

## *Investment Rules After Doha: A Time to Sow?*

By Lyuba Zarsky, Nautilus Institute

The agreement to begin WTO negotiations on investment should serve as a call to action for NGOs, socially responsible business leaders, and others who seek to promote the global public interest. Now more than ever, it is time to mount a proactive advocacy effort based on a positive vision of what constitutes “sustainable and ethical” investment rules.

Pundits and analysts are “spinning” the Doha agreement in different ways. U.S. Trade Representative Robert Zoellick calls Doha a “big win” for the United States. Mike Moore, Director General of the WTO, credits delegates for “saving the WTO.” The *Financial Times* praises Washington’s “conciliatory style” but wonders if it reflects “fundamental shifts” that would make the WTO more manageable. NGO analysts think not and call Doha a “Pyrrhic victory” and a “massive defeat for poor people around the world.”

The reality is that there are deep divisions between the U.S. and the EU, and between developed and developing countries, especially on “issue creep”—the tendency to stake out more and more market territory to fall under WTO disciplines and dispute resolution. At Doha, much arm-twisting was needed to get agreement to get the latest batch of new issues—competition policy, government procurement, trade facilitation, and investment—on the negotiating table.

The EU and Japan were behind the push to get investment on the agenda. Going into Doha, developing and least developed countries were flatly opposed and even the U.S. was lukewarm. In the event, the 142 WTO members gave a nod only to the broad concept that there would be negotiations—and only after the Fifth Ministerial in 2003. Between now and then, all other issues, including the modality, scope, definition, and mechanism of dispute settlement,

would be discussed by the Working Group on the Relation Between Trade and Investment.

The governance of investment strikes at the heart of sustainable and equitable development. The rules and practices surrounding investment decisions affect both access to capital and a broad range of social and environmental impacts. “Quality” investment is crucial for the development of cleaner technologies, for sustainable resource management, and for human and environmental infrastructure of all kinds. According to UNCTAD’s 2001 World Investment report, about 75% of global foreign investment flows between the thirty rich countries of the OECD. Africa gets less than 1%.

Global investment rules could potentially help to redress this imbalance. Better protection for foreign investors against expropriation and unfair treatment could encourage more “greenfield” investment in poorer countries and communities. Freer access to investment opportunities in developing countries could also increase foreign investment, though potentially at the cost of domestic companies.

The problem is that investment rules which protect only foreign investors—and nobody else—undermine the will and capacity of nations to regulate in the public interest. Sustainable development requires corporate and state governance mechanisms that expressly embrace environmental, social, and development objectives. If global rules don’t raise the bar for all, then the effects of competition for investment will keep national standards stuck in the mud. Even the most socially responsible companies can only go so far in voluntarily improving their environmental and social performance before they hit the realities of market competition.

Moreover, if global investment rules skew local growth opportunities in favor of foreign com-

panies, they can also fuel political resentments. In the aftermath of September 11, American companies have already been the targets of anti-imperialist demonstrations around the world.

To date, investment rules in regional and bilateral agreements have strengthened investor rights without specifying social and environmental obligations either of private investors or governments. NAFTA's Chapter 11 goes even further, allowing corporations to successfully challenge the rights of states to regulate in the public interest.

A sustainable and ethical approach to investment rules would, first of all, affirm the rights of states to regulate. It would also spell out positive obligations, such as for investors to undertake environmental impact assessments and to maintain environmental and social management systems as part of good corporate governance; and for states to embrace and enforce global human rights, labor, and environmental agreements. Finally, it would create a bal-

anced dispute settlement mechanism, accessible to both citizens and investors and offering protection for both investors and the public interest.

Without exception, NGOs with missions to promote global sustainable and poverty-reducing development opposed the launch of WTO negotiations on investment. Their fear was that the WTO would squeeze the complex ethical and environmental issues surrounding the governance of investment into a narrow "liberalize-at-all-costs" formula aimed at increasing market access and protection for rich country corporations.

Now that the WTO has decided to launch negotiations, it is time to ratchet up advocacy on investment based on a positive vision. Two tasks are urgent. The first is to figure out what the content of a sustainable development framework for investment rules would be. The second is to coalesce on a feasible implementation strategy. The record of the WTO inspires little confidence that it can carry such an agenda.

A more fertile institutional arena is the Earth Summit, which will take place in Johannesburg next September. The Summit could launch a Working Group on Sustainable Investment to complement and feed into the WTO or even to work toward a standalone framework agreement. UNEP, UNDP, the ILO, the Commission on Sustainable Development, and the UN's Financing for Development Initiative could all play a part. But only the NGO community, both North and South, can provide the trigger and, with business, the muscle. Now is the time to sow.

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