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Briefing

Investment and the WTO – Busting the Myths

Foreign direct investment (FDI) can play a positive role in achieving sustainable development. It does not, however, automatically lead to environmentally and socially beneficial outcomes. The nature and extent of these outcomes are critically affected by the market conditions, and thus the regulatory framework, within which the investment takes place.

For almost a decade, the European Union (EU) has been pressing for the creation of an international investment agreement aimed at placing controls on the ability of governments to regulate foreign direct investment. This briefing explodes some of the myths surrounding FDI and the myths surrounding the “benefits” of establishing an investment agreement in the WTO.

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Introduction

Foreign direct investment (FDI) can play a positive role in achieving sustainable development. It does not, however, automatically lead to environmentally and socially beneficial outcomes. The nature and extent of these outcomes are critically affected by the market conditions, and thus the regulatory framework, within which the investment takes place.

For almost a decade, the European Union (EU) has been pressing for the creation of an international investment agreement aimed at placing controls on the ability of governments to regulate foreign direct investment.

In 1995 the club of the world's richest countries – the Organisation for Economic Cooperation and Development (OECD) – began negotiations on a Multilateral Agreement on Investment (MAI). This proposed agreement was hailed by critics as a 'corporate bill of rights' giving multinational companies sweeping rights to invest in countries and challenge government regulations. As a result of public pressure and disagreements between OECD members, the MAI collapsed in late 1998.

Even before the collapse of the MAI, the EU had sought to place investment on the agenda of the World Trade Organisation (WTO). At the WTO's Singapore Ministerial Conference in 1996, the EU got an agreement from other WTO members to establish 'working groups' to study the feasibility and desirability of WTO rules on a range of issues, including investment. These issues became known as the 'Singapore issues' or the 'new issues'.

At the 1999 WTO Ministerial in Seattle the EU, supported by a small number of countries such as Japan, attempted to push for an end to the 'working group' stage and the beginning of negotiations on new rules on investment. The total collapse of the Seattle meeting meant no deal was struck to start any talks let alone on investment.

At the 2001 WTO Ministerial Conference in Doha, developing countries again came under intense pressure to agree to start negotiations. In order not to be seen as blocking the start of a 'new round' of WTO talks to 'kick start economic recovery' in the aftermath of September 11th countries, many very reluctantly, signed up to a deal to discuss the 'modalities' (i.e. the aims and scope of a possible agreement and the type of rules it might contain) for negotiations on investment and other 'new issues'. As Ambassador Chidyausiku of Zimbabwe later described, *"They [developed countries] said that if you don't agree to the inclusion of new issues, you don't get the TRIPs and Health Declaration and the ACP waiver. The other source of pressure was that no minister was prepared to be blamed for the failure of Doha, or standing in the way of fighting terrorism. There was so much pressure during the negotiations that [developing country ministers] did not have the guts to say, as far as my national position is concerned, this is not in our interest."*¹

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Since then, talks have been proceeding slowly. The deadline for agreement on 'modalities' is the WTO Ministerial Conference in Cancun in September 2003. This will be a critical decision – and probably the biggest and most contentious decision of the Conference. This is because governments have left open the possibility that if agreement on 'modalities' cannot be reached, negotiations on an investment agreement will not proceed. Such an agreement is therefore not a foregone conclusion.

However, stalling the onward march of a WTO investment agreement will be difficult. Not only do countries have to contend with blatant political pressure, they also have to deal with more subtle forms of persuasion. In particular, the proponents of investment liberalisation and new WTO rules, have created a series of myths designed to convince the general public, the media and trade negotiators that WTO rules on investment will benefit everyone.

Also difficult to contend with are the constantly shifting terms of the 'debate'. For example, since the talks on a possible WTO agreement on investment started, governments have referred to it as a Multilateral Agreement on Investment (MAI), a Multilateral Investment Agreement (MIA) a Multilateral Framework on Investment (MFI) and a Multilateral Investment Framework (MIF). The EU has recently even started calling it an Investment for Development Framework (IDF).

Whatever it is called, this briefing aims to explode some of the myths surrounding FDI and the myths surrounding the 'benefits' of establishing an investment agreement in the WTO.

Myth 1: FDI will unequivocally benefit poor countries because it always has 'spill-over' effects, such as increased employment and technology and skills transfer. Liberalising and deregulating FDI will attract more FDI and thus increase these benefits.

The claims of the myth-makers...

According to the European Commission, *"It is undisputed that FDI can bring important developmental benefits to recipient countries, in the form not only of capital but also technology, knowledge, ..."*²

According to the Japanese Government, *"National development objectives are better achieved by promoting [investment] liberalization and thereby stimulating domestic investment activities."*³

According to UNICE (A European business lobbying organisation), *"Greater involvement of international companies strengthens the private sector contribution to a country's development process by creating productive capacity and employment, by the transfer of expertise and technology..."*⁴

According to the Organisation for Economic Co-operation and Development (OECD), *“FDI creates jobs and raises economic growth. In many cases it will stimulate technological innovation, increase competitiveness, improve efficiency and transfer intangible resources such as organisational, managerial and marketing skills.”*⁵

Busting the myth...

FDI can play an important part in sustainable development but attracting FDI should not override social and environmental objectives and the need for governments to effectively regulate investment – including using regulations that free market proponents regard as ‘barriers’ to investment. It is therefore important to take an objective view on the contribution FDI can make to sustainable development.

At the very broadest level, attracting more FDI is *not* a prerequisite for economic growth. A look at the evidence suggests there is no automatic link between increased FDI and growth. In 1999 the UN Commission for Latin America and the Caribbean reported that FDI in the region rose by 13 times in the 1990s compared with the 1970s, while GDP growth was 50% *lower* than during the 1970s. One of the reasons for the fact that all this FDI did not lead to higher economic growth is that foreign investment was concentrated on purchasing assets rather than creating new sources of production. For example, in the period 1995-98, transfers of property accounted for nearly two-thirds of total FDI flows.

The distinction between buying existing assets and creating new production is critical when considering the contribution of FDI to sustainable development. For example, most investment into the developing world has not been in the form of starting new production (the oft-quoted examples of green-field site development). Aside from investment in China, 72% of investment into developing countries in 1998 was in the form of mergers and acquisitions.⁶ These have a mixed record of job creation, the positive examples of expansion being matched by many other examples of rationalisation and job losses after acquisition by a foreign multinational.

Privatisation accounted for 12% of FDI inflows to developing countries (excluding China) in 1990-97, and higher in many countries (e.g. 80% of FDI in Argentina for 1990-95).⁷ These are one-off inflows which make a questionable contribution to development. A review of structural adjustment related privatisation case studies concluded that privatisation of public utilities often resulted in increased charges - adversely affecting the poor - and often resulted in net unemployment.⁸ A study conducted by four IMF researchers concluded that, *“the empirical evidence suggests that significant reductions in employment are indeed associated with privatisation.”*⁹

Looking more generally at the spillover benefits of FDI, the United Nations Conference on Trade and Development (UNCTAD) reports, *“Not all FDI is in the best interests of host countries. Some can have an adverse effect on development.”*¹⁰ Moreover UNCTAD points out that the benefits from TNC investment *“may fail to materialise in the host country. In particular, dynamic comparative advantages may*

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not be developed and affiliates may not embed themselves in the local economy by building linkages to the domestic entrepreneurial community, by further developing labour skills, or by introducing more complex technologies.”¹¹ UNCTAD goes on to conclude that if the potential for FDI to promote development is to be realised “the need for developing countries to preserve sufficient policy space to pursue their development objectives also has to be recognised.”¹²

Despite the clear need to regulate incoming investment, policy-making has been going in the opposite direction. For well over a decade, industrialised countries, mainly through the international financial institutions (the IMF and World Bank) and the WTO, have been pushing investment liberalisation. In other words the elimination of what they see as regulatory ‘barriers’ to investment, such as limits on how much foreign investors can own in particular sectors in an economy. This, it is claimed, will be good for poor countries as it will help attract more investment. However, contrary to the prevailing orthodoxy, such ‘barriers’ do not seem to be an important factor in determining FDI flows (see ‘Myth 2’ below).

Attracting appropriate foreign investment therefore forms one part of a development strategy and should not be seen as an end in itself. The key point is that FDI is not inherently good or bad – there are trade-offs between the risks and returns.

Any objective look at the evidence points to the conclusion that FDI needs to be regulated and that such regulation has no significant impact on countries’ ability to attract FDI if they so wish. It is crucial therefore that governments have maximum flexibility to regulate FDI in order to minimise the costs and maximise the benefits to society. However, as is explained below, the EU’s plans for a WTO investment agreement are aimed at further reducing this flexibility.

Myth 2: A WTO agreement on investment will reduce ‘regulatory risk’ and provide greater predictability for investors. This will enable developing countries to attract more FDI.

The claims of the myth-makers...

According to the European Commission, “*Multilateral investment rules would increase overall FDI flows by reducing marginal risk associated with each new venture abroad. It would help developing countries to attract a fairer share of whatever FDI is available.*”¹³

“*[With WTO rules] Many developing countries would find it easier to attract investment, along with the capital and technology it brings. And rules would help least developed countries to join the ranks of those attractive to FDI flows.*”¹⁴

According to the UK Government, “*At the moment developing countries are getting two per cent, a tiny fraction, of the world’s FDI flows. If developing countries can opt in...to a basic set of standards for the treatment of foreign investment, that will*

*encourage more foreign investment.*¹⁵

*“This framework should help to create investor confidence through certainty, credibility and transparency, a confidence from which the poorest countries stand to benefit the most.”*¹⁶

According to Clare Short, former UK International Development Secretary, *“I remain convinced that a negotiated investment agreement reached in the WTO...could help developing countries to attract the investment they desperately need.”*¹⁷

According to the International Chamber of Commerce, *“The International Chamber of Commerce has urged the World Trade Organization to agree multilateral rules governing investment as part of the Doha round and said they would boost investment in the developing world.”*¹⁸

Busting the myth...

There is no evidence that a WTO investment agreement will lead to greater foreign investment for the poorest and most marginalised countries, let alone that they will be the ones ‘to benefit the most’. In a recent consultation meeting with UK non-governmental organisations (NGOs), the UK Government confirmed that it can point to no evidence for the claim it makes in the above statement, in that the two studies it cited in support of the claim relate to competition for investment between and within the larger developing countries, which already receive a significant majority of FDI flows to the South.

By contrast, there is an extensive literature stretching back over several years which indicates that a WTO investment agreement will not lead to increased FDI flows to the poorest countries. The strength of this body of evidence has led the World Bank to conclude that:

*“[A]n international agreement that seeks to substantially increase investment flows by increasing investor protections seems destined, on the basis of available evidence, to fall short of expectations. Some key issues are already covered by relatively strong investor protections in BITs [bilateral investment treaties]. Moreover, it is not clear that any investor protections emerging from multilateral negotiations would add markedly to existing protections found in bilateral agreements. Finally, merely creating new protections does not seem to be strongly associated with increased investment flows. For these reasons, the overall additional stimulus of multilateral rules that apply to new investment over and above unilateral reforms would probably be small – and virtually nonexistent for low-income developing countries.” (emphasis added)*¹⁹

This conclusion supports evidence already gathered in relation to investment flows arising from the General Agreement on Trade in Services (GATS). Foreign investment in services accounts for half of the world total of FDI flows, and developing countries have been assured in the past that making GATS commitments

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would increase the level of FDI they would receive in future. Yet this ‘signalling’ has not brought additional FDI flows to host countries as they had been led to believe. As UNCTAD concluded, on the basis of its assessment of the impact of GATS commitments on foreign investment, *“There is no empirical evidence to link any significant increase in FDI flows to developing countries with the conclusion of GATS.”*²⁰ Despite this lack of evidence, the UK government continues to perpetuate the claim. For example, UK Trade Secretary Patricia Hewitt recently asserted, *“The advantage of governments [privatising water services] within the GATS framework, if they want to, is that it provides the certainty that will encourage foreign investors to come in.”*²¹

The World Bank reports similar findings for bilateral investment treaties (BITs), which – despite being typically more ambitious than multilateral agreements – have also had minimal effect in increasing FDI flows. Noting the findings of a recent survey of FDI flows from OECD members to 31 developing countries over 20 years, as well as previous UNCTAD research, the World Bank acknowledges, *“Countries that had concluded a BIT were no more likely to receive additional FDI than were countries without such a pact.”*²²

It is well established that the key determinants of FDI flows to the poorest countries are economic and infrastructural. UNCTAD’s comprehensive analysis of the constraints on capital flows to LDCs highlighted in particular the costs of asset development, vulnerability to shocks, lack of business support services, weak physical, social and administrative infrastructure and the typically small scale of projects in the poorest countries.²³

By contrast, surveys conducted in order to identify key investment determinants in the poorest countries reveal that regulatory and legal frameworks do not constitute a major obstacle to investment decisions – particularly in light of the considerable liberalisation of FDI regimes in recent years. One survey of investment determinants across 30 African countries identified the regulatory and legal framework as having a negative impact on investment decisions in under 5% of cases.²⁴ Another confirmed that while foreign investors in Africa see the existence of a reform programme with the World Bank or IMF as a sign of stability, *“they do not rank this as an important factor in investment decisions.”*²⁵

Myth 3: Attracting FDI is important for sustainable development (and by inference, a WTO agreement is compatible with sustainable development).

The claims of the myth-makers...

According to the European Commission, *“Investment flows benefit everyone, creating opportunities for investors and helping developing countries to achieve sustainable development.”*²⁶

According to the UK Government, *“Foreign direct investment (FDI) is now generally*

*recognised as one of the key factors in economic growth and wealth. The UK Government believes that investment flows benefit both developed and developing countries, creating opportunities for investors and helping developing countries to achieve sustainable development.*²⁷

Busting the myth...

The UK Government and European Commission argue that FDI is unequivocally good for sustainable development. By extension they seem to be saying that any WTO agreement aimed at restricting governments' ability to regulate investment, allowing greater freedom for foreign investors, will promote sustainable development.

If sustainable development (as it should be) is the ultimate goal for public policy then three outcomes must be sought simultaneously. The first is that the level of natural resource extraction, pollution and impact on diversity must be within the limits that the environment can sustain. The second is that everybody must have access to their fair share of natural resources and the burdens of over extraction and pollution must not be born disproportionately (in particular, the imbalance between the "over-consumption" of resources by the rich and developed world and the "under-consumption" by the poorest needs to be addressed). The third is that, to both make the transition to sustainability and to maintain it, the active and democratic participation of society must be ensured.²⁸ Any claim about the benefit of FDI under a WTO investment agreement must be measured against these benchmarks.

The world is clearly a long way from achieving sustainable development. In the case of global climate change, for example, not only have we exceeded the atmosphere's limit to absorb greenhouse gases emissions, but there are huge disparities between the winners and losers in the situation. In 1995 20% of the world's population in the North were 'high emitters' responsible for 63% of global carbon emissions, while 20% of the population (primarily in the South) were 'low emitters', responsible for 2% of emissions²⁹. Moreover the poorest people and countries are desperately in need of energy sources and are the most likely to die from the devastating effects of climate change.

This briefing already establishes that unregulated FDI may be more likely to exacerbate poverty than to improve it and that a WTO investment agreement will not necessarily bring any more or any better FDI. A WTO investment agreement will also not address the trail of environmental destruction and resource expropriation associated with many forms of FDI and could prevent much needed improvements in resource management and local participative decision making for sustainable development. Overall the whole approach of an agreement would be one where sustainable development public policy objectives are confined to the edges, written in as exceptions open to interpretation and dispute rather than the primary consideration. The 'lock-in' effect of a WTO agreement would act as a brake on environmental improvements and transfer power over resources from local people to

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transnational corporations, consumers in other countries and the WTO.

A WTO agreement would do little to help and would probably harm the prospects for sustainable development on three main levels. The first is in the overall pattern of production and consumption, the second is at the level of policy making and standards and the third is about the performance of individual investors.

Unsustainable and inequitable global consumption

At the big picture level a WTO agreement would probably serve to perpetuate the pattern of rich industrialised countries consuming more than their fair share of land, water, wood, minerals and resources. This is because current investment has a high component of northern based TNCs “investing” in the South often concentrated in the extractive industries which export these resources to northern markets. This investment has been associated with high levels of environmental and social damage and serious impacts on un-exploited areas of bio-diversity and indigenous people. In the petroleum and mineral sector, a host of case studies suggest that, on average, TNCs have tended to follow, or even worsen – local practice³⁰. Many countries have raced to liberalise their mining laws, for example, in an attempt to get this short-term foreign exchange with little room to consider the longer term impacts. If they are pressured, through a WTO agreement, to ‘lock-in’ this liberalisation preventing them from changing policies in future, this will help consolidate the process.

‘Locking-in’ liberalisation also traps us in unsustainable forms of production and consumption. The claimed ‘good’ of past and hoped for future increases in global trade and investment seems to be based on the premise of the ‘death of distance’ with declining world transport and communication costs making it possible to ship and fly products and components across the globe in the ‘search for efficiency’³¹. Clearly this notion of efficiency has conveniently ignored the greenhouse gas emissions associated with this transport and the fact that these emissions are not yet regulated under the Kyoto climate change protocol.

Environmental Policy Space

The need for countries to retain policy space to manage FDI for the ends of environmentally sustainable development is not adequately addressed by any of the proposals made for a WTO agreement. Sustainable development is a complex and moving challenge that is likely to be achieved differently according to the particular social, political and environmental circumstances of countries regions and localities. A one size fits all approach that would be implicit in a WTO agreement is not what is needed. Rather, countries need the space to pick and mix the policy tools that they and their population deem to be the best to achieve sustainable development.

However, countries rights to try and manage their natural resources are already under threat. The EU is already challenging the rights of countries such as Taiwan to

prevent foreign companies purchasing or leasing land in agriculture, forestry, fishing, pasture, hunting, salt production, mines and sources of water in the current GATS talks. Also, the EU is leading the development of a ‘necessity test’ under the GATS aimed at eliminating domestic regulations – such as technical standards – that are considered to be ‘more burdensome than necessary’ on business. This constitutes a serious threat to effective environmental regulation and there is every reason to think similar rules will be inserted into a new WTO investment agreement.

Leaving it up to WTO dispute panels to decide what is ‘necessary’ and what is too ‘burdensome’ is a recipe for bad environmental policy-making. There is already evidence that the WTO is not working for sustainable development considerations. For example, the results of WTO disputes have tended to go against environmental sustainability cases and the multilateral environmental agreements have come under persistent threat from the WTO.

The race to the bottom and the chilling effect

There can be intense competition between countries to attract FDI allowing companies to play countries off against each other, lowering or keeping low labour, health and safety and environmental standards and costs everywhere. Whether or not it actually makes any difference to the long-term investment climate in a country, many companies lobby using the threat of leaving, or the promise of arriving, to lower standards and many governments respond.

UNCTAD acknowledges this when it says, *“the fact that some countries view limiting labour and environmental standards as an incentive to FDI [in Export Processing Zones] may indicate a need for collective action ...to limit the risk of a possible race to the bottom.”*³² There is also further evidence that *“while foreign firms may not have been drawn in by lower standards, they clearly perform like environmental renegades once they get there.”*³³

Even if companies don’t actually move, and don’t behave any worse than anyone else liberalised investment can have a potential chilling effect on a government’s ability to adopt much needed *new* sustainable development policies. There is evidence that policy makers are very sensitive to the presence of foreign investors so they might not weaken environmental standards but they do not enforce or increase them either. Increased corporate globalisation has inhibited a race to the top and causes environmental commitments to be ‘stuck in the mud’.³⁴

This process is only likely to accelerate if there is any further deregulation of investment through the WTO. As has already been mentioned, the potential development of GATS-style rules on ‘domestic regulation’ constitute a serious threat to environmental policy-making. Also of major concern is the likely insertion of rules on ‘creeping expropriation’ where new government measures that have an impact on a company’s operations – and thus affect its investment – can be challenged. Such rules in the North American Free Trade Agreement (NAFTA) have been used to

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successfully undermine environmental policies on the siting of a toxic waste dump and the use of harmful additives in fuel.

Finally a WTO investment agreement would not address the cases of environmental injustice that unregulated FDI can create. There is evidence that the location of polluting FDI can be based on differences in the income and/or education levels of local communities. FDI tends to concentrate in *“pollution zones of poorer people, both within and across countries where firms perform worse and where regulation is less effective.”*³⁵ A WTO agreement will ‘lock-in’ a process of liberalisation that is putting control out of the hands of local people who bear the brunt of this environmental injustice and in the hands of even more remote institutions and powerful corporates.

None of the proposals for a WTO investment agreement address the need for collective action to limit the race to the bottom, to raise environmental, labour and other standards, or to stop bad practices being concentrated in the areas where people have the least capacity to fight back. Instead the proposals would make it more difficult to address the sustainable development challenges the world faces for example, by including expropriation measures, and by limiting the policy space of host countries, or by giving more power to already powerful multinational companies.

Myth 4: Developing countries are desperate to attract more foreign investment and by implication they must therefore want WTO rules on investment.

The claims of the myth-makers...

According to Baroness Symons, former UK Trade Minister, *“An issue often raised by my opposite numbers in developing countries is their desperate need for inward investment. I can’t think of a time when I have met developing country representatives when they didn’t raise this concern. A multilateral framework for investment...”*³⁶

Busting the myth...

There is no conflict between wanting to attract appropriate FDI into a country and opposing the deregulation of investment through the WTO. In fact, to the contrary, history has shown that effective regulation of FDI can enhance its potential benefits. Not surprisingly then, most developing countries are opposed to expanding the WTO agenda in this way.

In May 2001, a report of the meeting of the G-15 summit level group (which now consists of 19 countriesⁱ), stated the following in May 2001: *“That the WTO should focus on accomplishing its current work programme rather than entertaining new*

ⁱ Algeria, Argentina, Brazil, Chile, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Mexico, Nigeria, Peru, Senegal, Sri Lanka, Venezuela, Zimbabwe, and Iran and Colombia

*issues which will create additional obligations on developing countries.*³⁷

In August 2001, the Least Developed Countries submitted a paper to the WTO asking for the study process to continue (in other words, that these issues should not be elevated to full blown negotiations).³⁸

In September 2001, the Africa Group of WTO members released a communique stating that the 'Singapore Issues' (i.e. the new issues including investment) are: *“not within WTO competence in developing multilateral rules”, that “Members are not convinced that negotiations in these areas would deliver benefits to African countries”, that “These issues would add more burden of obligations, while the problems of implementing the Uruguay Round Agreements continue” and that “These issues would overload the WTO agenda.*³⁹

These three groups of developing countries include almost 60 WTO Members.

At Doha, twenty-nine developing countries explicitly mentioned the 'new issues' in their statements. Nineteen of these opposed their inclusion in the Doha agenda, while only two spoke in favour of their inclusion (the Republic of Korea and Venezuela). The rest did not express a clear view. This opposition was simply ignored as the EU pushed ahead with its agenda.

Since Doha, the opposition has continued. For example, at a conference in March 2003, the Indian Ambassador to the WTO, said, *“we are of the view that we do not want an [investment agreement] in the WTO. The position remains as unclear today as it was in Singapore. No convincing arguments have yet been put forward.”*⁴⁰ At the same meeting the Ambassador of Kenya to the WTO, Mrs. Amina Mohamed, stated, *“There is a lack of capacity of developing countries to negotiate these [new] issues, the Doha work programme is overwhelming, there is a lack of human resources. It's a majority of developing countries that are opposed to the new issues.”*⁴¹

At a recent meeting of the WTO's Trade Negotiations Committee in Geneva (April 2-3, 2003), both the Africa group and the Least-Developed Countries (LDC) group in the WTO reaffirmed their opposition to the launch of negotiations on these issues and the most recent LDC statement again calls for the continuation of the 'study process' rather than starting full blown negotiations.⁴²

Only a small number of developing countries actively want an investment agreement in the WTO. The principal proponents continue to be the European Union and Japan. If these countries dropped their insistence on a new WTO agreement, it is highly unlikely that any other WTO member would take up the baton.

The problems with the Doha agenda are practical as well as political. Many small delegations are struggling with the current agenda, and simply could not engage with the new issues. They would therefore run an extra risk of an outcome that does not reflect their interests. Rather than adding more issues to an already overloaded

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negotiating agenda the UK should look to reform the way the existing talks are operating. Although laudable, the UK Government's capacity building efforts will not make a significant difference over the next few years. Instead of piecemeal attempts to increase developing country capacity a more immediate solution would be to make the workload manageable. As well as dropping 'new issues', the UK government could propose that capacity problems at the WTO are addressed directly by looking at issues of scheduling, deadlines and organisation of existing meetings. There also needs to be official recognition that capacity issues will take many years to resolve – and can certainly not be addressed adequately during the lifetime of this round.

The EU's insistence upon adding new issues to a clearly unmanageable agenda at this point is misguided. Rather than forcing through a set of new negotiations which most developing countries do not want, developed countries must instead review and radically reform the existing rules.

Myth 5: A WTO agreement on investment will be better for developing countries than negotiating bilateral treaties with industrialised countries because they can 'club together' in the WTO and exercise greater collective power.

The claims of the myth-makers...

According to the UK Government, "[A framework of multilateral rules on investment] could give rise to greater investor confidence compared to current bilateral agreements but at the same time enhance the power of smaller developing countries, who can be squeezed in bilateral negotiations."⁴³

According Clare Short, former UK International Development Secretary, "[A WTO investment agreement] would particularly benefit smaller developing countries who don't have the resources to develop an investment regime or to negotiate numerous individual bilateral treaties, where they would come under pressure to agree higher levels of investor protection."⁴⁴

Busting the myth...

In the two years before Doha, at least 60 developing country WTO members expressed a strong desire not to begin negotiations on the 'new issues', including investment. Up to now, despite being able to club together in the WTO, the 'power' of over 40 per cent of the WTO's membership has counted for nothing on this issue. Their views were ignored as the EU stubbornly pushed ahead with its agenda to commence talks on 'modalities' for a WTO investment agreement. There is no reason to expect that, if the EU gets its way in Cancun and new rules on investment are developed, the positions of developing countries will be taken into account any more than they have been up to now.

The EU's proposal for a 'GATS-style' approach to investment negotiations means that, once a basic framework has been set up, liberalisation is likely to take place on a country-by-country 'request-offer' bilateral basis. Developing countries will be just as isolated in a bilateral process inside the WTO as they are in a bilateral negotiation outside the WTO. The difference from a Bilateral Investment Treaty (BIT) is that any commitments they make will apply multilaterally (i.e. to all countries in the WTO).

GATS already provides direct experience of how these pressures are brought to bear on developing countries in secret bilateral negotiations, and UNCTAD's survey of developing country delegates reveals that lack of transparency in that process is hindering their ability to defend their own interests in the negotiations.⁴⁵

According to H.E. Dr. Toufiq Ali, the Ambassador of Bangladesh to the WTO, *"When you go into a bilateral format of the negotiations, you are vulnerable. Why? Because against a major developed country, you simply cannot withstand the level of scrutiny. And you do not have the strength in the numbers that you get in the multilateral process. This is exactly what happens bilaterally in the WTO. Within a multilateral context, in the WTO, sometimes developed countries are unable to get their way with us. But when you come to the bilateral mode, we find that where they are unable to persuade us to agree to something multilaterally, they apply pressure bilaterally to get it done."*⁴⁶

More broadly, the depressing conclusion from the last 18 months suggests that it may not be any easier to obtain development-friendly agreements inside the WTO than it is outside it, despite the fact that developing countries can club together. They joined forces over TRIPS and look what has happened: even the EU has tried to renege on the Doha agreement.

Myth 6: A WTO agreement on investment will be more 'transparent' and 'efficient' for companies and countries than having to deal with some 2000 Bilateral Investment Treaties (BITs).

The claims of the myth-makers...

According to Pascal Lamy, European Trade Commissioner, *"Another important benefit of multilateral rules would be to establish a level playing field amongst host countries and among investors by addressing the problems caused by the current patchwork of investment rules established at the regional and bilateral level, which result in inefficient and non-transparent investment rules, given the variations in treatment in various countries."*⁴⁷

According to the European Commission, *"The patchwork [of bilateral investment treaties] with its overlaps, gaps and inconsistencies, is unhelpful for multinational enterprises."*⁴⁸

According Clare Short, former UK International Development Secretary, "[A WTO

investment agreement] *would particularly benefit smaller developing countries who don't have the resources to develop an investment regime or to negotiate numerous individual bilateral treaties...*⁴⁹

Busting the myth...

Proponents of a WTO investment agreement argue that it will free developing countries from having to negotiate a plethora of BITs, and free companies from the variations in regulations that BITs entail. This argument is flawed for a number of reasons.

First, there is no evidence that WTO agreements act as a brake on bilateralism. Although the multilateral system became much more powerful in the 1990s, the EU and USA, among others, continued to vigorously pursue new bilateral and regional economic agreements with investment provisions. More recently, over the past year, despite its claim that bilateral treaties are unhelpful, the EU has been initiating, continuing or concluding bilateral or regional trade and investment talks with Vietnam, Chile, Canada, East African countries in COMESA, West African countries in ECOWAS, Latin American countries in MERCOSUR and Mediterranean countries.⁵⁰ Since the collapse of the proposed OECD MAI in late 1998 and announcing its desire to see WTO rules on investment instead of BITs, the UK Government has concluded bilateral Investment Promotion and Protection Agreements (IPPAs) with Bosnia, El Salvador, the Gambia, Kenya and Vietnam.⁵¹ So much for multilateralism.

Second, any WTO investment agreement would leave uncovered many aspects of investment currently included in BITs. This means first that a WTO agreement would not replace existing BITs, and second that there would be a continuing demand for more bilateral treaties to make up the shortfall. In agreement with other commentators that envisage a continued growth in the number of BITs even alongside a WTO investment agreement (e.g. UNDP⁵²), the World Bank concedes, *"In the case of the WTO, the Doha Ministerial Declaration reflects a significantly more-limited approach that clearly does not view a multilateral framework on investment as a substitute for bilateral and regional arrangements."*⁵³ The argument that a WTO investment agreement will act as a substitute for BITs is even weaker if the former is as 'light' as the EU and UK Government currently suggest. In any case, the US Government has specifically declared that it will only support a WTO investment agreement if it has no impact on the USA's existing BITs and its ability to negotiate new ones.⁵⁴

The TRIPS experience demonstrates clearly how, in terms of the obligations placed on developing countries, a WTO agreement acts as a new 'floor' and not as a ceiling. Morocco, Singapore, Chile and the whole of Latin America are now under pressure from the USA to agree to 'TRIPS plus' rules. Jordan has already succumbed.

Indeed, it is very hard to imagine the WTO agreeing to rules which genuinely discourage bilateral agreements by placing a *limit* on the demands that industrialised countries can make of developing countries, e.g. regarding deregulation.

Therefore, a WTO agreement will not get rid of the ‘regulatory spaghetti’ created by the many bilateral investment treaties (BITs). It will merely add another spoonful. Also, it will not stop countries seeking WTO-plus bilateral agreements in the future.

Myth 7: A WTO agreement on investment is merely intended to achieve ‘non-discrimination’. Surely this is a good thing.

The claims of the myth-makers...

According to the UK Government, “*The UK Government wants to include negotiations on foreign direct investment (FDI) in the WTO with a view to a simple, basic framework of rules based on transparency and non-discrimination in the treatment of foreign investors...*”⁵⁵

According to the European Commission, “*The EC and its Member States consider that non-discrimination is the linchpin of an open and efficient investment regime.*”⁵⁶

“*Should a MIF include meaningful provisions that enhance transparency, predictability and non discrimination for FDI those who will mostly benefit from it will be developing countries.*”⁵⁷

According to UNICE (A European business lobbying organisation), “*The core of a WTO agreement and essential to the creation of a level playing field for international investment is the inclusion of the principle of non discrimination between domestic and foreign owned companies.*”⁵⁸

Busting the myth...

Discrimination is a critical aspect of government policy-making, both for developmental and environmental reasons. Successful developed countries have used ‘discriminatory’ investment rules to promote domestic businesses and to ensure that foreign investment benefits society. Applying the WTO’s core ‘principle’ of non-discrimination to investment regulation is therefore not appropriate.

Most economic historians agree that during the earlier stages of development, now-developed countries (or newly industrialising countries) from the UK right through to more recent examples such as the USA, Finland, Japan, Korea, Taiwan and China have systematically discriminated between domestic and foreign investors in their industrial policy.^{59,60} They have used a range of instruments to build up national industry, including limits on ownership, performance requirements on exports or local employment, insistence on joint ventures with local firms and barriers to brown-field⁶¹ investments.

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Only when domestic industry has reached a certain level of sophistication, complexity and competitiveness do the benefits of non-discrimination and liberalisation come to outweigh the costs. As a result, countries (e.g. Taiwan and South Korea) generally move towards a greater degree of non-discrimination and liberalisation as they develop. In that sense, liberalisation is better seen as an outcome of development, not a cause.⁶²

Non-discrimination, and in particular national treatment is historically seldom part of successful development strategies. When challenged, even the most well-versed World Bank trade specialists have struggled to offer a single country which has developed on this basis.

The pursuit of investment rules by the EU is tantamount to telling developing countries, “don’t do as we did, do as we say”. Such remarkable historical amnesia on the part of rich countries seems to stem more from double standards and self interest than any genuine urge to enable others to learn from the developed countries’ past mistakes.

Proponents of an investment agreement argue that developing country ‘policy space’ can be guaranteed by making the agreement very flexible. But non-discrimination is a ‘core principle’ of the WTO, part of its institutional make-up. However much flexibility is initially provided, there will be an inevitable tendency for negotiators to chip away at developing countries’ national policy space in this and successive rounds of negotiations, forcing them into a developmentally premature application of national treatment to FDI. This is one of the key reasons why the WTO is the wrong place for pro-development investment rules.

Myth 8: A WTO agreement on investment will follow a ‘GATS-style approach’ which allows countries the flexibility to choose what, when and how to make binding commitments to liberalise.

The claims of the myth-makers...

According to the European Commission, “*An approach along the lines of the GATS model, based on commitments undertaken by each Member, is the way to allow for the flexibility that many WTO Members require.*”⁶³

“*...the GATS is probably one of the most development friendly agreements in the WTO system because of its [flexible] structure.*”⁶⁴

Busting the myth...

European Union submissions to the WTO make various references to using a ‘GATS-style approach’ to a new WTO investment agreement, claiming that this will provide flexibility. However, the GATS is not a model of flexibility. It is in fact undermining the ability of developing countries to use appropriate policies to achieve

development. In particular, the arguments over the ‘flexibility’ of the GATS are flawed because:

- Its rules (e.g. on de facto discrimination, domestic regulation and subsidies) are riddled with uncertainty, making regulators more cautious for fear of violating opaque trade laws and making it difficult for governments to list exemptions to their GATS commitments.
- It effectively requires governments to be omniscient and know, in advance, all the possible GATS incompatible regulations they, or successive governments, might want to use in future in order to list exemptions at the time of making commitments.
- It effectively ‘locks-in’ policy, making it virtually impossible, to alter commitments. This denies future governments the option to change economic course, roll-back liberalisation, increase regulation or list extra exemptions.
- It has no end-point. It requires successive rounds of negotiations aimed at progressively higher levels of liberalisation. The regulatory exemptions governments list in one round of talks are targeted for removal in the next.
- It is an extremely complex agreement involving bilateral negotiations and multilateral commitments, providing opportunities for political and economic pressure to be exerted on developing countries.

Experience with the GATS shows that a ‘GATS-style positive list approach’ does not guarantee the flexibility developing countries need to pursue appropriate policies. In fact, over time, the GATS guarantees a steady *reduction* in flexibility. As the Indian Ambassador to the WTO highlights in raising concerns over a proposed investment agreement, *“As our experience with services has shown, great pressure would be brought to bear on developing countries to give greater – and still greater – market access to developed countries in these areas in subsequent stages.”*⁶⁵ Given the explicit proposal that a WTO investment agreement should be based on the same approach as that used in GATS, it is clear that it will also fail to provide the flexibility developing countries need to protect their national development policies and to ensure that FDI works to the benefit of their economies and their peoples.

It is important to remember that countries can liberalise investment without making binding commitments under the GATS or under a new investment treaty. Critically, they are then free to ‘re-regulate’ in the future if this policy does not work. The whole point of a WTO investment agreement is to prevent countries from regulating, or re-regulating investment. As Baroness Symons, former UK Trade Minister, has stated, *“A multi-lateral framework for investment...will also help lock in individual countries’ own investment reform efforts.”*⁶⁶ A central aim for the UK is therefore to make sure that flexibility is steadily eliminated and policies are ‘locked-in’ so that countries cannot change investment policies in response to changing political or economic circumstances in the future.

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Finally, it should always be borne in mind that, although the ‘GATS-style approach’ is the preferred option of the European Union and is mentioned in the Doha Declaration, the United States and industry lobby groups such as the International Chamber of Commerce (ICC) continue to push for even more restrictive rules. The ICC is keen to point out that the statements from the WTO’s Working Group on Trade and Investment (WGTI) laying out the scope of work in the run up to the Cancun Ministerial “*does not exclude that the negotiations may deal with additional topics at a later stage*”, so their demands for far less flexible measures such as negative lists, standstill and roll back commitments may still be met.⁶⁷

Myth 9: A WTO agreement on investment will ensure countries have a ‘right to regulate’.

The claims of the myth-makers...

According to the European Commission, “*International rules on FDI, while aimed at encouraging FDI flows, should preserve the ability of all host countries to regulate, in accordance with basic WTO principles, the exercise of economic activity on their territory.*”⁶⁸

“*The right of members to regulate ‘in order to meet national policy objectives’ should be explicitly recognised.*”⁶⁹

According to the International Chamber of Commerce (ICC), “*Such an agreement should...take due account of the right to regulate in the public interest [of host governments] without discrimination against foreign investors.*”⁷⁰

Busting the myth...

It is important to explain a difference in semantics on ‘regulation’ that often leads to confusion. Effective regulation encompasses the full range of government interventions related to managing investment so that it achieves public policy objectives. This not only includes regulating how companies operate (e.g. environmental laws, consumer laws, labour laws etc.) but also includes regulations - such as requiring foreign investors to employ local people or requiring foreign investors to form joint ventures with domestic companies – that are incompatible with WTO market access and national treatment ‘principles’. There is no single ‘right’ model for development, which is why it is so critical to maintain a high degree of flexibility to use these different forms of ‘regulation’.

The experience with GATS provides a useful guide to the implications for the ‘right to regulate’ of a WTO investment agreement. In debates over GATS, the EU has often pointed to the fact that GATS preserves the ‘right to regulate’. It is true that the preamble to the GATS affirms this ‘right to regulate’ and that this has been reaffirmed in both the Doha Ministerial Declaration and in the GATS negotiating guidelines, and that these documents would be used to guide WTO Panels in the

event of a dispute. However, this does not address the key point that both the GATS preamble and these statements are expressions of general ‘expectations’ by the members. The rules on national treatment and market access, on the other hand, constitute quite specific restrictions on *how* governments can regulate investment to achieve development goals (i.e. their ability to regulate). WTO Panels will base rulings on the most specific guidance they receive from governments. The specific rules on national treatment and market access will outweigh a general presumption, however many times it is stated, that governments should have the ‘right to regulate’.

The GATS process has also enabled the EU to target specific regulations in developing countries. A leak of the EU’s GATS requests clearly demonstrates it is demanding elimination of a whole raft of investment regulations across the globe. Examples include eliminating the ability of:

- Chile to require foreign investors to retain capital in the country for at least three years from the date of entry (yet, such capital controls were once praised for helping Chile to avoid the capital flight and economic crisis befalling other Latin American and Asian countries).
- Cameroon to specify that for every CFA 5 million (equivalent to £6,250) of foreign investment at least one job must be created (yet, what is wrong with trying to ensure jobs are created?).
- El Salvador to place a 50 per cent ceiling on the remittance of profits abroad (yet, what is wrong with trying to stimulate re-investment?).
- Jordan to require foreign travel agents to implement their tours through local service providers (yet, what is wrong with trying to ensure benefits for the local economy?).

A new investment agreement in the WTO is likely to be constructed in the same way and will therefore have similar implications for the ability of governments to effectively regulate investors. Government rhetoric on ‘right to regulate’, no matter how many times it is trotted out, is an irrelevance. It is the rules that matter.

Myth 10: The ‘Voluntary Approach’ is sufficient to ensure the negative social and environmental impacts of TNC FDI are prevented.

The claims of the myth-makers...

According to the European Commission, *“The question of investors behaviour and their responsibility vis-a-vis host countries could also be addressed ...the OECD guidelines for multinational enterprises provide a useful example of how to ensure MNE’s conduct their activities in a responsible manner and in harmony with the politic of the countries they operate.”*⁷¹

According to Baroness Symons, former UK Trade Minister, *“Of course it is possible that a business may be conducted in a disreputable way. But overwhelmingly businesses are conducted properly in the current climate of openness.”*⁷²

According to a UK Government paper to MPs, *“In respect of multinationals I am aware of the concerns raised about their behaviour in developing countries. I believe that these are being tackled effectively by private, voluntary and public sector taking greater account of their economic and social and environmental impact [and] that improved disclosure and transparent will have a key role to play in delivering this.”*⁷³

According to the International Chamber of Commerce (ICC), ‘the world business organisation’, “Good corporate practice is spread more effectively by example, persuasion and peer pressure – rather than by prescriptive government codes and regulations....business is worried by the growing tendency for voluntary initiatives in the corporate social responsibility field to become mandatory in practice.”⁷⁴

Busting the myth...

A WTO investment agreement is aimed at placing legally binding restrictions on the actions of governments – something international business lobby groups wholeheartedly support. However, the enthusiasm of international business lobby groups for binding rules does not extend as far as the operations of their own member companies. As UNCTAD points out, *“The business community’s aversion to binding legal standards governing corporate operations contrasts with its strong advocacy of international legal commitments applied to the obligations of governments towards foreign investors.”*⁷⁵

As can be seen from the quotes above, government policy is completely in line with the views of big business. Businesses, they claim, should not be ‘over-regulated’. Forcing companies to comply with regulations is too ‘heavy-handed’ and the ‘voluntary approach’ is the best way to encourage best practice. However, reliance on voluntary measures and self regulation by international investors, such as the OECD guidelines to counter the negative social and environmental impacts of FDI, is insufficient. This is because the ‘voluntary approach’ has been shown to be ineffective.⁷⁶ More importantly, UNEP notes there is a growing gap between the efforts of business and industry to reduce their impact on the environment and the worsening state of the planet;

*“...in most industry sectors, only a small number of companies are actively striving for sustainability, i.e. actively integrating social and environmental factors into business decisions. And, secondly, because improvements are being overtaken by economic growth and increasing demand for goods and services: a phenomenon known as the “rebound effect.”*⁷⁷

Similarly the vast proportion of CSR (Corporate Social Responsibility) efforts are merely “greenwash”.⁷⁸

In the case of the OECD guidelines, a comprehensive critique has already been made by civil society pointing out the weak implementation mechanisms, a dependence on confidentiality rather than disclosure and weak wording. For example,

the guidelines do not even require adherence to existing international instruments such as the International Labour Organisation (ILO) convention, the Universal Declaration on Human Rights and international environmental agreements. Neither is there a enforcement or sanction mechanism or an effective means for citizens to seek justice.⁷⁹ A recent study shows that the guidelines have not been properly implemented, have hardly even been used and when they have the results have been inconsistent.⁸⁰

What is needed is a system of legal rights for the people affected by the foreign investment including rights to information, to participate in decisions (including the right to say no) and to seek redress, and a system of obligations for the corporations and their home countries to ensure transparency and accountability around the world. The WTO is the wrong institution for such an agreement as it is beyond the WTO's remit and expertise.

Myth 11: Governments have learned their lessons from the aborted attempt to negotiate a Multilateral Agreement on Investment (MAI) in the OECD. The proposed WTO Agreement will be nothing like the MAI.

The claims of the myth-makers...

According to the European Commission, *“The exercise in WTO will be significantly different from the approach taken in the MAI negotiations in the OECD.”*⁸¹

According to the UK Department of Trade and Industry, *“The EU position differs greatly from the OECD Multilateral Agreement on Investment (MAI) negotiations...unlike the MAI, the WTO would have only state to state dispute settlement procedures and the definition of investment would also be narrower (FDI only, so excluding portfolio investment).”*⁸²

Busting the myth ...

The EU may well have modified its own proposals to deal with some of the concerns raised by the public during the MAI campaign. However, it has by no means addressed all the concerns – as this briefing demonstrates – and in any case, the EU cannot, on its own, determine the eventual outcome of any WTO negotiations. Other parties, who have no interest in a ‘light’ agreement, will also have a hand in shaping the rules.

For example, the International Chamber of Commerce (ICC) – a major international corporate lobbying organisation - has called for MAI-style rules such as ‘investor-state’ dispute resolution. For example, the ICC has stated that, *“besides regulating disputes between states, an agreement must also provide the means to settle disputes between investors and host governments.”*⁸³

The ICC has also called for the inclusion in any agreement of protection for investors

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against, “*measures tantamount to expropriation.*”⁸⁴ It is this rule, combined with ‘investor-state dispute resolution’, that has caused so many problems in the North American Free Trade Agreement (NAFTA) and has allowed companies to challenge new social and environmental laws on the basis that they adversely affect their operations and are therefore ‘tantamount’ to expropriation of their investment by the government.

The US Government has also publicly stated that it is not interested in a WTO investment agreement unless it is a strong agreement with broad coverage and strict rules. For example, a US Trade Journal has recently reported that, “*On investment, the U.S. is ready to move forward provided the WTO would agree to a broad definition, and that future WTO rules would not prevent the U.S. from entering into more advanced investment agreements bilaterally, sources said.*”⁸⁵ This, along with the content of the only US submission to the working group on investment,⁸⁶ seems directly at odds with the EU’s stated objective of not including portfolio investment and is of particular concern given that the same report claims, “*The U.S. and EU seem to have narrowed their differences on the controversial Singapore issues of competition and investment.*”⁸⁷

Bearing in mind the more radical ambitions of business and the US Government, it is also worth remembering that the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) started out as a proposal for an agreement to deal with counterfeiting. During the negotiating process, after heavy pressure from big business, it was transformed completely to cover rules on all kinds of intellectual property such as patenting (including patenting life-forms), copyrights and trademarks. The TRIPs Agreement has caused massive public protest and, although many countries wish to change its rules, the EU and USA have blocked it.

Given the obvious desire of business organisations and the US Government for a far-reaching WTO investment agreement, and the past history of WTO rules expanding during negotiations, there is no reason to believe that, once talks commence, the self-proclaimed ‘modest’ public ambitions of the EU will not change completely resulting in an MAI style agreement.

Myth 12: There is no alternative to a WTO investment agreement.

The claims of the myth-makers...

According to the European Commission, “*The WTO appears as the only multilateral forum that can fully take into account the interests of both developed and developing countries in their position as home and/or host countries to international investors.*”⁸⁸

Busting the myth ...

In contrast to the twin myths that first, a WTO-style agreement is the ‘only way’ to attract and regulate FDI to improve livelihoods, and second, opposing it is equivalent

to being ‘anti international rules’, a variety of alternatives exist including possible international agreements.

A critical first step is to establish the aim of any investment agreement(s). The principle reason for objecting to an investment agreement in the WTO is that its main focus would be the liberalisation of investment based on ‘non-discrimination’. As already mentioned, there are a number of reasons why governments may want to discriminate between investors in order to promote poverty reduction or environmental protection. ‘Non-discrimination’ is therefore not a sound basis on which to develop an international agreement.

Principles for a fair agreement on investment have been developed by a United Nations expert working group.⁸⁹ These could form the basis for a set of core principles and an eventual agreement on international investment. These ‘criteria for the development friendliness of investment frameworks’ emphasise the role of rule-based systems in allowing the discrimination of investment according to its ‘quality’, particularly the contribution that it makes to development aims. The criteria also call for a balance between the rights and the responsibilities of both government and investors.

In contrast, the WTO’s ‘liberalisation objective’ does not allow for a balance to be achieved between national sovereignty, the rights of investors and the responsibility of investors to the communities and society in which they operate. Proposals in favour of an MIA at the WTO envisage a new set of disciplines and obligations on host countries, bound and enforced through the mechanisms of the WTO. Yet there is no mention of the parallel responsibilities of investors and their home governments. This imbalance threatens to undermine national and international attempts to hold foreign investors to account for their activities – and in particular transnational corporations (TNCs).

In part, this imbalance is because the WTO is a negotiating forum for nation states, and has no jurisdiction over investors. This highlights further why the WTO is not an appropriate forum for dealing with investment issues, which require a different set of instruments and expertise from those established under the trade mandate of the WTO.

The binding nature of host countries’ WTO liberalisation commitments can be contrasted with the voluntary nature of TNC codes of practice, be they adopted unilaterally by individual companies or applied on an international basis, such as the ILO and OECD guidelines. Attempts to turn UN codes of conduct on TNCs into enforceable international treaties have been actively resisted by developed country governments – yet the provisions of codes such as the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the Draft Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (formerly the Draft Human Rights Principles and Responsibilities for Transnational Corporations and Other

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Business Enterprises) are there to be incorporated into legally binding agreements, if developed countries are prepared to drop their opposition to such a move. What is more, the developed countries were instrumental in disbanding the UN Center on Transnational Corporations in the early 1990's.⁹⁰

Developing country delegates to the WTO have raised this issue of imbalance on numerous occasions, most notably in the joint submission by six delegations, including China and India, in November 2002.⁹¹ The call to restore balance between host countries' and investors' obligations has also gained greater international momentum in the wake of the recent spate of corporate fraud and accounting scandals. The plan of implementation agreed at the World Summit on Sustainable Development held in Johannesburg in September 2002 called for urgent action to promote corporate accountability at all levels, including through "*full development and effective implementation of intergovernmental agreements*", as a means to making globalisation equitable and inclusive.

It is clear, therefore, that, as well as there being no shortage of evidence to back up the need for regulation, there is also no shortage of alternative suggestions and workable policy ideas. There are alternatives to WTO rules; it is political will that is now needed to follow through on these ideas and make good the new commitment to international regulation made at the Johannesburg World Summit on Sustainable Development.

Consideration could also be given to a small tax on currency exchange or FDI (an example being the proposed Tobin tax) to dampen speculation and to generate and redistribute financial resources to measures that promote sustainable societies and to those areas of the world that FDI does not reach.⁹²

Myth 13: If developing countries want CAP reform, they need to 'give' something in return, such as new rules on investment.

The claims of the myth-makers...

According to Pascal Lamy, European Trade Commissioner, "*EC has obviously to open further open its markets to agriculture, peak industrial sectors, tariff escalation and so on. We will do so, in return for some improvements in openness from developing countries...and if our partners sign on to some rule making areas.*"⁹³

According to a recent report in a trade journal, "*The EU views the talks [on investment and other 'new' issues] as essential for securing gains in areas of economic interest to Brussels in order to balance off the concession it is expected to make in the area of agriculture.*"⁹⁴

Busting the myth...

The 'balance' of concession referred to above is entirely theoretical. There is no way

that any politician or government official can sensibly weigh up and compare the social, economic and political costs and benefits of agricultural tariff and subsidy reform on the one hand against some new rules on investment on the other.

Even if they could, the prospects for significant reform of the Common Agricultural Policy (CAP) currently look bleak. According to the Guardian newspaper in the UK, the French President Jacques Chirac “*stitched up a deal on the future of CAP spending at a private meeting with the German chancellor Gerhard Schröder on the eve of the summit* [on EU enlargement in October 2002].”⁹⁵ The deal struck by the EU member states means that the overall budget for the CAP will continue to rise (albeit slowly) by 1 per cent per year until 2013.⁹⁶

Even if inflation in Europe outstrips this rate of increase, any real terms decrease in this part of the CAP budget will be modest. In any case, the so-called ‘second pillar’ of CAP – ‘rural development’ payments – falls outside of this agreed budget increase.⁹⁷ This means the EU has placed no budget limit on so-called ‘green box’ measures in the WTO Agreement on Agriculture and such flexibility could be used by the EU to accommodate the increased spending needed to satisfy the demands of the Eastern European countries acceding to the EU. While some ‘green box’ measures are entirely legitimate and have a relatively low impact on other producers, the ‘green box’ is by no means without fault. For example, a significant proportion of US support payments are green box compatible but in fact, on closer inspection, are still closely tied to production. An example would be the production flexibility contracts (which have now been replaced by direct payments in the US Farm Bill).

What the recent Franco-German deal amounts to is an admission from the EU that significant subsidy reduction is not going to happen in the near future. There could even be an increase. All that the EU can offer both before and at Cancun is to bind the reforms it has already undertaken since the Agreement on Agriculture was created in 1995 or further juggle the way in which subsidies are provided. The European Commission’s current proposal for CAP reform confirms this situation.

Developing countries should not be misled into believing that the EU’s proposals for WTO agricultural reform amount to ‘substantial reductions in trade-distorting domestic support’ and ‘reductions of, with a view to phasing out, all forms of export subsidies’ as the Doha Declaration requires. The EU tabled a reduction of 45% in the value of export subsidies and a 55% reduction in its aggregate measure of support (amber box) from its final bound commitments in the Uruguay Round. Partly because the EU negotiated favourable reference years and high final bound levels during the Uruguay Round and partly because the EU juggles the way in which subsidies are provided, the EU is already at (or close to) these reductions. The EU’s current proposal would in effect not commit the EU to do anything more than it is already doing. This is disingenuous because it misleads other WTO member states into believing that the ‘new’ reduction proposals are a commitment to further cuts in subsidies.

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Even if the European Union proposes to rearrange its subsidies to make them ‘less trade distorting’, reduce its export subsidies and provide more market access, this is simply not worth giving up our future development policy options for. As one respected Harvard economist - and significant contributor to the recent report to the United Nations Development Programme on trade - concludes, “*The exchange of reduced policy autonomy in the South for improved market access in the North is a bad bargain where development is concerned.*”⁹⁸

Finally, claims that, because of the ‘political difficulty’ in reforming the CAP, the EU must have something in return to make CAP reform acceptable to the European public are spurious. It will make little or no difference to the European public – and in particular the agricultural community – if the EU gets WTO rules on the ‘new issues’ that ensure extra market access for European multinationals. Arcane bits of trade law are not election issues and CAP reform will be politically difficult for some European countries regardless of what the EU can ratchet out of the developing world in return.

In summary, the EU should implement its previously agreed commitments to reform the CAP and move towards sustainable agriculture without extracting further concessions from developing countries in return.

Conclusion

Once you strip away the myths and the rhetoric, you are left with the simple truth; an investment agreement in the WTO will primarily benefit a small number of large transnational companies who will get greater ‘rights to roam’ around the global economy with no additional responsibilities.

It is time to view the proposed WTO investment agreement for what it is and what it is not. It *is* about corporate rights for big European multinationals without any responsibilities. It *is* about the European Union trying to get something in return for some minimal CAP reform. And it might even be about a political legacy for European Trade Commissioner Pascal Lamy. However, make no mistake, it has *nothing* to do with development and it is *not* about responding to the needs and wishes of European citizens.

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