



InvestmentWatch

Corporate Conquistadors in Cancun

The EU offensive for WTO-Investment negotiations

InvestmentWatch Info Brief, July 2003

At the fifth World Trade Organisation (WTO) ministerial meeting (Cancun, Mexico, September 10th-14th) the WTO membership will decide whether to begin negotiations on a multilateral investment agreement. Citing strong evidence that a WTO -Investment agreement is likely to have extremely adverse social and ecological impacts, a broad range of civil society groups (as well as a large number of developing country governments) are resolutely opposed to such a launch. The European Commission (EC), in contrast, is leading the push for a WTO - Investment agreement, reflecting the EC's determination to advance the (European) corporate agenda of creating new opportunities for the expansion of EU-based multinational corporations. Despite heavy doses of political spin, and assurances that it foresees only a mild, supposedly 'basic' agreement, a range of factors suggest that in the longer-term the EC hopes to transform WTO-Investment into an even more radically corporate -friendly agreement. One such factor is that EU corporate opinion - which the EC has relied on extensively in the formulation of its negotiating objectives and as such provides the underlying rationale for EC's agenda - is increasingly prioritising the launch of WTO-Investment negotiations, and desires a considerably more far-reaching model than that currently proposed by the EC.

The EC's obsessive pursuit of corporate -friendly multilateral investment agreements

Background

In Cancun, the green light to begin negotiations on a WTO -Investment agreement (and several other controversial issues, collectively known as the "Singapore Issues") will only be given if there is "*explicit consensus*" amongst the WTO membership in favour of this. At the previous WTO ministerial in Doha (Qatar), November 2001, the EU (and other proponents such as Japan) came within touching distance of forcing the launch of negotiations, only to be frustrated by rearward resistance from India and other developing countries. The deferment of the decision to Cancun is a consequence of this. It is widely recognised that the EC – which negotiates on behalf of the EU - took the lead in the Doha onslaught, using power politics to sideline developing country opposition¹. The EC's determination to launch the Singapore Issues remains so great that there is immense concern that Cancun will bring a repeat of these unacceptable tactics. Indeed, it seems that the EC attaches far more importance to WTO-Investment and the other Singapore Issues than the individual EU member states do.²

What was the OECD's Multilateral Agreement on Investment (MAI) ?

The MAI was an extremely ambitious and corporate-friendly attempt at an investment agreement, which sought to achieve maximum, immediate investment liberalisation and extensive rights for multinational corporations. Negotiations proceeded for several years out of the public eye until a draft MAI agreement was leaked in 1997, sparking outrage and a huge global civil-society campaign. Stoutly defended by the global corporate lobby, and pushed aggressively by the US and the EC, the negotiations nevertheless collapsed after France (followed by several other countries) withdrew from negotiations in 1998. The civil society campaign was instrumental in pushing the implications of the MAI to the forefront of decision-makers' minds. As a result of this controversy, it is now considered politically dangerous to promote such ambitious, "big-bang" investment agreements. The EC (for example) goes to great lengths to argue that its current WTO-Investment proposals are substantially different from the MAI.

The origins of the EC's current WTO-Investment push date back to the mid-1990s, when the EC embarked upon a twin-track strategy of simultaneously promoting the adoption of multilateral investment agreements both within the OECD (Organisation for Economic Co-operation and Development) and the WTO.³ With the OECD project - the now notorious Multilateral Agreement on Investment (MAI) - grinding to a halt in late 1998, the EC instantly switched its focus to the WTO, and has since advocated a WTO -Investment agreement with almost religious fervour.

Revealing the EC's real agenda

The EC embellishes its push for WTO-Investment with a huge amount of 'pro-development' rhetoric, and argues that it is only pursuing what it claims is a basic, flexible agreement. In particular, its proposal suggests a 'narrow' definition of investment (e.g. excluding destabilising short-term capital flows), a "bottom-up" negotiating mechanism – as in the General Agreement on Trade in Services (GATS) where WTO members choose which sectors to liberalise rather than choosing which sectors to exempt – and is silent on politically-charged issues such as the rights individual private corporations will inherit from the agreement.

The EC's 'basic' model is nevertheless highly dangerous. Civil society argues that, because of the liberalising dynamic of WTO negotiations, even a so-called 'basic' WTO-Investment agreement will greatly undermine the right of nations and communities to regulate the entry and performance of foreign investment and investors in their territories.

History shows us that most successful economies have mitigated the negative impacts of inward foreign investment, and accentuated its positive impacts, by (for example) restricting which sectors investment flows into, by forcing foreign investors to assist in the development of local industry (by, for example, mandating technology transfer, or joint partnerships), and positively discriminating in favour of local companies and investors.⁴ Yet such interventionist

measures are precisely those that even a 'basic' WTO-Investment agreement would constrain. A fledgling economy deprived of the ability to use such measures has little defence against the economies of scale enjoyed by multinational corporations, greatly damaging the prospect of developing prosperous, democratically-controlled and ecologically-sustainable economies, not just in the South but in the North also. Furthermore, just like GATS itself, the EC's proposed "GATS-style" negotiating mechanism will still cause the progressive, effectively irreversible erosion of policy flexibility, and lock-in existing investment liberalisation, in effect foreclosing the prospect of returning to less neoliberal regulatory frameworks for managing foreign investment.⁵

The events now unfolding in Argentina and other Latin American countries, for example, where there is growing demand for more socially-just policies following the failure of the neoliberal economic model, demonstrate how crucial it is that economies refrain from permanently binding investment liberalisation within the WTO. Indeed, it is the potential for even a 'basic' WTO-Investment to permanently lock-in and multilateralise neoliberal policy that makes it such a profoundly dangerous agreement; the global neoliberal architecture cannot be fully complete without it.

The 'basic' model is only the beginning

Moreover, despite the fact that the EC's 'basic' model would be bad enough, there is a growing amount of evidence that the EC has much higher ambitions. The following quote is taken from an internal EC paper – penned only two weeks after the official collapse of MAI negotiations - that Corporate Europe Observatory (CEO) obtained early in 1999:-

*"...even if a perfect result is not achieved in a first agreement, the main point is to get investment rules firmly implanted in the WTO. Further improvements of these rules and additional liberalization can be part of future agendas, once we have basis from which to work."*⁶

Recent developments inside the WTO also give cause for concern that the EC is hoping to build a 'slow-motion MAI'. Normally, before embarking on negotiations, it is usual for WTO members to agree what the final agreement ought to roughly look like, to prevent a wildly unexpected end result. However, the EC has caused controversy by arguing that WTO members need only agree on superficial issues (such as the number of negotiating meetings) to allow negotiations to start. This is clearly an attempt by the EC to artificially create the "explicit consensus" it craves at Cancun. Yet an (intended?) side-effect of such an approach to negotiations is that, if adopted, the final form of the WTO-Investment agreement will not be pre-judged, potentially opening the door to the emergence of a "high standard" (i.e. exceptionally corporate-friendly) agreement.⁷ As Walden Bello noted in a recent presentation, the EC's proposal is tantamount to asking for a "blank cheque".⁸ (Such an outcome would not be unprecedented in WTO jurisdiction; the deeply controversial TRIPS agreement is testament to what can happen if the power players within the WTO are handed an open-ended negotiating mandate on an issue of high corporate interest.⁹)

"One official privately admitted that the EU and Japan, the main proponents for the investment negotiations, have agreed to deliberately avoid any detailed discussions on what a future investment pact should cover so not as to antagonize any wavering WTO members, leaving the scope of an agreement to be determined in the negotiations." *International Trade Daily*, June 18th, 2003¹⁰

In light of this, the alarming revelation that the EC and Japan are deliberately avoiding discussions on substantive issues (see above), and comments from Trade Commissioner Pascal Lamy (the EC's chief negotiator) such as "What the final result will be I can't say"¹¹, understandably cause great concern given the EC's historic determination to build a "perfect" WTO-Investment agreement.

The tactical positioning of the US on the WTO-Investment issue further undermines the EC's assurances that it only wants a 'basic' agreement. The US, which has been strategically quiet on the issue, now says that it will engage in any WTO-Investment negotiations that arise, but

that its cooperation and support is conditional on the agreement including a very broad definition of investment, and the requirement that any negotiated elements of the agreement be of the highest (i.e. most corporate friendly) standard.¹² Hence, it seems contradictory for the EC to promote a 'basic' model at the same time as pushing for an open-ended negotiation in which the US will undoubtedly insist on features beyond those currently proposed by the EC. Indeed, there is growing concern that the EC and US are colluding on this issue¹³; it could, for example, be politically very useful for the EC if it can position itself as the more 'moderate' protagonist of the two.

Certainly, it remains a fact that many (if not the large majority) of developing countries are opposed to or at least very uneasy about WTO-Investment¹⁴, and most major development NGOs are scathing about the agreement, whilst EU industry is (as we shall see) very much in favour of the idea.

In fact, ever since the beginning of its WTO-Investment campaign, the EC has been keen to court industrial support, and private sector perspectives have been directly and extensively consulted in the shaping of the EC's proposals. During 1999-2000 the EC conducted a comprehensive survey of 10,000 large businesses from the EU to ascertain their ambitions with regard to a WTO-Investment agreement.¹⁵ More covertly, the EC also championed the "Investment Network" (IN), a heavily corporate-oriented body which the EC clearly wanted to use to help generate direct, executive-level support for their WTO-Investment campaign.¹⁶ Limited, stripped-down minutes to IN meetings were released by the EC only after heavy pressure from CEO and other NGOs was successful in unlocking access to the full, revealing minutes of the first IN meeting. The EC has not ruled out the re-activation of the presently-dormant IN should WTO-Investment negotiations begin:- *"It is difficult to predict today whether the IN will need to be reactivated in case negotiations are launched at Cancun."*¹⁷ Indeed, as experiences with GATS and the European Services Forum (ESF) demonstrate, the EC does not hesitate to directly involve the private sector once WTO negotiations are underway.¹⁸

Moreover, the natural sympathies of many senior EC officials seem to lie with the corporate world. For example, Robert Madelin - the official responsible for sustainable development in the EC's trade department - recently (April 9th 2003) had a lead speaking role at the strategy-oriented, private sector seminar *"Cancun: Multinationals In The Firing Line Again?"* Hosted by public relations firm APCO, the seminar boasted opportunities for corporate staff to have questions such as *"What will the protestors be doing and saying?"* and *"What should you do and say?"* answered.¹⁹

The problem with the EC's close relationship with business is that it institutionalises the one-sided corporate agenda to the exclusion of other stakeholders' priorities. This democratic deficit is particularly pronounced given the overwhelming strength of the civil society critique against a WTO-Investment agreement.

Sidelining civil society

The arguments against WTO-Investment are so strong that a broad coalition of civil society groups and NGOs, from both the North and South, and with backgrounds ranging from mainstream to radical, resolutely oppose the launch of negotiations.²⁰

Despite this, the EC presses on determinedly, responding not only with its development-friendly rhetoric – cynically describing its proposed WTO-Investment model as an "Investment for Development Framework (IDF)"²¹ - but also by pointing out that it has a negotiating mandate (dating back to 1999) from the EU member states. However, it increasingly seems that WTO-Investment is not such a priority for individual EU member states.²² Asked why, therefore, they are letting the EC push such a controversial and potentially destabilising agenda, they point to the EC's mandate and the fact that their ambivalence on the issue is not a good enough reason to retract that mandate. This circular, 'plausible deniability' further undermines the accountability of the EC.

The effective exclusion of the civil society and developing country viewpoint, and the promotion of the corporate agenda, is unfortunate enough in its own right. However, it is all

the more worrying because it tells us a lot about where the EC's WTO-Investment strategy is probably heading; it hardly seems realistic that the EC will be satisfied with a 'basic' model.

Finally, it is likely that many of civil society's questions about the EC's true WTO-Investment agenda would be answered if the EC committed itself to public-interest transparency and released internal documents related to its preparation of possible WTO-Investment negotiations. CEO has since the summer of 2002 pursued access to these documents, but the EC claims that releasing them would harm "international relations". The European Ombudsman has now started an investigation into whether the EC's secrecy is violating EU's public transparency rules.²³

WTO-Investment and the corporate perspective

*"...I do not want to leave any doubt about the continuing great interest of the (multinational) business community in an international investment framework as declared times and again in preparation of the WTO Doha and Cancun context (BIAC, UNICE, ICC etc)" Kristian Ehinger, Business and Industry Advisory Committee (BIAC) to the OECD, May 2003*²⁴

As will be demonstrated shortly, it seems that WTO-Investment is increasingly a priority for European corporate lobby groups. However, compared to the feverish levels of corporate campaigning that were witnessed during the MAI, support for WTO-Investment seems fairly low-profile, particularly at the global level.

There are a number of explanations for this. An immediate and extremely relevant factor is that there is simply no need for the EU corporate lobby to push hard while the EC, with a (presently) secure negotiating mandate, is carrying the issue forward aggressively within the WTO.

However, other factors include the political dynamics of the wider WTO negotiations, and the different positions held on the WTO-Investment issue by the US and EU corporate lobbies.

The 'ideal' WTO-Investment agreement, and US industry hesitance

From the corporate perspective, the 'ideal' WTO-Investment agreement should include a very wide definition of investment, enable free access to foreign markets, require that (once inside a foreign market) investing companies be treated as well as domestic companies, endow the investor with significant legal protection, and incorporate mechanisms by which the investor can invoke arbitrations against the host government ("investor-to-state" dispute settlement.) Additionally, the ideal investment agreement should lock liberalisation in permanently, be designed to expand its coverage over time ("progressive liberalisation"), prevent host governments from stipulating "performance requirements" on incoming investment (e.g. measures to ensure the local population benefits such as mandatory joint partnerships with local companies), and allow the unfettered repatriation of profits. Needless to say, an investment agreement with such "high standard" features profoundly restricts the extent to which governments and communities can exercise democratic control over their economies.

Given that even the EC's 'basic' model – which falls far short of the corporate ideal – is controversial inside and outside the WTO, it is highly unlikely that the corporate ideal will be attained overnight. This is why the US corporate lobby remains at best luke-warm about WTO-Investment; US corporations already enjoy the exceedingly "high standards" of investment liberalisation and protection found in NAFTA (North American Free Trade Agreement), US-negotiated FTAs (Free Trade Agreements), US-negotiated BITs (Bilateral Investment Treaties) and potentially in the hemispheric FTAA (Free Trade Area of the Americas.) They are concerned that a weaker WTO-Investment agreement will legally and/or politically undermine US attempts to continue negotiating such high standards of treatment for US corporations.²⁵ There is also concern that prematurely pushing for an agreement within the WTO will damage longer-term attempts to build what corporations would consider an 'ideal' WTO-Investment agreement, as well as destabilising 'safer' WTO deliverables such as service liberalisation (GATS) and reductions in industrial tariffs. In fact, one powerful US lobby group recently came out against the launch of talks at Cancun²⁶, and another has argued that

the WTO should (at least initially) focus only on a comparatively uncontroversial core set of investment issues to ensure that these are of the highest quality.²⁷ Many other US lobby groups, while not being completely silent, are saying very little indeed about WTO-Investment.

EU industry leading the charge

In contrast, leading EU lobby-group UNICE (Union of Industrial and Employers' Confederations of Europe) has now listed the launch of negotiations on a relatively high-standard WTO-Investment agreement as one of its four top priorities for the remainder of the Doha round²⁸, stipulating that greater market access is more of a priority to it than investor protection.²⁹ UNICE's positive stance can be added to other powerful, supportive voices such as the International Chamber of Commerce (ICC)³⁰ – which in March 2003 announced its intention to push for an extreme, corporate-friendly WTO-Investment agreement – the Business and Industry Advisory Committee to the OECD (BIAC), the Transatlantic Business Dialogue (TABD), the European Services Forum (ESF), and a number of other influential lobby groups from both inside and outside Europe.³¹

In addition to the prioritisation of the issue by UNICE and ESF (and tacit support from the European Roundtable of Industrialists, ERT³²), there is quite a lot of evidence that EU industry has been promoting WTO-Investment rather heavily. According to one TABD participant the push for TABD endorsement of WTO-Investment came from its EU bloc, with the final position statement (which is structurally identical to the BIAC statement oddly) being a product of EU corporate enthusiasm and US nervousness about existing investment treaties not being undermined.³³ (It may therefore be the case that the tactical restraint shown in the TABD and BIAC statements is in fact the hallmark of US influence.) Similarly, the September 2002 endorsement of WTO-Investment by AEBF (Asia Europe Business Forum) came after many years of the European private sector repeatedly bringing the issue to the table, only to be shunned by their Asian private-sector counterparts.³⁴ Furthermore, and perhaps most revealingly, provisional results from the 2003 member survey of the EABC³⁵ (European-American Business Council) show that, only when the results are disaggregated along US-European lines, does it become apparent that WTO-Investment is now the top priority of its European members, but barely a priority at all for its US members.³⁶

Possible reasons for the greater level of EU enthusiasm include the competitiveness of EU foreign investment exports compared to the US³⁷, a more multilateral outlook and, probably most importantly, a determination to ensure that the standards of market access and legal protection experienced by EU corporations investing abroad does not fall too far behind the high standards currently enjoyed by US corporations.

EU and US industry uniting to save the Doha Round

This disjuncture between the US and EU corporate viewpoints is particularly relevant in the context of the wider WTO negotiations. It is widely held that the Doha round of negotiations as a whole is in trouble, and commentators are starting to talk about Cancun becoming a repeat of the Seattle ministerial, which collapsed as a consequence of irreconcilable disagreements between WTO members. This time, there are high tensions between developed and developing countries over issues such as agriculture and access to medicines, as well as the Singapore Issues themselves. Additionally, spats between the US and EU both inside and outside the WTO (for example on Iraq, the Foreign Sales Corporation WTO case³⁸ and the GM food WTO case) are casting a shadow over proceedings, although it would be naive to assume that these US-EU rifts will prevent the US and the EU from working together in Cancun.

Given the perilous state of the Doha round, corporate lobbies have started to unite across borders to help prevent the round from collapsing. This can be seen in a recent flurry of transatlantic and global joint statements. The most high-profile of these to date has been the initiation of a joint campaign to bring the Doha round to a successful conclusion by six of the world's most powerful lobby groups:- ICC, ERT, UNICE, Nippon Keidanren (Japan), BRT (the US Business Roundtable) and CCCE (Canadian Council of Chief Executives.) This campaign

began with a direct address to the G8 leaders in Evian in May/June 2003.³⁹ Other alliances include the ERTFBRT declaration on the eve of the EU-US Summit (June 2003)⁴⁰, and a joint statement by the UK and German national business federations in association with two leading US lobby groups.⁴¹

These groups recognise that the best way to 'save' the Doha round is for WTO members to focus on resolving key negotiating blockages (in the area of agriculture in particular) and to move forward in less controversial areas such as services and industrial tariffs. This fact, combined with the need for these transatlantic and global corporate alliances to produce strong, united position statements, explains why the issue of WTO-Investment (with its uneven distribution of support between US and EU corporations) hardly figures at all in these statements.

However, despite the 'masking' effect of these joint declarations, and the fact that the EC is currently leading the corporate agenda through the WTO, there is good reason to believe that corporate campaigning will increase post-Cancun should the EC successfully force the launch of negotiations. As UNICE's investment policy advisor recently stated, *"Business is already interested in the issue and it will become even more interested once the negotiations are launched in Cancun."*⁴²

Certainly, industry has already shown its willingness in the past to adjust its enthusiasm for this issue in line with the mood inside the WTO. Whilst a shock, short-term progression towards a high-standard agreement would undoubtedly stimulate great interest from the corporate lobby, industry appears ready to 'dig in' for the long-haul. In fact, a number of lobby group position statements explicitly recommend building up WTO-Investment in multiple stages⁴³ – rather than pushing for everything at once – and even in statements that make no such recommendations there is often an implicit acceptance that this is the way their dream WTO-Investment agreement will have to be built.

Thus, whatever the starting point of a WTO-Investment agreement, the EC and the corporate lobby are likely to progressively press for its expansion, with the EC (as well as the US⁴⁴) repeatedly upgrading its WTO demands in line with the ever-higher standards demanded by the corporate agenda.

Countdown to Cancun

Not much time is left before the decisive WTO summit in Cancun. In order to get the EC's mandate for promoting WTO-Investment negotiations withdrawn, one or more EU governments would have to break ranks. But while an open rebellion by EU governments, causing a major political crisis, is unlikely to happen before Cancun, intensified civil society pressure could have a major impact. The fact that a united civil society opposes the launch of WTO-Investment talks effectively undermines the EC's claims that it is pursuing a sustainable development agenda on behalf of the global environment and the world's poorest. In Cancun itself, this lack of legitimacy may also help to strengthen the resolve of developing country governments to continue blocking the launch of these negotiations. Some EU governments, one can hope, may try to reign in Trade Commissioner Lamy's use of bullying tactics, and limit the freedom he has to use other issues as bargaining chips, which would make it harder for him to force developing country governments to give in. In any case, mass demonstrations, actions, happenings and other protests will be crucial to underline the global opposition to corporate-centred trade and investment rules, so see you in the streets of Cancun and cities around the world!

To assist in the co-ordination of this growing civil society campaign, CEO is maintaining www.investmentwatch.org, a central site where all the latest (critical) news, papers, position statements, 'calls for action' and so on can be found, with dedicated intelligence sections such as a database of the latest corporate lobby group positions.

Appendix: Some corporate groupings supportive of a WTO-Investment agreement

See corporate positions database at www.investmentwatch.org for more details. (EU member state federations have not been included here.)

ICC (International Chamber of Commerce)
ESF (European Services Forum)
UNICE (Union of Industrial and Employers' Confederations of Europe)
AEBF (Asia-Europe Business Forum)
TABD (Transatlantic Business Dialogue)
BIAC (Business and Industry Advisory Committee to the OECD)
Nippon Keidanren
Eurochambres
Eurocommerce
CCCE (Canadian Council of Chief Executives)
ERT (European Roundtable of Industrialists) – **tacit support**
NFTC (US National Foreign Trade Council)

Endnotes

¹ See "Power Politics in the WTO" (Second edition, January 2003) by Aileen Kw a, Focus on the Global South, <http://www.focusweb.org/publications/Books/power-politics-in-the-WTO.pdf>

² See endnote 1, plus also see WWF / Friends of the Earth Europe (FOEE) joint press release (20 June 2003), "Extension of Commission competence to include foreign direct investment": *"The Commission is energetically pursuing the launch of negotiations for an investment agreement at the WTO: Negotiations which are opposed by civil society organisations north and south, and by many developing country governments. Moreover, EU Member states themselves are far from unanimous on these negotiations."*

³ See the CEO briefing "MAlgalomania" (<http://www.corporateeurope.org/mai/index.html>) or consult the book "Europe Inc." by Balanya/Doherty/Hoedeman/Ma'anit/Wesselius, Pluto Press 2000

⁴ A particularly good briefing in this regard is Duncan Green and Ha -Joon Chang's CAFOD / South Centre paper ("The Northern WTO Agenda on Investment: Do as we say, Not as we did" - June 2003) which documents how now -industrialised countries used precisely these kind of investment regulations to strengthen their own economies. See <http://www.cafod.org.uk/tradejustice/doaswesay20030623.shtml>

⁵ See the Friends of the Earth / World Development Movement joint publication, "Investment and the WTO – Busting the Myths", June 2003, http://www.foe.co.uk/resource/briefings/investment_and_the_wto_bust.pdf

⁶ The paper was prepared by DG Trade for discussion at the Article 133 Committee, and is dated 15th December 1998. See <http://www.corporateeurope.org/mai/eu/113invest.html> for more details.

⁷ See "The EC's Trojan Horse: The Investment for Development Framework", Geneva Update, April 9th, 2003, <http://216.43.125.72:83/index.cfm?mthd=msg&ID=71692>

⁸ "The Crisis of the WTO and the Crisis of the Globalist Project: Update on the World Trade Organization and Global Trends", May 2003, <http://www.ifg.org/analysis/wto/cancun/bellowto.htm>

⁹ "On a number of occasions concerns were raised by a variety of witnesses, particularly from civil society and developing countries, about the prospects of discrete negotiations 'snowballing' and resulting in a broader than intended agreement which was far more intrusive than originally intended. Many argued that the agreement on TRIPS was an example of such an agreement." page 40, "Expanding WTO Rules? Should there be WTO rules on competition, investment, trade facilitation and transparency in government procurement? – A Federal Trust Report on the Singapore Issues", June 2003, http://www.fedtrust.co.uk/Media/FedT_Sing_Issues_Report.pdf. The corporate influence behind TRIPS is well-known; at the World Development Movement (WDM) annual conference in 2002 the WTO Director General (Dr. Supachai Panitchpakdi) said that TRIPS, "... was one of the glaring examples of the pressure coming from the corporate sector on governments – that ultimately resulted in some agreements being forced on governments..."

¹⁰ See "U.S., EU Service Industry Groups Diverge on WTO Investment Pact", International Trade Daily, June 18th 2003, available at <http://www.investmentwatch.org/articles/itd18june.html>

¹¹ "REPORT ON EUROPEAN PARLIAMENT HEARING ON WTO", Third World Network, 18th June 2003, available at <http://www.investmentwatch.org/articles/twn18june.html>

¹² "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." – see "WTO MEMBERS CONSIDER TWO MINI-MINISTERIALS BEFORE CANCUN MEETING", Inside US Trade, May 9th 2003. Available from <http://www.investmentwatch.org/articles/iust9may.html>

Also, according to The Global Positions Notebook (by the Global Business Dialogue Inc., www.gbdinc.org) May 17th 2003, "What the United States will insist upon, the [USTR] official said, are high standards in the areas that are addressed." Finally, "The United States plans to push for a 'high-standards' agreement on new global investment rules in the World Trade Organization but will not block progress in talks leading up to the negotiations taking place over the next four months, U.S. trade officials said May 15." – "U.S. Wants 'High-Standards' Investment Pact At WTO, but Will Not Block Progress in Talks", International Trade Daily, May 16th 2003, downloadable from <http://www.investmentwatch.org/articles/itd16may2.html>

¹³ "US-EC to cut new 'Blair House' deal on Doha talks?", Third World Economics, Issue No. 304, 1-15 May 2003

¹⁴ For example, see "Declaration of African Trade Ministers for Cancun rejects negotiations on Singapore Issues in the WTO", Geneva Update, June 22nd 2003, available from <http://www.investmentwatch.org/articles/gu23june.html>. See also the Dhaka Declaration by LDCs (Least Developed Countries) end-May 2003, downloadable from <http://www.investmentwatch.org/files/Dhakadeclaration.pdf>. Inside the WTO's Working Group on Trade and Investment (WGTI), many developing countries have repeatedly spoken out against WTO-Investment, see "INVESTMENT WORKING GROUP MEETING (10-11 JUNE): MANY DEVELOPING COUNTRIES DON'T WANT TO START INVESTMENT NEGOTIATIONS", Third World Network, 12th June 2003, available from <http://www.investmentwatch.org/articles/twn12june.html>

¹⁵ Details of the EC-commissioned SOFRES survey are available at http://europa.eu.int/comm/trade/issues/sectoral/investment/docs/finreps_of_en.pdf. "The purpose of these consultations is (a) to identify the obstacles facing European companies abroad and the problems they cause and (b) to find out what they feel a multilateral investment agreement should contain."

¹⁶ See "Investment Network: How the EC and Business Prepared for WTO Investment Talks in Seattle" in the April 2000 edition of Corporate Europe Observer, <http://www.corporateeurope.org/observer6/index.html>

¹⁷ Email from Carlo Pettinato (Trade and Investment division, DG Trade), May 2003

¹⁸ See "Behind GATS2000: Corporate Power At Work", Erik Wesselius on behalf of the Transnational Institute (TNI), May 2002, <http://www.tni.org/reports/wto/wto4.pdf>

¹⁹ According to the seminar invitation, "What's the likely impact of Cancun on you and your reputation? What's the context and key negotiating issues for Cancun? What will the protesters be doing and saying? What should you do and say? How and when? How will this impact on trade in your goods and services? APCO Europe is hosting a seminar to help you answer these questions... Guest Speaker: Mr. Robert Madelin Head of Sustainable Development, DG Trade, European Commission." A copy of the full invitation is available on request from CEO. A copy of the full invitation can be downloaded from <http://www.investmentwatch.org/files/apcomadelin.doc>.

²⁰ See the Critical Voices > Groups and Critical Voices > Sign-Ons sections of www.investmentwatch.org for more details. See also the STATEMENT OF CIVIL SOCIETY AT THE AFRICAN UNION TRADE MINISTERS MEETING, June 18th 2003, <http://www.investmentwatch.org/files/africacivsoc.doc> and the Latin American statement on investment that emerged from the Brasilia civil society meeting, 23rd-25th April 2003. There are many NGO papers criticising WTO-Investment (see the aforementioned Critical Voices > Groups section) but a good starting point is the joint Friends of the Earth / World Development Movement paper discussed in endnote 5.

²¹ See endnote 7

²² With the possible exception of the UK government, European activists consistently report that it is difficult to find an EU member state government that attaches high priority to WTO-Investment

²³ "European Ombudsman to investigate complaint against EC", May 2003, <http://www.investmentwatch.org/articles/ombudsman.html>

²⁴ Personal communication, May 2003. Kristian Ehinger is Vice-Chairman of BIAC's Committee on Investment and Multinational Enterprises.

²⁵ Interestingly, personal communication with a member of the US negotiating team in March 2003 suggested that US reticence is more based on the danger of WTO-Investment "seducing" countries away from US investment treaties than (for example) the danger of existing US investment treaties being forcibly multilateralised by the WTO.

²⁶ In their May 2003 position paper, "HOW THE WTO CAN PROMOTE THE BENEFITS OF INTERNATIONAL INVESTMENT", BRT state, "The Business Roundtable supports the ultimate goal of a comprehensive WTO investment agreement. Unfortunately, the current lack of consensus on investment

among WTO members is likely to derail the negotiation of any meaningful WTO investment agreement with binding rules and dispute settlement, and also undermine progress on more important WTO negotiations.” See <http://www.brtable.org/document.cfm/923> or the corporate positions database on www.investmentwatch.org

²⁷ In their May 2002 document, “Vision 2005: Free Trade and Beyond”, NFTC write, “In view of the increasing importance of investment flows, it is important to have strong rules on investment and, given the existence of over 1850 bilateral investment treaties (BITs) among WTO members, any new WTO rules should aim to set standards at least as high as those in BITs. Therefore, the WTO should focus on a subset of issues where consensus on a high standard can be reached, particularly by agreeing to basic principles covering transparency, national treatment, and the right of establishment.” See <http://www.nftc.org/default/trade/NFTC%20Doha%20Round%20Position%20Paper%20May%202002.pdf> or visit the corporate positions database on www.investmentwatch.org

²⁸ “UNICE and Nippon Keidanren priorities in the DDA are improved market access commitments, the liberalisation of services markets, clarification and strengthening disciplines of the anti-dumping agreement and WTO agreements on trade and investment and trade facilitation.” - “UNICE AND NIPPON KEIDANREN STRIVE TO STRENGTHEN EU- JAPAN BUSINESS”, 3rd March 2003. The actual UNICE WTO-Investment position statement (18th May 2003) can be downloaded as follows: go to wto.unice.org, click on ‘what we say’, click on ‘issues’, click on ‘WTO Trade and Investment.’

²⁹ “UNICE therefore attaches higher priority on results in the areas of WTO principles and market access compared to issues relating to protection.” UNICE WTO-Investment position statement, May 18th 2003, see endnote 28. This emphasis might well be due to the fact that WTO-Investment, through the “pre-establishment” features contained even in the EC’s “basic” model, could potentially convey a “right” of market access, unlike most existing bilateral investment treaties to which EU corporations are party. Perhaps significantly, US-negotiated BITs already contain such “preestablishment” mechanisms.

³⁰ The ICC is extremely influential, and was heavily involved during the MAI years and the initial phases of the WTO-Investment project. See CEO’s ICC Fact Sheet #4, “THE ICC: CRUSADING FOR INVESTMENT LIBERALISATION”, <http://www.corporateeurope.org/icc/investment.pdf>, May 2000

³¹ See corporate positions database at www.investmentwatch.org for more details

³² “It is important that progress be achieved on all the items currently on the agenda. ERT believes that negotiations on additional items, including GATS, MIF and the Singapore Issues are key to achieving greater prosperity, while we are conscious of the fact that an overburdened agenda may lead to a loss of credibility of the Doha deadline.” MIF (Multilateral Investment Framework) is another name for WTO-Investment. Email communication with Dennis Kredler, ERT Strategy Analyst, April 2003

³³ Interview with Alan Pasquier (working contact for the EU wing of the TABD’s WTO work), May 2003

³⁴ The AEBF chairman’s statement (from September 2002) is available at http://europa.eu.int/comm/external_relations/ase/min_other_meeting/bf7.htm. An interview with Friedolin Strack, Director Asia-Pacific Federation of German Industries (BDI) (April 2003) confirmed the driving role of the European private sector on this issue.

³⁵ The EABC’s membership list is available from <http://www.eabc.org/membership.htm>, and comprises about 50 very large corporations.

³⁶ These results were obtained through communication in May 2003 with EABC. More specific details are available on request from CEO.

³⁷ In the May 2003 issue of UNICE@NEWS, it is noted that, “The EU exports 47% of the world’s FDI.” The US figure is probably somewhere in the region of 20%. Such figures are however somewhat deceptive because a large amount of FDI exported by EU member states simply goes elsewhere in the EU. Nonetheless, “Although the largest share of the EU’s FDI flows goes to other EU members, the region as a whole continues to outperform the United States, as it has done since 1998.” UNCTAD World Investment Report 2002, page 40, <http://r0.unctad.org/wir/pdfs/fullWIR02/pp37-84.pdf>

³⁸ The EU has won this case and reserves the right to level several billion Euro of sanctions against the US, if it thinks it appropriate.

³⁹ See “Business groups unite in pressing G8 to boost Doha trade round”, ICC press release, 21 May 2003, http://www.iccwbo.org/home/news_archives/2003/stories/brt.asp. See also, “G8 must lead way to trade liberalization”, ICC press release, 2nd June 2003, http://www.iccwbo.org/home/news_archives/2003/stories/G8-Staits_times.asp

⁴⁰ “EU AND US BUSINESS EXECUTIVES CALL ON EU/US SUMMIT TO BOOST COOPERATION ON TRADE”, ERT press release, 23rd June 2003, <http://www.ert.be/pdf/EU%20US%20Summit%20June%202003%20Press%20Release.pdf>

⁴¹ See “NFTC and European Counterpart Organizations Urge Joint US-EU Leadership on WTO Doha Development Round”, NFTC press release, 13th May 2003, <http://www.nftc.org/newsflash/newsflash.asp?Mode=View&articleid=1632&Category=All>. The statement was signed by the NFTC, UK CBI, German BDI, and EU-AmCham.

⁴² Email communication with Adrian van den Hoven, May 2003

⁴³ The TABD and BIAC statements are good examples of this, as is the USCIB “Letter on Investment in the WTO”, October 9th 2001, <http://www.uscib.org/index.asp?documentID=1856>

⁴⁴ Although the US aspires to a state-of-the-art agreement, it has shown that it is prepared to take its time: *“The U.S. has long advocated a building block approach to an investment agreement, meaning an agreement could cover transparency and non-discrimination. The U.S. has insisted that the elements detailed in the Doha Declaration on investment are not necessarily elements for an eventual investment agreement.”* - “INVESTMENT WORKING GROUP MEETING ILLUSTRATES MODALITIES SPLIT”, Inside US Trade, June 13th 2003, <http://www.investmentwatch.org/articles/iust13june.html>. Additionally, *“[USTR official] Papovich said that the United States was still developing its negotiating position for the WTO investment talks. But he said that “likely candidates” for US-backed elements in the negotiations were transparency in decision making and non-discrimination in the treatment of foreign and domestic investors. More difficult issues, such as how to handle questions related to expropriation, would be left to later negotiations, he said, noting that the United States favours a “building block” approach to the talks.”* - “US will seek limited scope in WTO talks on Investment and Environment, aides say”, International Trade Daily, June 20th 2002.