Briefing Paper

Committee: ECOFIN

Topic: The Question of Avoiding the Exploitation of Developing Nations by Developed Nations through the use of Foreign Direct Investment

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Summary

The giving of economic aid by developed countries to developing countries first emerged after WW2 where developed countries such as the USA gave financial aid to countries devastated by the war, mainly in Europe. The aim was to promote sustainable and equitable growth. However, alongside providing employment opportunities and economic and technological advances, FDI has also resulted in developing nations becoming reliant on the aid. Additional factors are corruption, mismanagement and donor fragmentation. All of these reduce the final amount of FDI ultimately used by the developing country. Some policy writers have likened FDI to Neo-colonialism, that is, a developed country controlling the developing nation's progress through the financial investments.

In addition, critics argue that unregulated or poorly structured FDI can reinforce global economic inequalities by prioritising the interests of multinational corporations over local development. In many cases, profits generated through foreign investment are repatriated to the investor country rather than reinvested into the host economy, limiting long-term economic growth. Developing nations may also feel pressured to lower labour, environmental, or taxation standards to remain attractive to foreign investors, increasing the risk of worker exploitation, environmental damage, and loss of economic sovereignty.

Despite these concerns, FDI can play a crucial role in development when accompanied by strong governance and appropriate regulation. Investment that supports infrastructure, skills development, technology transfer, and domestic industries can contribute to sustainable economic growth and poverty reduction. The central challenge for the international community is therefore to establish frameworks that maximise the developmental benefits of FDI while preventing exploitation. This includes improving transparency, strengthening domestic institutions, enforcing corporate accountability, and ensuring that developing nations retain control over their economic priorities.

Definition of Key Terms

Foreign Direct Investment (FDI) – Investment made by a firm or individual in one country into business interests in another, typically through establishing business operations, acquiring assets, or taking a controlling stake (generally defined as 10% or more of voting shares) in a foreign enterprise. FDI is distinguished from portfolio investment, which involves passive ownership of financial assets without management control. FDI creates a lasting interest and a degree of influence over the management of the enterprise.

Bilateral Investment Treaty (BIT) – A treaty between two states that establishes the terms and conditions for private investment by nationals and companies of each state in the other. BITs typically grant foreign investors a range of protections including fair and equitable treatment, protection against expropriation without compensation, and the right to transfer profits out of the host country freely. Critically, most BITs include Investor-State Dispute Settlement (ISDS) clauses. As of 2025, there are over 2,800 BITs in force globally, the vast majority signed between a capital-exporting developed nation and a developing host country.

Investor-State Dispute Settlement (ISDS) – A mechanism included in most BITs and many trade agreements that allows foreign investors to bring arbitration claims directly against a sovereign state if they believe their investment rights have been violated. Unlike ordinary commercial litigation, ISDS cases are heard by private arbitration tribunals – typically panels of three arbitrators, often drawn from a narrow community of international commercial lawyers – rather than domestic courts. ISDS awards can run to hundreds of millions or billions of dollars and are enforceable in signatory states. Crucially, states cannot bring claims against investors under ISDS; the mechanism is structurally one-directional.

Profit Repatriation – The transfer of profits, dividends, and capital generated by a foreign-owned enterprise in a host country back to the investor's home country. BITs and investment agreements typically guarantee the right to repatriate profits freely and without restriction. This means that even when a foreign company generates substantial economic activity in a developing country, the financial surplus may flow out of the host economy rather than being reinvested locally, limiting the multiplier effect of the original investment.

Transfer Pricing and Base Erosion – Practices by which multinational corporations manipulate the prices charged for transactions between their own subsidiaries in different countries to shift profits towards low-tax jurisdictions and costs towards high-tax or high-revenue countries. For developing nations with weak tax administration, transfer pricing is a primary mechanism through which FDI generates economic activity while yielding little or no corporate tax revenue for the host government. The OECD estimates that developing countries lose USD 100–300 billion annually to tax base erosion and profit shifting (BEPS).

Race to the Bottom – The competitive dynamic whereby developing countries progressively lower labour standards, environmental regulations, and corporate tax rates in order to attract or

retain foreign investment relative to competitor host nations. The race to the bottom is a structural consequence of the fact that developing countries must compete against each other for a finite pool of internationally mobile capital, while investors can credibly threaten to relocate to a more permissive jurisdiction. The outcome is a systematic erosion of regulatory standards that serves investor interests at the expense of workers, communities, and governments in host nations.

Neo-Colonialism – A concept, developed by Ghanaian President Kwame Nkrumah in 1965, describing a system in which formally independent post-colonial states remain economically and politically subordinate to their former colonial powers or to other developed nations, through mechanisms of economic dependence rather than direct political control. In the context of FDI, neo-colonialism refers to the way in which investment relationships can reproduce patterns of resource extraction, profit outflow, and structural dependency that characterise the colonial era, without formal imperial administration. The term is contested: some economists reject it as an oversimplification, while others argue it captures real and measurable power asymmetries.

Export Processing Zones (EPZs) / Special Economic Zones (SEZs) – Designated areas within a country where normal regulatory requirements – including labour law, environmental regulation, and taxation – are suspended or significantly relaxed in order to attract foreign investment. EPZs have been widely established across the developing world as instruments for FDI attraction. Critics argue they create enclaves of low-wage, low-regulation production that do not integrate with or benefit the broader domestic economy, and that they are a concrete institutional expression of the race to the bottom.

Technology Transfer – The process by which knowledge, skills, methods of production, and technical expertise are passed from a foreign investor to the host country economy, enabling domestic firms and workers to develop capabilities that persist beyond the presence of the foreign firm. Technology transfer is frequently cited as a principal developmental benefit of FDI, but evidence on whether it actually occurs is mixed: many foreign firms actively protect proprietary technology through contractual restrictions, use expatriate rather than local technical staff, and source inputs from their home country supply chains rather than developing local suppliers.

Capital Account Liberalisation – The removal of restrictions on the movement of money across borders, including restrictions on foreign investment flows, profit repatriation, and currency conversion. The IMF and World Bank historically pressured developing countries to liberalise their capital accounts as a condition of financial assistance, arguing this would attract FDI. Critics argue that premature capital account liberalisation exposed developing nations to volatile capital flows and locked them into investment agreements that precluded effective regulation.

Background Information

Foreign Direct Investment (FDI) refers to investments by companies, individuals, or governments from one country into business interests in another, typically through subsidiaries, joint ventures, or acquisitions. For developing nations, FDI can provide crucial capital, create employment, transfer technology, and improve infrastructure. International institutions such as the IMF, World Bank, and WTO have historically encouraged developing countries to attract foreign investment to support economic growth. However, the relationship between developed and developing nations through FDI is often unequal. Developed nations and multinational corporations (MNCs) usually hold greater bargaining power, advanced technology, and global financial access, enabling them to negotiate terms that prioritise profit over local development. A major concern is profit repatriation, where earnings generated in host countries are transferred back to investor nations, limiting domestic reinvestment. FDI can also facilitate tax avoidance, reducing government revenue and constraining long-term development.

FDI can also pose social and environmental risks. To attract investment, some developing countries may weaken labour protections, leading to low wages, poor working conditions, and limited worker rights. Environmental damage can occur when weaker regulations allow foreign firms to exploit natural resources or pollute ecosystems, leaving local communities to bear the cost. Investor-State Dispute Settlement (ISDS) mechanisms further complicate the issue, as they allow foreign investors to challenge government policies that may affect profits, potentially undermining national sovereignty. While FDI can support development, these challenges highlight the need for careful regulation and international cooperation to ensure investment benefits host nations rather than exploiting them. ECOFIN plays a key role in promoting fair investment standards, sustainable practices, and policies that balance the interests of both developed and developing countries.

FDI can be invested in many different sectors and following industrialisation and technological developments, the largest sectors in 2026, are communications (data centres), renewable energy (wind farms, solar and hydropower) and semi-conductors.

Major Countries and Organizations Involved

World Bank – established in 1944, provides development finance, loans and technical assistance

International Monetary Fund (IMF) – offers policy advice, financial assistance and capacity

Organisation for Economic Co-operation and Development (OECD) – established in 1960, an international organisation that analyses data to understand economic, social and environmental changes to develop better policies

United Nations Conference on Trade and Development (UNCTAD) – the first UNCTAD was in 1964. The G77 was originally 77 members from developing countries, which has now grown to 134 members (retaining the G77 name).

United Nations Industrial Development Organisation (UNIDO) – established in 1966 as a programme and became a UN agency in 1985. Its purpose is to promote inclusive and sustainable industrial development for developing countries.

World Trade Organisation (WTO) – sets global trade and investment rules that affect how FDI is regulated.

African Union (AU), Association of Southeast Asian Nations (ASEAN), and MERCOSUR – work to coordinate regional investment policies, protect local economies, and negotiate fair terms for foreign investors.

Timeline of Events (Relevant UN Treaties)

1945 – United Nations Founded: Created to promote international cooperation, peace, and economic development.

1964 – UNCTAD Established: United Nations Conference on Trade and Development formed to help developing nations harness FDI for development.

1974 – UN Code of Conduct on Transnational Corporations: Non-binding UNCTAD framework aimed at guiding multinational corporations toward responsible behaviour.

1992 – ILO Core Labour Conventions: Strengthened fundamental labour rights influencing host country standards.

2000 – Millennium Development Goals (MDGs): Set global targets for development with investment linked to economic indicators.

2011 – UN Guiding Principles on Business and Human Rights: Framework urging corporations to respect human rights in global operations.

2015 – Sustainable Development Goals (SDGs): 17 goals including SDG 17 on global partnerships, underpinning sustainable investment principles.

2016 – 2024 – Evolution of Investment Laws: Many national investment laws incorporated sustainability, labour, and environmental provisions, reflecting a shift to safeguard host states' interests.

24 October 2024 – G20 Trade & Investment Ministerial: Highlighted alignment of investment agreements with sustainable development objectives, informing future treaty designs.

31 March 2025 – Investment Treaty Conference: UNCTAD, OECD, and UNCITRAL convened to discuss modernising investment treaties to support sustainable development and rebalance investor protections vs. state policy space.

21 October 2025 – UNCTAD16 Investment Facilitation Event: Focused on facilitating investment in ways that support the 2030 Agenda for Sustainable Development and strengthen predictable, transparent systems

Ongoing – Reform of International Investment Agreements: UNCTAD is developing Guiding Principles on IIA Reform to centre sustainable development in investment treaties, expected discussion at the World Investment Forum 2026.

2026 – New IIAs Signed: Multiple bilateral and regional treaties were signed in 2026 that could shape future FDI patterns and host country frameworks (e.g., agreements involving Nigeria, Brazil, EU-MERCOSUR).

Previous Attempts to Solve the Issue

The New International Economic Order and the UN Code of Conduct (1974–1992): In the 1970s, newly independent developing nations, acting collectively through the G77 and UNCTAD, mounted the most ambitious attempt to restructure the international investment order. The Declaration on the Establishment of a New International Economic Order (1974) and the associated Programme of Action asserted developing countries' permanent sovereignty over their natural resources and their right to nationalise foreign assets and regulate investment in their national interest. UNCTAD simultaneously began drafting a binding Code of Conduct on Transnational Corporations, which would have required MNCs to comply with host country law, disclose financial data, refrain from corrupt practices, and respect labour rights – with enforcement mechanisms.

This initiative failed comprehensively. The United States, United Kingdom, and other capital-exporting nations refused to accept a binding code or any multilateral framework that constrained investor rights. By the early 1980s, the debt crisis had dramatically weakened developing country bargaining power: indebted nations dependent on IMF and World Bank assistance were in no position to insist on their demands from the 1970s. The Washington Consensus replaced the NIEO as the dominant paradigm, and FDI liberalisation rather than FDI regulation became the policy orthodoxy. The lesson from this period is that structural reform of the investment order requires either multilateral political consensus that wealthy nations have consistently refused to provide, or sufficient developing country collective bargaining power to extract concessions – a power that debt dependency systematically undermines.

Bilateral Investment Treaties: Why They Structurally Favoured Investors: From the 1960s onwards, BITs proliferated as the primary instrument for governing international investment. By 2025, over 2,800 BITs are in force. Understanding why these treaties structurally favoured investors over host states requires examining their origins, content, and the context in which developing countries signed them. BITs were designed by capital-exporting nations – initially Germany, then the United States, UK, France, and Netherlands – to protect their investors' assets in politically unstable developing countries. The template was written by and for investor-state relations in which the 'state' was always the host (developing) country. The protections were one-directional: foreign investors gained rights to fair and equitable treatment, protection from expropriation, free profit repatriation, and ISDS access. Host states gained no corresponding rights over investor behaviour, no binding obligations on investors regarding labour standards,

environmental conduct, or technology transfer, and no reciprocal mechanisms to claim against investors for causing harm.

Developing countries signed these treaties for structural reasons that had little to do with the merits of the terms. First, there was a credible signalling argument: signing a BIT was meant to signal commitment to investor protection and thereby attract investment. Empirical evidence on whether BITs actually increase FDI flows is highly contested; several studies find little or no effect. Second, developing countries faced acute competitive pressure: if country A signed a BIT with the US and country B did not, investors might prefer A, threatening B's investment attraction. This collective action problem meant each country had an incentive to sign, even if all countries signing collectively made them worse off. Third, developing country trade ministries in the 1980s and 1990s frequently lacked the legal expertise to understand the full implications of ISDS clauses – implications that only became apparent decades later when cases were filed.

The ISDS mechanism is the most structurally problematic feature of BITs. Arbitration cases are decided by panels of private lawyers whose professional community is small, whose leading members regularly switch between acting as counsel for investors and sitting as arbitrators, and who have a financial interest in the expansive interpretation of investor rights (broader rights generate more cases and larger awards). ISDS tribunals have interpreted 'fair and equitable treatment' as prohibiting regulatory changes that reduced investor profits – even when those regulatory changes were enacted for legitimate public interest purposes. This 'regulatory chill' effect is not hypothetical: documented cases include Phillip Morris' challenge to Australian plain packaging laws, Veolia's challenge to Egypt raising its minimum wage, and numerous cases against Latin American countries for measures taken during financial crises. The chilling effect on regulation – the regulations that are never enacted because governments fear ISDS claims – is by definition unmeasurable but potentially very significant.

The IMF and World Bank: Structural Adjustment and Policy Conditionality: The World Bank and IMF played a critical but underacknowledged role in creating the conditions for FDI exploitation through structural adjustment programmes in the 1980s and 1990s. Loans and debt relief were conditioned on 'structural reforms' that typically included privatisation of state enterprises (often sold to foreign investors at below-market prices), removal of capital controls (including restrictions on profit repatriation), reduction of tariffs and trade barriers, and elimination of subsidies and performance requirements for foreign investors.

These conditions directly served the interests of foreign investors by removing the instruments developing country governments could use to ensure FDI served national development goals. Local content requirements – requiring foreign firms to source a proportion of inputs domestically – were prohibited under TRIMs. Technology transfer obligations were removed. Capital controls that could have limited destabilising outflows were eliminated. The cumulative effect was to maximise the openness of developing economies to foreign capital while minimising their capacity to shape the terms on which that capital operated. The IMF itself has in more recent

years acknowledged that capital account liberalisation was pursued too rapidly and without adequate regard for institutional capacity.

The UN Global Compact and Voluntary Approaches (2000 onwards): The UN Global Compact (2000) represented the dominant response to growing demands for corporate accountability – instead of binding obligations, corporations would be invited to voluntarily commit to principles of human rights, labour standards, environmental responsibility, and anti-corruption. Participation grew rapidly – by 2025, over 20,000 companies had signed – but the Compact's substantive impact has been limited for structural reasons. Voluntary frameworks face a fundamental collective action problem – firms that genuinely comply bear costs (higher wages, environmental investment, forgone tax avoidance) that non-compliant competitors do not bear, undermining the competitive position of ethical actors. Without monitoring, verification, or sanctions, the Compact has enabled 'bluewashing': companies associate themselves with UN endorsement while continuing exploitative practices. Several systematic studies have found no measurable relationship between Global Compact membership and corporate behaviour on labour or environmental standards. The lesson is not that voluntary frameworks are useless – they can shift norms and provide a basis for civil society pressure – but that they cannot substitute for binding legal obligations with enforcement mechanisms.

BIT Reform and the Shift in Treaty Design (2010s–2025): From the 2010s, growing awareness of ISDS abuses and BIT structural imbalances prompted a wave of treaty reform. UNCTAD's Investment Policy Framework for Sustainable Development (2012, updated 2015) provided a roadmap for new-generation BITs that would include sustainable development clauses, right-to-regulate provisions, investor obligation clauses, and reformed ISDS. Several countries – India, South Africa, Brazil, and Indonesia – terminated large numbers of their existing BITs.

Brazil's approach is notable – rather than BITs, Brazil developed Cooperation and Facilitation Investment Agreements (CFIAs) that replace ISDS with a joint committee mechanism for dispute resolution and include explicit investor obligations on labour and environmental standards. The EU's replacement of ISDS with a proposed Multilateral Investment Court would introduce appeals, a roster of full-time adjudicators replacing ad hoc arbitrators, and greater transparency. These reforms represent genuine progress, but face two structural constraints. First, the legacy stock of existing BITs – including the most investor-favourable treaties signed in the 1980s–2000s – remains in force, often with 'survival clauses' extending their effect for 10–20 years after termination. Second, developing countries that have terminated BITs risk signalling reduced investor protection and facing capital flight, illustrating the competitive dynamic that makes unilateral reform costly.

Possible Solutions

Reform of ISDS: Replacing Arbitration with a Multilateral Investment Court: The most consequential structural reform would be the replacement of ad hoc ISDS arbitration with a permanent, multilateral investment court with publicly appointed judges, an appellate

mechanism, binding precedent, and full transparency. The EU has been the principal advocate for this model, and UNCITRAL Working Group III has been negotiating its establishment since 2017. The case for this reform is strong: it would eliminate the structural conflicts of interest in current arbitration, introduce consistency and predictability through appellate review, and reduce the cost asymmetry that currently favours investors who can afford prolonged arbitration.

However, the Multilateral Investment Court faces significant obstacles. The United States and major capital-exporting nations outside the EU have been resistant, preferring to retain existing ISDS. Developing nations are divided: some support the court as an improvement, but others argue that any mandatory international adjudication system still privileges foreign investors over domestic regulatory authority and that the court's jurisdiction would still be one-directional, allowing investors to sue states but not vice versa. A more fundamental critique is that reforming the adjudication mechanism does not address the substantive content of investment treaties – the rules on what constitutes expropriation, what 'fair and equitable treatment' requires, and what regulatory measures are permissible. Without substantive reform of treaty content alongside procedural reform of dispute settlement, a new court may simply entrench existing investor-favourable rules under a more legitimate institutional form.

Binding Corporate Accountability and Supply Chain Due Diligence: A growing number of developed countries have enacted or are enacting mandatory human rights and environmental due diligence laws for multinational companies – the EU Corporate Sustainability Due Diligence Directive (CS3D), Germany's Supply Chain Due Diligence Act (LkSG, in force since 2023), and France's Loi de Vigilance (2017). These laws require large companies to identify, prevent, and remediate human rights and environmental harms throughout their supply chains, including in developing countries, and create civil liability for failure to do so.

This approach represents a genuine shift from voluntarism to binding obligation. The principal limitation is jurisdictional: these laws apply to companies incorporated in or operating from the legislating jurisdiction, meaning they capture some but not all FDI. Companies can potentially restructure their corporate arrangements to reduce exposure, particularly if they operate through subsidiaries incorporated in third countries. The CS3D has also been significantly weakened during legislative negotiation, with its scope reduced and liability provisions diluted under pressure from industry lobbying. Developing country governments have limited capacity to use these laws: the ability to bring civil claims in European courts requires legal resources and expertise that are difficult for affected communities or governments in low-income countries to access. Effective due diligence legislation would need to be accompanied by accessible grievance mechanisms, publicly funded legal support for affected parties, and coordination among major economies so companies cannot escape obligations by relocating their nominal headquarters.

International Tax Reform: The UN Framework Convention: Transfer pricing and profit shifting are among the most quantitatively significant mechanisms through which FDI exploits developing

countries: UNCTAD estimates developing nations lose USD 100 billion annually in corporate tax revenue to profit shifting alone. The OECD's BEPS programme and the 2021 global minimum tax agreement represent partial progress, but they were designed by and primarily serve the interests of OECD members – wealthy, capital-exporting nations. The 15% global minimum rate was opposed by many developing countries as insufficient; the Pillar One allocation of taxing rights to market jurisdictions further disadvantages resource-rich developing countries relative to consuming nations.

The UN Framework Convention on International Tax Cooperation, currently under negotiation, would shift global tax rule-making to a universal body with full developing country participation. This is the most structurally significant tax reform under discussion. It faces fierce opposition from OECD members, who argue that undermining the BEPS framework would create regulatory uncertainty and that the UN lacks the technical capacity to manage complex international tax negotiations. These objections are not entirely without merit, but they also serve the interests of nations that benefit from the current allocation of taxing rights. The fundamental tension is whether international tax rules will be designed in a forum controlled by capital-exporting nations or in one that gives equal voice to capital-importing ones.

Renegotiation of the BIT Stock and Regional Investment Frameworks: The 2,800+ existing BITs represent a legacy architecture that cannot be reformed quickly. Developing countries face a genuine dilemma: terminating BITs may expose them to capital flight and investment loss; retaining them means continuing to operate under rules that constrain their policy space. The most promising approach is collective action: regional blocs negotiating with investors and capital-exporting nations as a group – as the AU's Pan-African Investment Code attempts – have more bargaining power than individual nations. Brazil's CFIA model, which replaces ISDS with a joint state-to-state committee mechanism and includes investor obligations, provides a template for new agreements that does not replicate the structural imbalances of conventional BITs.

The practical constraint is that many developing countries have signed dozens of BITs and renegotiating all of them simultaneously requires diplomatic resources and legal capacity most do not possess. International support – from UNCTAD and from developed countries willing to accept reformed treaty terms – is necessary but far from guaranteed. There is also a fundamental question of whether developing countries that successfully terminate BITs can maintain investor confidence through alternative means: domestic rule of law, contract enforcement, and regulatory stability are the underlying investor concerns that BITs are meant to address, and strengthening these is both a more difficult and a more genuinely developmental task than treaty reform alone.

Restoring Industrial Policy Space and Reforming WTO TRIMs: The WTO's TRIMs Agreement prohibits local content requirements and export performance conditions that developing countries have historically used to ensure FDI generates domestic supply chain development and technology transfer. The evidence from successful industrialising economies – South Korea, Taiwan, China, and earlier Japan – consistently shows that active industrial policy, including

performance requirements on foreign investors, was central to their development. The current prohibition on these tools applies asymmetrically: developed countries industrialised using instruments now denied to developing nations.

Reform of TRIMs to restore developing country flexibility on performance requirements would require consensus in the WTO, where developed nations have consistently opposed such changes. The 2001 Doha Development Round – which promised to prioritise developing country interests – collapsed in 2008 partly over this issue and has never been revived. The systemic problem is that WTO decisions require consensus, and the nations with the most to gain from TRIMs reform have the least political weight. This solution is technically well-grounded but politically very difficult: it requires developed nations to accept constraints on their investors that reduce the competitive advantage of their MNCs in developing markets.

Capacity Building and Institutional Strengthening: Developing countries' vulnerability to exploitative FDI is substantially a function of institutional weakness: weak tax authorities that cannot counter transfer pricing, under-resourced environmental regulators that cannot enforce conditions, ministries that lack the legal expertise to negotiate or litigate treaty terms. Capacity building – technical assistance for tax administration, regulatory agencies, investment negotiators, and domestic legal systems – is a necessary complement to structural reforms and is less politically contentious than treaty renegotiation.

The limitation of capacity building as a primary solution is that institutional weakness in many developing countries is not accidental but structural, rooted in histories of colonial extraction and the fiscal constraints imposed by debt obligations. Addressing it genuinely requires long-term financial commitment from developed nations far beyond what has historically been provided. There is also a risk that capacity building initiatives controlled by the IMF, World Bank, or bilateral donors replicate the priorities of donor nations rather than recipient governments. Effective capacity building must be demand-led, with developing countries determining their own institutional priorities, rather than supply-driven by donors seeking to replicate their own regulatory models.

Useful Links

1. https://unctad.org/publication/global-economic-fracturing-and-shifting-investment-patterns
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