

THE WTO'S NEW ISSUES:  
INVESTMENT, GOVERNMENT PROCUREMENT, COMPETITION POLICY  
AND TRADE FACILITATION

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THE “NEW” OR “SINGAPORE” ISSUES (subjects that entered the World Trade Organization (WTO) framework in the first ministerial conference held in Singapore in November-December 1996) may be, after agriculture, the most important issues discussed in Cancun. If agreed to, they will have a devastating impact on developing countries, workers, the environment, and consumer health and safety.

Opposition stems from experience: the current agreements of the WTO have caused significant harm to democracy, communities, workers, the environment and indigenous peoples around the world. In addition, the WTO has failed to provide any of the promised benefits. In response, citizens groups and social movements from across the world have joined with many developing country governments (for example, India, Egypt, and Malaysia), to oppose the introduction of any new agreements or commitments at the WTO. Instead, many believe that at a minimum, current WTO commitments should be rolled back and a global discussion begun on decommissioning the WTO.

It has not yet been determined whether or not the new issues will be negotiated in Cancun. At the last ministerial meeting of the WTO in Doha, Qatar, it was agreed that negotiations on these issues would take place after the fifth ministerial only if all the nations of the WTO agreed to do so. It is still unclear if such a census will be reached in Cancun primarily because of the extensive opposition to negotiations on the New Issues from developing country governments and civil society worldwide.

## 1. NEW ISSUE: INVESTMENT

### THE PROBLEM

The investment agreement is increasingly becoming one of the most destructive elements of the North American Free Trade Agreement (NAFTA). It has been used by corporations to challenge and eliminate critical environmental, consumer health and safety and economic development laws across Mexico, Canada and the U.S. (for specific examples, see “The WTO’s Threats to Global Water Security” in this packet). It has granted unprecedented rights to corporations which the Bush Administration, among other governments, would like to see expanded to all 146-member nations of the WTO through a WTO investment agreement.

A WTO investment agreement would increase the rights of foreign investors while restricting the ability of governments to regulate them. The agreement would remove some of the most basic and important tools of local, state and national economic development and restrict significantly the ability of governments to regulate in the public interest.

For example, government regulations created to ensure that foreign investment supports domestic economic activity, such as requiring that a company hire local people, use local products or invest a certain proportion of its profits locally, would be challengeable at the WTO under an investment agreement. The same is true of laws used to support local companies rather than foreign companies that seek to keep profits local, ensure clearer lines of accountability, and increase local productive capacity. In addition, restrictions on the free flow of capital in and out of the country—known as financial speed bumps—would be prohibited. Similar prohibitions

on speed bumps made by the International Monetary Fund are credited by financial experts such as former World Bank Vice President Joseph Stiglitz with contributing significantly to the East Asian Financial Crisis of 1999.

An investment agreement would give investors new rights. Existing WTO rules that apply only to goods and services would be expanded to cover investors and their investments.

#### KEY PROVISIONS AND IMPACTS

**National Treatment** would require governments to treat foreign investors from any WTO member country no less favorably than domestic investors (foreign investors could be treated more favorably) with respect to all phases and aspects of investment.

For example, under the NAFTA investment agreement, Chapter 11, a Canadian steel contractor is challenging a U.S. Buy America law for \$90 million claiming that the law conflicts with the National Treatment provision by discriminating against Canadian companies. The U.S. will need to eliminate the law or pay \$90 million in damages.

**Most Favored Nation Treatment (MFN)**—would require governments to give foreign investors from all WTO nations no less favorable treatment than the best treatment given to investors of another WTO nation, even if that treatment is better than that given to domestic investors.

For example, laws widely adopted during the South African apartheid regime banning investment from the South African government and South African corporations would have been challengeable under a WTO investment agreement.

**Performance Requirements Forbidden**—these are laws such as domestic content rules, local hiring, the transfer of necessary technologies, local investment of profits, diversity in hiring and other measures geared toward regulating investors to ensure local economic benefit

For example, local, state and national governments around the world have adopted a myriad of laws designed specifically to ensure that foreign investment actually serves local interests, such as requiring that new technologies be transferred to local experts, that a certain percentage of hiring takes place locally, or that investment is targeted at particularly needy areas. All of these provisions would be challengeable under a WTO investment agreement.

The WTO has been trying to complete an agreement on investment since the first meeting of the newly formed body in 1995. The original treaty included NAFTA-style investor-to-state rules that allow corporations to sue governments directly (under current WTO rules, only governments can sue governments). Developing countries strongly opposed the agreement and it was sent to the Organization for Economic Cooperation and Development (OECD)—the “club” of the 27 wealthiest nations, and named the Multinational Agreement on Investment (MAI). The MAI was soundly defeated by international public opinion. The agreement then went back to the WTO to be considered at the Seattle Ministerial—contributing greatly to public and government opposition to the Seattle Round and its defeat. Proponents tried again at the Doha Ministerial, and were only able to achieve a commitment that investment would be taken up for consideration in Cancun if agreed to by the WTO membership.

It is not in the interest of communities, the environment nor democracy for the WTO to adopt an investment agreement in Cancun. Rather, alternative global bodies, such as the United Nations, should consider adopting the following international investment rules that protect communities, not corporations.

## ALTERNATIVES

### *1. Full Freedom to Apply Conditions on Investment.*

Communities must be totally free to apply conditions on the entry and operation of foreign investors in accordance with their own local needs. Foreign investors should be required to undertake technology transfers to domestic firms, train domestic personnel, allow domestic firms/persons participation in equity, bring specified amounts of capital, retain certain levels of profit in the country, etc.

### *2. Governments Should Put Obligations on Foreign Investors, not Vice Versa.*

Foreign investors should be required to follow laws that guarantee that their investment services the needs of the local community rather than ensure that the local community meets the foreign investors' needs. For example, foreign investors should not be allowed to undertake restrictive business practices, such as transfer pricing, collusive pricing or predatory practices. They should have the specific obligation of total transparency in their dealings, particularly in respect to labor and the environment. There should be a provision for international blacklisting of the investors found to be defaulting on their obligations. It should be the responsibility of the host government of the foreign investor to ensure that the obligations of the investor are being met.

## 2. NEW ISSUE: TRANSPARENCY IN GOVERNMENT PROCUREMENT

The WTO Government Procurement Agreement (GPA) is unique in the WTO system in that it is one of only two agreements that are not obligatory for all WTO members. Twenty-five national governments, including the U.S., are a party to the agreement, as are 37 U.S. states. Few state or federal government officials, however, are aware of their obligations under the GPA, nor the tremendous restrictions it places on public policy.

Attempts at making the GPA obligatory for all WTO members and all states have been strongly opposed. Therefore, proponents are moving in small steps. In Cancun, they will hold talks only on a Multilateral Agreement on Transparency in Government Procurement rather than on expanding the coverage of the GPA itself. The GPA in its current form is already a significant obstacle to environmental, consumer health and safety, human rights, economic development, and worker protection laws. Therefore, opposition to any form of expansion of the agreement is widespread.

At present, not a single developing country has agreed to sign the GPA because of the vital role government procurement plays in their local economies. For many developing countries, government expenditures are as high as one-third of Gross Domestic Product (GDP). If the GPA became an obligation, laws that preference local suppliers could be challenged and local suppliers would be forced to compete against the largest multinational corporations in the world. Governments would be restricted in their ability to use taxpayer-funded purchases to advance economic development or other social and environmental goals.

## THE PROBLEM

Government procurement laws cover the rules applied to all government purchases of goods and services. They include requirements that governments purchase paper with a certain percentage of recycled content; preferences for local producers; only buying products from countries with satisfactory human rights or child labor practices; community investment requirements; local content rules, etc. Such laws are vital for local economic development and the creation of new legislation—many laws begin as requirements on government procurement that are later applied to all production.

The GPA restricts the ability of government to use procurement in ways that help the environment, labor and economic development through three key provisions: National Treatment and Most Favored Nation (described above) and Technical Specifications.

**National Treatment** (described above)—restricts governments from preferencing local producers over foreign producers in government purchases. For example, a foreign producer could challenge a law by the city of San

Francisco preferencing the products of local, organic, sustainably harvested and biologically diverse farms in the city's cafeterias, parks, government funded public events, etc.

***Most Favored Nation*** (described above)—restricts governments from discriminating against government purchases from WTO member countries. For example, the EU and Japan launched a WTO challenge against a Massachusetts government purchasing law that penalized companies doing business with Burma's brutal military dictatorship under MFN provisions.

***Technical Specifications***—prohibits rules on packaging, marking and labeling, the process by which products are produced (such as requirements that goods be produced in environmentally and socially sound ways), and others that can be construed as "unnecessary obstacles to international trade," as determined by the WTO, for any government purchases.

For example, a U.S. federal ban on government purchases of products made using child labor or in ways that harm endangered animals or the environment could be considered "unnecessary obstacles to international trade" and challenged under GPA rules. In fact, several U.S. trading partners have already argued that U.S. procurement preferences for recycled products and sustainably harvested wood are inconsistent with the GPA and could be the basis of WTO challenges.

Transparency in Government Procurement could be the first step toward giving multinational corporations from other member countries the right to compete against local companies for vital contracts. For this reason, the proposal is opposed by many developing country governments and civil society.

#### ALTERNATIVES

##### ***1. Do Not Expand WTO Government Procurement Rules, Rather, Roll Them Back.***

Allow governments to use government procurement in ways that benefit the environment, the economy, local workers, human rights and other development goals.

### 3. NEW ISSUE: COMPETITION POLICY

#### THE PROBLEM

As with the investment agreement, a WTO competition agreement would increase the rights of foreign investors, while restricting the ability of governments to regulate them. The agreement would eliminate a key local tool of economic development, restrict the ability of governments to favor domestic firms in the domestic market, and increase the power and control of multinational corporations worldwide.

Governments would be restricted in their ability to guide the entry and operation of foreign corporations and would be prohibited from providing preferences to domestic firms. For example, many governments give special treatment to domestic firms in the form of taxation, loans and subsidies, while denying these advantages to the foreign firms. Such an agreement would open domestic producers to intense competition from the world's largest multinational corporations. Most would be unable to compete.

Corporate concentration is increasing rapidly and exponentially. In fact, of the largest 100 economies in the world, 52 are now corporations; only 48 are countries. The combined sales of the largest 200 global corporations are 18 times the size of the combined annual income of the 1.2 billion people (24 percent of the total world population) living in severe poverty. Given the recent global scandals with corporations such as Enron and Worldcom, it is ludicrous to enforce a global agreement that would give multinational corporations even greater advantages over domestic companies. Instead, the trend should be reversed.

#### ALTERNATIVES

The suggestions given above in the section on Investment are applicable here too. All those elements may be included in this subject as well.

### ***1. The Competitiveness of Domestic Firms Should be Increased.***

Local businesses are vital to any economy, they are also vital to economic self-sufficiency. The global marketplace has demonstrated that increased concentration leads to global economic instability and insecurity. Governments should be pursuing laws that protect domestic businesses and make them more competitive, rather than increase the benefits to multinational corporations.

### ***2. Current forms of Competition Impeded by Government Actions Should be Addressed.***

Fair competition is hurt more by governments that allow the “dumping” of cheap products on foreign markets than the preferences provided to domestic companies (see “the WTO Agreement on Agriculture” in this packet for more on dumping). The WTO should first address anti-dumping measures proposed by developing countries before discussing a new agreement on competition. Similarly, the WTO’s Trade Related Intellectual Property Rights (TRIPs) Agreement provides uncompetitive protection of intellectual property by giving exclusive and monopoly rights to the Intellectual Property Rights (IPR) holders. For these and other reasons, the TRIPs agreement should be eliminated or reduced before consideration is given to a new competition agreement.

## **4. NEW ISSUE: TRADE FACILITATION**

The objective of this agreement is to harmonize international rules covering the movement of goods such as freedom of transit, fees and formalities connected with import and export and publication and administration of trade regulations.

### **THE PROBLEM**

A WTO trade facilitation agreement could severely undermine measures established to protect the environment, including biodiversity and human health, as part of national or international legislation. For example, restrictions on the international trade in endangered species, hazardous wastes, genetically modified crops, weapons and other existing United Nations treaties could be challenged under such an agreement.

One set of proposals would reduce the physical examination of goods by the customs authorities to only a small number of cases selected on random basis. This may improve the flow of goods, but it would also increase the risk of unwanted materials entering countries such as harmful pests, illegal materials or environmentally harmful materials. In addition, it could lead to an increase in the avoidance of payment of adequate customs duties that are vital to developing countries and low-income areas. The agreement also ignores the wide difference in the administrative, financial and human resources between the developed and developing countries.

### **ALTERNATIVES**

#### ***1. Wealthy Nations Provide Assistance to Developing Nations for Trade Facilitation.***

Wealthy nations could provide financial and administrative assistance to those nations with inadequate customs oversight. As long as the process leads to increased inspection of goods, and not increased costs for countries or communities unable to afford it, they would be welcomed. Such measures should be undertaken outside of the framework of the WTO.

The bottom-line on all the New Issues is that the WTO should not be expanding into new areas while it is having such devastating impacts on the areas already under its control. ▲