptions may be misleading in the case of FDI. As economists have emphasized, FDI can only be explained and understood in the context of highly imperfect markets (Dunning, 1993; Caves, 1982). Thus, the high costs of closure assumed in neoclassical political economy models no longer follow, and countries may be able to sustain restrictive policies over long periods of time (Lall, 1997).

This line of reasoning is unconvincing. Even if restrictions are optimal from a national economic standpoint, they are not from the point of view of global firms.[17] If performance requirements impose higher operating costs on TNC affiliates, such countries could still be shunned by mobile investors, as many developmentalists fear. The only likely explanation of the ability of some countries to resist policy convergence upon TNC preferences, therefore, is that TNCs themselves do not base their location decisions (entirely) upon host country investment regimes. This is supported by much survey evidence, which has asked firms their reasons for making (country) investment location decisions. Most such studies, as well as statistical research, have shown that market size, growth prospects, geographical location, access to large regional markets, local infrastructure, human capital, and political stability are more important factors in attracting investment than the nature of the FDI policy regime. Many of these factors are beyond the policy control of governments. Nor has this evidence suggested that incentives have a significant impact on the investment location decision across countries. Some survey data does suggest that after the initial country location decision has been made, factors such as incentives and policy differences between sub-state regions may influence the final location decision, but such factors are apparently of marginal importance at the initial stage (Dunning, 1993: 139-148).

Of course, degrees of mobility vary considerably by sector and by project, and so therefore should host country bargaining power. Domestic market-seeking and resource-based FDI is mainly affected by domestic resources and market prospects. Large countries will enjoy greater bargaining power, *ceteris paribus*, for projects which are domestic-market oriented. For countries like China or Brazil, if one firm dislikes the conditions of entry imposed by the host country, there are usually others eager to take its place. The evidence shows that historically, the great majority of FDI projects is aimed at improving access to the domestic market rather than international markets (table 5, and OECD, 1998: 21-2). In Argentina and a number of other developing countries in the last decade, a large proportion of FDI inflows have been privatization-related, often in utilities and infrastructure and hence particularly immobile (OECD, 1998: 27-32). This suggests the claim of Scholte (that TNC mobility makes states amenable to policies of privatization) is back to front.

Table 5: Sales by US MNC Affiliates by Selected Country/Region of Affiliate, 1994 ($MM)

All Industries				**Manufacturing Affiliates**			
Total sales	***Local***	***Exports***	***% Exports***	***Total sales***	***Local***	***Exports***	***% Exports***

All countries	*1,435,901*	*963,779*	*472,122*	*33%*	*697,554*	*413,873*	*283,681*	*41%*
Canada	194,004	134,197	59,807	31%	108,969	57,823	51,146	47%
Europe	*796,816*	*516,754*	*280,062*	*35%*	*396,154*	*223,925*	*172,229*	*43%*
Latin America	*134,808*	*91,832*	*42,976*	*32%*	*76,287*	*57,595*	*18,692*	*25%*
Argentina	11,545	10,086	1,459	13%	7,182	6,084	1,098	15%
Brazil	33,232	29,238	3,994	12%	25,445	21,726	3,719	15%
Chile	4,937	3,551	1,386	28%	1,789	1,150	639	36%
Colombia	6,501	5,620	881	14%	3,125	2,774	351	11%
Ecuador	795	564	231	29%	300	241	59	20%
Venezuela	5,431	4,955	476	9%	3,622	3,178	444	12%
Mexico	39,420	27,022	12,398	31%	30,873	20,033	10,840	35%
Panama	NA	NA	NA	NA	218	198	20	9%
Africa	*14,866*	*9,485*	*5,381*	*36%*	*3,532*	*2,807*	*725*	*21%*
Nigeria	3,141	810	2,331	74%	NA	NA	NA	NA
South Africa	3,629	3,308	321	9%	1,871	1,792	79	4%
Middle East	*8,070*	*4,688*	*3,382*	*42%*	*1,769*	*988*	*781*	*44%*
Israel	2,351	1,519	832	35%	1,561	863	698	45%
Saudi Arabia	887	670	217	24%	4	49	1	25%
Asia and Pacific	*281,081*	*204,301*	*76,780*	*27%*	*110,841*	*70,734*	*40,107*	*36%*
Australia	42,552	36,349	6,203	15%	17,367	14,303	3,064	18%
China	3,225	2,520	705	22%	1,921	1,450	471	25%
Hong Kong	29,729	16,769	12,960	44%	5,686	3,193	2,493	44%
India	983	934	49	5%	724	681	43	6%
Indonesia	8,229	3,012	5,217	63%	1,727	1,549	178	10%
Japan	97,604	88,280	9,324	10%	37,361	31,941	5,420	15%
Korea, Republic of	5,553	4,883	670	12%	2,961	2,500	461	16%
Malaysia	11,579	6,700	4,879	42%	6,684	2,524	4,160	62%
New Zealand	4,685	4,279	406	9%	NA	1,054	NA	NA
Philippines	5,211	3,884	1,327	25%	3,053	1,921	1,132	37%
Singapore	46,871	17,808	29,063	62%	21,512	4,234	17,278	80%
Taiwan	13,690	10,701	2,989	22%	6,394	3,649	2,745	43%
Thailand	9,627	7,019	2,608	27%	3,838	1,451	2,387	62%

Source: Bureau of Economic Analysis, US Department of Commerce, *US Foreign Direct Investment Abroad: 1994 Benchmark Survey* (BEA, 1998).

Export-oriented or 'efficiency-seeking' FDI, on the other hand, should be more sensitive to the national FDI policy regime, as confirmed by various studies (Haggard, 1990: 221-2; Kobrin, 1987). Table 5 shows the sales pattern of US affiliates in 1994 by country of location for all industries and for the manufacturing sector. Manufacturing FDI in East Asia, by comparison with Latin America, has been more export-oriented, with a wide range of variation. Countries like

China, India, Indonesia, and Korea follow the Latin American pattern, partly because of their domestic market size and partly because of import substitution policies. Singapore, Malaysia and Thailand stand out as countries that have successfully attracted export-oriented manufacturing FDI, particularly in electronic and automobile components. Yet Malaysia and Thailand have done so while maintaining comparatively restrictive inward FDI regimes. It is true that they have often relieved export-oriented FDI projects of some restrictions, providing some support for the weak version of the convergence hypothesis. Malaysia, for example, often exempts export-oriented FDI from the otherwise onerous restrictions on equity ownership, and many developing countries have created Export Processing Zones (EPZs) for precisely this reason.

However, EPZs tend to be isolated from the rest of the economy. By offering better deals to some, host countries prevent the emergence of concerted action by a unified group of investors by giving individual mobile firms an incentive to defect. Also, even in sectors in which technology is crucial and mobility may be high, the high levels of competition between US, Japanese, and European firms has reduced the arbitrage pressure on host countries' policy regimes (Lipson, 1985: 161-82; Moran, 1985: 8-9; Oman et al., 1997: 210-12). Another point is that technological change, often seen as shifting power away from states towards firms, has often reduced the minimum efficient plant scale in many industries, increasing the bargaining power of smaller countries in the process (Bartlett and Seleny, 1998). Overall, even for relatively mobile export-oriented industry, attractions other than FDI policy (such as geographic position, regional trade liberalization, physical infrastructure and human capital) are probably more important in location decisions of TNCs (Dunning, 1993: 144). Countries like Malaysia, which have often waived equity restrictions and provided tax incentives to export-oriented projects, have also required substantive local content requirements in turn (OECD, 1998: 80). Other studies have found manufacturing TNCs tend to remain in host countries even when tax holidays and other incentives expire or are removed (Stopford and Strange, 1991: 101,147).

Hence, mobility appears to make some difference, and truly ‘footloose’ FDI is likely to receive more liberal treatment. Overall, however, other factors predominate in location decisions of TNCs, and the bulk of FDI is domestic market-seeking. East Asia has been highly attractive over the past decade or more primarily because of its growth prospects, allowing such countries to maintain policy regimes that diverge significantly from TNC preferences. In contrast, many African and former communist countries now have very liberal policy regimes in comparison with most of East Asia and Latin America but receive a fraction of the inward investment. The convergence hypothesis might plausibly be turned on its head: the major developing host countries in East Asia and Latin America attract FDI because of their economic prospects and are accordingly under considerably less pressure to adopt policies which favour inward investors.

5.2 IDEOLOGY AND STRUCTURAL POWER

Even if mobility is substantially less than globalization theorists suggest, does a *perception* by states that FDI policies matter for location decisions by firms promote a competitive liberalization process? If true, this would attest to the power of ideas, as suggested in Gramscian accounts of the structural power of capital, and it might also limit the effects of rivalry among firms for dominant positions in key emerging markets. However, the evidence is also inconsistent with this view. First, as noted above, the extent of policy competition among states for FDI has been exaggerated, with important developing countries maintaining restrictive policies over long periods. Second, the argument that change is ideologically-driven is inconsistent with the differentiated pattern of opening across sectors and over different aspects of FDI policy in the developing world in recent years. If policy change were ideological in nature, we would expect an across-the-board liberalization pattern. While this appears to be true for some countries (e.g.: Argentina or the Czech Republic), most countries in East Asia and Latin America have embraced very ad hoc liberalization.[18]

The Gramscian view portrays liberalization in zero-sum terms and as a gain largely for capital, whereas developing countries have often felt able to regulate inward investment to their benefit. For countries like China and Malaysia, liberalizing entry restrictions in particular has been seen as enhancing national development opportunities (Xiaoqiang, 1997). More liberal rules can also enhance host country bargaining power. As Bartlett and Seleny point out for the case of automobile TNC investment in central Europe, the adherence to liberal FDI rules by the transition economies enabled host governments to resist TNC demands for preferential concessions which departed from the rules (Bartlett and Seleny, 1998). The recent shift in thinking in developing countries is better described as pragmatic rather than ideologically blinkered: governments recognize that FDI can contribute to development, but only if certain restrictions are placed upon their affiliate operations to enhance their contribution to the local economy. The ideology of neoliberalism is no match for the ideology of economic nationalism when the two conflict. As a recent OECD study on investment policy in emerging economies concluded:

> While there has been a growing acknowledgment of the role that direct investment can play in stimulating economic growth and development, there remains a tremendous diversity in approaches of countries in their policies towards FDI, as well as a lingering scepticism in certain spheres as to the inevitability or universality of the benefits from FDI…As a result, many countries screen incoming investment and retain extensive controls on foreign participation in particular sectors. Performance requirements on investment are sometimes still considered necessary or desirable to ensure that the activities of foreign multinationals are consonant with host country development strategies (OECD, 1998: 7-8).

6. CONCLUSION

Globalization theory has exaggerated the degree of mobility and structural power enjoyed by TNCs in the world political economy. The claim that states suffer from a collective action problem vis-à-vis TNCs is also misleading. It appears to be firms rather than states that have suffered from collective action problems, since there has been no strong tendency on the part of TNCs to avoid China, Indonesia or Malaysia simply because they dislike aspects of these countries' investment regimes. While TNCs investing in countries like China or Indonesia would prefer these countries to provide a strong liberal investment regime, the sheer attractiveness of these economies for most investors has prevented them from wielding power over the host government to force such liberalization.

Will the current financial crisis in Asia and elsewhere change this? Haggard and Maxfield have argued that private capital agents may be able to overcome the collective action problem during balance of payments crises, when herd behaviour predominates (Haggard and Maxfield, 1996). However, even if this is true for portfolio capital, the exercise of the exit option by long term capital is less credible given the relative immobility and illiquidity of fixed assets. The much lower volatility of direct investment flows in balance of payments financing compared to portfolio flows reduces the incentive for states to liberalize treatment of FDI in crises. Yet there is some evidence of a link. For example, in 1976, Peru reversed a ban on new oil contracts with foreign firms in the wake of a foreign exchange crisis (Stepan, 1978: 286-9). More recently, due to its payments and domestic financial crisis, Thailand has removed some important constraints on inward investment in the Thai financial sector (Financial Times, 1998f). Since the Asian crisis began in mid-1997, there have been a series of further FDI liberalization measures in most of the affected countries, often as part of IMF packages. According to a recent UNCTAD-International Chamber of Commerce survey, most East Asian countries affected have relaxed or removed limits on foreign shareholding limits, particularly with the view to promote inward FDI in the troubled domestic financial sector (ICC/UNCTAD, 1998: annex).

However, there is a difference between announcements of relaxations made in the heat of a crisis and actual policy change. It was initially thought that Thailand would allow foreign investors to bid for the estimated $19 billion in assets of the 56 finance companies that were shut down in 1997 (much of which is property), to help restore confidence and improve sale values. However, the return of confidence in early 1998 led the government to backtrack on this pledge, and to shelve plans to increase the number of years foreigners may hold property leaseholds and to remove foreign ownership restrictions on most businesses. Actual foreign takeovers have been rarer than first expected; Citibank's deal to take over First Bangkok City Bank collapsed in mid-February 1998 (Financial Times, 1998c). A Thai government proposal to remove most restrictions on inward investment was approved by cabinet in August 1998, a year after the onset of the crisis, but this law still required passage by Parliament (Financial Times, 1998d).

The ratification of such proposals can be difficult. There is great sensitivity and political resistance in the region to a 'fire-sale' of domestically-owned assets to foreign firms in a crisis. The Financial Times recently noted of Malaysia that in spite of the severity of the crisis, 'they are not prepared to sacrifice the sacred cow of majority control of significant banking institutions' (Financial Times, 1998b). The ICC/UNCTAD study which looked at this question also noted continuing restrictions on hostile takeovers across the region (ICC/UNCTAD, 1998: 6). One could add that much of the pressure for policy liberalization has come from the IMF rather than the market itself, consistent with a more traditional view of power in the international system than with that provided in globalization theories. Finally, Malaysia's decision to impose extremely strict capital controls in September 1998 is at odds with both the Haggard-Maxfield model and the preferences of TNCs, showing that crises can produce severe backlashes against globalization in all its forms (Financial Times, 1998e).

A final implication of the argument presented here is that the structural weakness of global firms also weakens attempts by home country governments to negotiate stronger international investment regimes with developing host countries. USTR representatives admit that obtaining BITs with East Asia will probably involve making concessions on some of the basic principles of the US model BIT, because these countries are so attractive to investors that they have little incentive to sign up to strong rules (USTR, 1996a). In other words, US business objectives are likely to be compromised ultimately because firms find it difficult not to invest in the key target countries. This also makes it unlikely that US firms would support a tough retaliatory policy on developing countries that did not agree to bilateral investment negotiations or any future MAI treaty (which now looks very unlikely). In the end, the main hope of government negotiators and business lobbies seems to be that if developing countries do not sign, they will be denied FDI (Malan, 1996). As we have seen, evidence for this optimistic assumption is hard to find. If anything, 'globalization' has strengthened the ability of key host countries to pursue policies at odds with the interests of TNCs and western governments. Thus, market power is not likely to provide a substitute for tough intergovernmental negotiations on investment issues for some time to come.

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[2] For simplicity, I use the term 'TNCs' throughout, but take no position on the issue of whether such firms are in practice transnational, multinational, or merely international in character.

[3] See Korten (1995), and for an earlier example, Barnet and Müller (1974).

[4] For sceptical views on these questions, see Lawrence (1996) and Garrett (1998).

[5] See the contribution by Elizabeth Smythe to this volume.

[6] See testimony by Wallach (1998).

[7] A statement by the environmental NGO, Friends of the Earth, is representative: '[T]he need for an [MAI] agreement liberalizing foreign investment rules seems questionable *since foreign investors can largely dictate the terms of their investment already*.' (Durbin, 1997; italics added).

[8] See in general Hirschman (1970), and Rodrik (1997: 70).

[9] This point is argued later.

[10] Most of what follows is from an interview with Todd Malan (1996).

[11] One likely divergence between expressed and real preferences occurs with incentives. Although TNC lobbies avoid mentioning the maximization of incentives as one of their policy objectives, they are the main beneficiaries of the incentives some governments and local authorities provide to attract FDI.

[12] It should be noted that the U.S.-Thai Treaty of Amity and Economic Relations of 1966 exempts US investors from many of the restrictions imposed by the 1972 law.

[13] For a general overview, see Lipson (1985) and Oman (1989). See also Stopford and Strange (1991: 101,147).

[14] 'US Model BIT', mimeo, USTR. See also Bureau of Economic and Business Affairs (1998b).

[15] Another problem is that embassy reports provide only a general description of a country's treatment of foreign investors, whereas individual TNCs may be able to strike better (or worse) bargains. This question requires research on individual state-firm bargains, but it is not pursued here.

[16] See Walter (1998). For an overview of the existing empirical literature, see Dunning (1993), ch.6.

[17] A possible exception being trade protection that favours inward investors.

[18] Even in the paradigm case of the neoliberal Czech government, policy has been more nationalistic and restrictive in practice. See Muchlinski, 1996: 662.