

Auszüge aus

BDI

**Die Doha Development Agenda
zum Erfolg führen**

September 2002

Gelöscht: Round

(.....)

Grundlage für ein multilaterales Investitionsabkommen schaffen

Internationale Investitionen sind die Triebfeder der Globalisierung. Ein erheblicher Teil des Welthandels ist auf die gestiegenen grenzüberschreitenden Direktinvestitionen zurückzuführen. Trotzdem werden Fragen ausländischer Direktinvestitionen der Industrie von der WTO nur rudimentär geregelt.

Die Ministererklärung von Doha weist den Weg zu einem substantiellen WTO-Abkommen über internationale Investitionen, bleibt in wichtigen Punkten aber deutlich hinter den Forderungen der deutschen Industrie zurück (Spektrum der erfassten Investitionen, Schutz vor Enteignungen). In einem ersten Schritt muss es darum gehen, international verbindliche Grundregeln festzulegen. Ausländische Investitionen müssen der Inländerbehandlung unterliegen. Nur wenn ausländische Investoren nicht diskriminiert werden, können gerade auch Entwicklungsländer im größtmöglichen Umfang ausländisches Kapital auf sich ziehen. Flexibilität darf in diesem Zusammenhang nicht als Freibrief für Diskriminierungen verstanden werden. Auch sollten ausländische Investoren nach dem Meistbegünstigungsgrundsatz behandelt werden. Vorzugsbehandlungen einzelner Investoren führen zu Wettbewerbsverzerrungen. Der Meistbegünstigungsgrundsatz stärkt die Position kleinerer Entwicklungsländer gegenüber potenziellen ausländischen Investoren. Die Chance sollte genutzt werden, ähnlich wie im Dienstleistungsabkommen konkrete Liberalisierungsverpflichtungen explizit zu verankern. Dabei sollte zwar nach dem Bottom-up-Ansatz vorgegangen werden. Nur ausdrücklich im Abkommen erwähnte Sektoren wären verbindlich liberalisiert. Jedoch erwartet die deutsche Industrie auch wirkliche Liberalisierungsfortschritte und nicht nur eine Festschreibung des Status Quo. Der Schutz von Investoren vor Enteignung und enteignungsgleichen Eingriffen im Ausland, so wie er in zahlreichen bilateralen Investitionsschutzabkommen festgeschrieben ist, sollte wenigstens zu einem späteren Zeitpunkt in die Verhandlungen Eingang finden. Es sollte klargestellt werden, dass auch für dieses Abkommen der WTO-Streitbeilegungsmechanismus angewendet werden soll.

Bundesverband der Deutschen Industrie e.V.

Mitgliedsverband der UNICE

Postanschrift
11053 Berlin

Telekontakte
Tel.: (030) 2028-1502
Fax: (030) 2028-2502

Internet
<http://www.bdi-online.de>

E-Mail
G.Glania@bdi-online.de

ICC-International Chamber of Commerce
ICC's expectations regarding a WTO investment agreement
Policy statement
Auszug

Commission on Trade and Investment Policy, 7 March 2003

Introduction

Worldwide economic integration requires business to produce and market goods and services on a global scale, by integrating the skills of people and various assets - tangible (e.g., land and resources), intangible (e.g., intellectual property) and monetary (e.g., stocks). In this process, trade and investment have become indistinguishable parts of a single strategy. Indeed, companies trade to invest and they invest to trade.

Therefore, ICC fully supports the aim of WTO investment negotiations towards the establishment of a legally binding, comprehensive multilateral framework of rules for investment that would provide for better market access, greater transparency and high standards of investment protection worldwide. Such a framework should reflect in a balanced way the interests of home and host countries, and take due account of the development policies and objectives of host governments, as well as their right to regulate in the public interest, without discriminating against foreign investors.

(.....)

Conclusion

ICC strongly believes that only by providing high standards of market access and investment protection will a WTO agreement on investment offer an added value to companies by increasing the predictability of the policy environment for their investment, which in turn may lead to additional investments.

Adherence to such high standards will encourage foreign investment in developing countries.

To summarize, ICC would like to see the following key elements included in a multilateral agreement on investment:

- a broad definition of investment;
- transparency;
- a negative list approach for pre-establishment including national treatment, MFN treatment and market access provisions;
- national treatment and MFN treatment in the post-entry stage;
- a high standard of investment protection;
- provisions for comprehensive and unrestricted transfer of funds; and
- an obligation for member countries to provide for investor-to-state dispute settlement procedures.

ICC knows that it will be difficult to achieve all of the above-mentioned objectives in the Doha Round.

Nonetheless, it should be noted that many of the high standards of market access and investment protection described above are incorporated in a large number of BITs, many of them concluded with developing countries. A WTO investment agreement should therefore strive to multilateralize those same high standards. At this early stage of the negotiating process, ICC wishes to state world business expectations so that these can serve as a reference point for the initial proposals put forward by WTO members and over the course of the negotiations. ICC stands ready to provide further input into the negotiation process as it progresses.

About ICC

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations from over 140 countries.

UNICE¹ position on a WTO framework for international investment

16 May 2003

The oft-stated long term goal of UNICE is to achieve a worldwide comprehensive investment agreement guaranteeing full transparency, non-discrimination and national treatment, free access to markets and the full protection of investments.

Companies must be able to operate in a manner that will enable them to compete effectively in local, regional and international markets. UNICE is very critical of calls to introduce conditionality in a WTO investment framework, which would in effect limit the possibilities of companies to compete effectively. This relates to so-called performance requirements as well as to initiatives to tie a WTO agreement to instruments of corporate social responsibility.

Apart from the importance of having a broad definition of investment and considering the high standards of protection already offered under most available bilateral investment protection agreements, the highest added value for European business is in the areas of (2) WTO principles and (3) market access. UNICE encourages negotiators to prioritise their negotiations accordingly. Business will analyse and weigh the outcome of the Doha Development Round with respect to investment in this context.

(....)

- A WTO agreement on investment should provide for strong and effective protection against expropriation, nationalisation or any other measure with similar effect. So-called 'creeping expropriation' caused by progressive erosion of the original conditions under which the initial investment decision was made should also be covered.
- WTO members should reflect on the different dispute settlement procedures that could be used to settle disputes between WTO members and investors and will provide adequate policy space for states while guaranteeing security for FDI.
- National treatment obligations should be agreed for all investments already established in the host country (post-establishment). A general most-favoured-nation obligation should be included for all foreign investments (pre- and post-establishment). If the objective is to create a level playing field, there is no reason to distinguish among investors from different countries of origin.
- European business considers that increased market access for foreign investors will offer the most added value from a multilateral framework on investment. Bilateral and other investment agreements generally concentrate on post-establishment provisions. A WTO agreement should also aim at liberalising the global environment for international investments. Considering the growing importance of investments for the operations of companies as well as for the economic development of countries, there is progressively more evidence that protectionist policies are indeed counterproductive and unnecessary.
- Freedom to transfer funds and balance of payment clauses

¹ Union of Industrial and Employer's Confederations of Europe

A Business Roundtable WTO Policy Paper: How the WTO can promote the Benefits of International Investment

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. (.....)

THE IMPORTANCE OF INTERNATIONAL INVESTMENT

Foreign direct investment ("FDI") plays an integral and increasingly important role in promoting worldwide economic growth and development by stimulating markets, creating jobs, increasing wages, and transferring knowledge and technology. At the recent United Nations Conference on Development in Monterrey Mexico, 184 participating countries agreed that FDI is necessary for sustained economic growth in the long term, and recognized the need for countries to create the necessary domestic and international conditions to facilitate FDI flows to developing countries. (.....)

In recognition of the growing importance of foreign investment, WTO members agreed at the Doha Ministerial Conference to start negotiations on developing a multilateral framework on investment after the Fifth Ministerial Conference in Cancun, Mexico in September 2003. These negotiations are, however, contingent on a consensus being reached at the Fifth Ministerial on the modalities of such negotiations. Thus, a decision must be made at Cancun whether and how to move forward. The Business Roundtable shares the goal of creating a multilateral framework on investment that incorporates detailed binding rules and dispute settlement. However, The Business Roundtable views this as a long-term objective, rather than a short-term priority. Not only does The Business Roundtable believe there are other more pressing issues to be addressed in the WTO agenda, but The Business Roundtable also is concerned that the current lack of consensus on investment among WTO members has the capacity to undermine progress on other issues within the Doha Round. (....)

THE KEY ELEMENTS OF A WTO FRAMEWORK AGREEMENT ON INVESTMENT

A WTO framework agreement on investment should establish a mechanism that will provide building blocks to promote investment now, while laying the groundwork for a binding investment agreement in the future. (....)

- ⇒ Identify Best Practices. To identify each Member's "best practices" for possible adoption by other members;
- ⇒ Develop Core Principles. To identify and develop core principles based on lessons learned from specific situations;
- ⇒ Promote a Stable Global Investment Environment. To contribute to a gradual convergence of views and promote a more stable global environment for investment.
- ⇒ Resolve Specific Disputes. To facilitate cooperation and mediation where necessary and appropriate.

(.....)

Technical Assistance and Capacity Building

Any WTO forum on investment should focus primarily on the special needs of developing countries for at least three reasons:

- ⇒ An important component of the "Doha Development Round" would be a forum that recognizes the integral role that foreign direct investment plays in economic development.
- ⇒ The WTO provides an opportunity to include developing countries in these discussions.
- ⇒ Developing countries, many of which are in the process of improving their investment policies, typically need the most help in developing legal and regulatory environments that are geared towards attracting and retaining foreign direct investment.

OBSTACLES ARE STILL TOO GREAT TO ACHIEVE A BINDING INVESTMENT AGREEMENT WTO Members Cannot Agree on Core Issues

In the period leading up to the Fifth Ministerial Conference, the Doha Declaration instructs the WTO Working Group on the Relationship between Trade and Investment ("Working Group") to focus on "clarifying" seven general issues: (1) the scope and definition of investment; (2) transparency requirements; (3) the scope of non-discrimination requirements; (4) special treatment for developing countries; (5) negotiating methods; (6) exceptions, including those related to a country's balance-of-payments; and (7) dispute resolution. While some of these issues have not yet been fully addressed by the Working Group, initial member submissions demonstrate that there is more divergence than agreement among members on core issues. As has been demonstrated in the past multilateral investment negotiations, such wide divergence can derail negotiation efforts. Previous efforts to develop a multilateral agreement on investment failed. In 1995, OECD member countries launched negotiations for a binding multilateral agreement on investment. Three years later the negotiations ended, mainly because the parties had such widely divergent priorities and views on investment that it was impossible for them to reach an agreement. This experience should inform the WTO process as members move forward in their efforts to develop a workable multilateral framework on investment. Some members have indicated a willingness to "forgo" resolving some of the more difficult disagreements and focus the negotiations instead on a limited number of issues based on a GATS-like positive list approach. The Business Roundtable believes that, while this approach reflects an eagerness to move forward, it has three fatal flaws:

- Such limited negotiations would merely result in an incomplete agreement incapable of dealing with the very set of issues it was meant to address in the first place. (...)
- Potential Conflicts with BITs and FTAs
First, it is highly unlikely that a multilateral WTO agreement would reflect the standards and obligations that members already have established in their respective BITs and FTAs. There are over 1,950 bilateral international trade agreements already in existence that most likely contain stricter protections for investors than any potential WTO investment agreement would contain. A multilateral agreement that offers less protection to investors would not be useful to members who enjoy greater protections through their respective bilateral and regional agreements. Second, there is great potential that contentious negotiations of a WTO investment agreement will disrupt ongoing bilateral and regional trade negotiations, which are proving to be especially successful in the comprehensive liberalization of investment regimes.

The Business Roundtable supports the ultimate goal of a binding WTO investment agreement. The Business Roundtable believes, however, that international consensus on the negotiation of a multilateral investment agreement is still evolving. The WTO has a significant role to play in developing a workable multilateral framework that promotes investment. WTO members must think creatively about how best to achieve this important objective. One framework for promoting investment, in the short term, is the establishment of a WTO forum for on-going policy dialogue and a policy review process. This framework will promote transparency and problem solving among WTO members and provide the building blocks for successful negotiations of an international investment agreement in the future. If WTO members decide to launch negotiations of a binding investment agreement now, however, such negotiations must be comprehensive. Postponement of certain issues until a later date will only result in an ineffective "patchwork" agreement that does nothing to promote a more stable global investment environment. The Business Roundtable looks forward to working with the Administration, the Congress, stakeholders, and WTO Members to ensure that negotiations lead to a framework that, in the short term, creates "building blocks" for international investment "best practices" and, in the long term, leads to a comprehensive, strong, state-of-the-art WTO investment agreement.

USCIB Letter on Investment in the WTO

October 9, 2001

Mr. Joseph Papovich
Assistant USTR - Services, Investment and Intellectual Property
Executive Office of the President
600 17th Street, NW
Washington, DC 20508

Dear Mr. Papovich:

On behalf of the members of the **US Council for International Business' Committee on International Investment**, I am responding to your request for our views on the Harbinson text for investment in the WTO.

As a point of departure, I refer to the Council's May 10, 2001 letter to Gloria Blue, in which our position on investment in the new round is set forth in detail. Summarizing, our position was that a comprehensive agreement on rules with high standards and the elimination of barriers to investment would take some time to achieve.

Consequently, we recommended a "staged" approach, whereby elements common to the WTO – transparency, national treatment (after entry) and TRIMs enforcement – would be negotiated in the first phase. The more difficult issues for WTO to handle, e.g., national treatment on entry, expropriation, dispute settlement, transfers of profits, would require more preparatory work to achieve our overall objective, and be dealt with in a second stage of negotiations.

The Council members have not changed their view on our overall objective or on our view that the best way to achieve this objective is through a staged approach, in which preparatory work for each stage has been achieved.

Unfortunately, the **Harbinson text** does not meet our objective, both on substance and staging. Regarding substance, **it omits in its "core" many elements that are critical for US investors: transfers of profits and capital, expropriation, and investor to state dispute settlement. Further it opens the door to special and differential treatment, a feature which the Council opposes, particularly in the investment context.** With respect to staging, we believe the declaration should acknowledge the value of careful preparation and give priority to the issues common to all WTO agreements.

We recognize the diverse views on investment held by WTO member economies, as well as the strong desire by some economies to proceed with negotiations. **We urge that the U.S. press for a text in the final declaration which, should negotiations proceed, would advance the goal of achieving high quality agreements to protect investment outside of the WTO and reduce barriers to investment.**

I hope you will find these comments helpful.

Sincerely,

R. Scott Miller
Chair, Committee on International Investment

ESF call for an effective launch of negotiations of a Multilateral Agreement on Trade and Investment

(...)

Today, international investment activities are governed by over 2100 Bilateral Investment Treaties (BITs), regional agreements such as the North-American Free Trade Agreement (NAFTA), and to varying extent by multilateral agreements within the framework of WTO, i.e. Trade-Related Investment Measures (TRIMS), Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Trade in Services (GATS).

Extensive though it is, this patchwork arrangement is felt to be insufficient by internationally investing companies and most governments of market-orientated countries, as well as national and international trade related organisations.

(.....)

ESF would like to underline that to make a WTO Agreement on Trade and Investment effective, it must address companies' needs. If the WTO Agreement on Investment is to have the intended

positive effects of facilitating increased foreign direct investment flows, it should:

⇒ Be legally binding and based on the fundamental legal principles of most favoured nation and of national treatment (i.e. non-discrimination);

⇒ Contain:

- A stand-still against the introduction of new barriers on to investment;
- Post investment protection;
- Protection of all material and intellectual property of the company;
- Effective protection against direct expropriation as well as against indirect expropriation through discriminatory treatment;
- A mechanism for compensation in the case of expropriation
- Independent and binding disputes settlement mechanisms;
- Right of the company to determine its own ownership structure and provisions on legal, regulatory and administrative transparency;
- The resolving of possible conflicts between the Agreement, Bilateral and /or Regional Investment Treaties.

⇒ Promote scheduling of concrete specific commitments by WTO members, to further open their markets to foreign direct investment.

(....)

ESF proposes that the WTO State-to-State dispute settlement mechanism should be applicable to all cases of non-compliance with the Agreement, as for any other WTO agreements. In addition, to ensure an effective protection of investors' rights, ESF believes that an "investor-to-state" dispute settlement provision should be included in the Agreement.

(....)

ESF urges all WTO Negotiating Parties to build on the momentum existing on this issue in Geneva and to adopt all resolutions needed to start negotiations on a WTO Multilateral Agreement on Trade and Investment at the Fifth WTO Ministerial Conference in Cancun in September 2003.

Unterstützer z. B.: Commerzbank AG, Deutsche Telekom AG, Siemens AG, PricewaterhouseCoopers

FTA Positionspapier zum WTO-Investitions-Abkommen

Mit ihrem Ruf nach Verhandlungen über ein neues Investitionsabkommen haben die WTO-Mitgliedsstaaten ihre Bereitschaft gezeigt, Auslandsinvestitionen in einem Klima von Rechtssicherheit, Berechenbarkeit und Transparenz für alle Beteiligten zu fördern. Die FTA begrüßt diesen Schritt und ist bereit, ihren Beitrag zur Schaffung eines modernen und liberalen multilateralen Abkommens zu leisten, an dessen Inhalt folgende Mindestanforderungen gestellt werden sollten:

→ Vermögensorientierte Definition des Begriffs „Investitionen“

(.....)Das Abkommen muss jede Art investitionsbedingter Finanzbewegung fördern und schützen. Nicht nur langfristige Direktinvestitionen, sondern auch Joint-Ventures, Strategische Allianzen, Grundbesitz, Geistiges Eigentum, Markenrechte, BOT-Projekte, Schutzrechte (Bsp.: Lizenzen) und jede andere Form von Unternehmensbeteiligungen (wie Aktien, Obligationen, etc.) „Investor“ sollte jede Art von Einheit hinter der oben genannten „Investition“ sein.
(.....)

→ Weitreichender und wirksamer Schutz vor Enteignung

Eine der ersten Fragen, die sich Investoren auf dem Weg ins Ausland stellen lautet: Wie hoch ist die Gefahr, enteignet zu werden. Ein WTO-Investitionsabkommen muss dieses ‚worst-case scenario‘ berücksichtigen und wirksamen Schutz vor jeder Art von Enteignung oder enteignungsgleichen Maßnahme bieten.

→ Definition des Begriffs „Enteignung“

Die FTA fordert die WTO nachdrücklich auf, die Liste der zu verhandelnden Punkte um zwei weitere, wichtige Punkte zu ergänzen: Enteignungsschutz und Definition des Enteignungsbegriffes.

→ Negativliste-Lösung in der Marktzugangsphase

Art. 22 der Doha-Ministererklärung sieht „Verhandlungsangebote für Marktzugangsbedingungen entsprechend dem GATS-typischen Positivliste-Prinzip“ vor. Dies hätte zur Folge, dass ausländische Investoren nur in einem Gastland investieren könnten, wenn der fragliche Sektor dort ausdrücklich in einer Positivliste genannt würde. (.....)

Dies widerspricht dem eigentlichen Ziel des Investitionsabkommens: Investitionen würden behindert und nicht gefördert. Protektionistische Verhaltensweisen würden als ungewollte Folge des Abkommens unterstützt.

Ein liberales Investitionsklima muss sich an dem Grundsatz „Alles was nicht verboten ist, ist erlaubt“ orientieren. Im Rahmen eines Negativliste-Prinzips wären alle Sektoren zunächst für Investitionen geöffnet. Einige könnten ganz oder zum Teil ausgenommen werden.

→ **Transparenz, Inländergleichbehandlung und Meistbegünstigungsgrundsatz als übergreifende Prinzipien**

Sämtliche nationalen Vorschriften, die den Investor in seinen Rechten und Pflichten betreffen – sei es in der Marktzugangsphase oder nach erfolgter Investition – sollten in nationalen Amtsblättern veröffentlicht und öffentlich im Internet zugänglich sein. Neue nationale Regelungen mit nachteiligen Auswirkungen auf Investitionen sollten vorab den anderen WTO-Staaten angezeigt werden.

→ **Freier Kapitaltransfer für alle mit einer Investition verknüpften Finanzmittel**

Das WTO-Abkommen muss eindeutige Regelungen enthalten, die den unverzüglichen freien Kapitaltransfer für jede Art von Finanzbewegung garantieren, die im Zusammenhang mit Investitionen getätigt werden und zwar in frei konvertierbaren Währungen.

→ **Volle Ausdehnung des WTO-Streiterledigungsmechanismus auf alle**

Vorschriften des Abkommens

Wirkungsvolle Streiterledigungsmechanismen sind eine Grundvoraussetzung, um die Vorteile eines WTO-Investitionsabkommens sicher zu stellen. Die im Rahmen der Bilateralen Abkommen bestehenden Regelungen sind in ihrer Bandbreite nicht geeignet, allen WTO-Mitglieder die erforderliche Rechtssicherheit und Transparenz zu gewährleisten. Dies gilt insbesondere für Länder ohne Bilaterale Abkommen.

Die FTA ist deshalb der Überzeugung, dass dieses Thema Teil des WTO-Abkommens sein muss, wobei eine volle Ausweitung des WTO-Streiterledigungsverfahrens auf alle Regelungen des WTO-Investitionsabkommens empfohlen wird.

Brüssel, 2003

Anmerkungen:

Prominente deutsche FTA-Mitglieder sind u.a.: C&A, Breuninger, Baur Versand, Esprit, Deichmann, Karstadt, Otto Versand, OBI, Neckermann, Quelle, Spar