

Presentation to the United Nations Special High Level Meeting between the Economic and Social Council with the Bretton Woods institutions, the World Trade Organization and the United Nations Conference on Trade and Development

New York, April 14th, 2008

Notes for remarks to Roundtable 3: Supporting the development efforts of the least developed countries, including through trade capacity-building.

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The session was co-chaired by the State Secretary for International Development of Norway and a representative of Bangladesh who was replacing the absent representative of Haiti. The Under-Secretary General and High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, Mr. Cheikh Sidi Diara provided an opening contextual address, referring to issues raised in the Secretary General's note.

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Mr. Chair,

My name is John Foster and I am speaking on behalf of the North-South Institute of Ottawa which is a partner in the Social Watch, a southern-based international network of non-governmental organizations in more than fifty countries.

As civil society organizations we share the deep concern regarding the implications of falling ODA levels and increasing threats to access to food and energy, particularly for the poor. Even 0.7 level ODA will be insufficient to meet the financing needs of reaching the MDGs and responding to climate change, so we support the institution of new levies, like the C.T.T. to meet the need for additional funding.

However, Mr. chair, I wish to address issues related to capacity building for trade and investment for enhanced benefit for least developed countries as suggested in the agenda.

The most important question is simply “capacity building for what?”: for more trade, investment and intellectual property agreements which further reduce the policy space of governments to plan their own development and address the social and economic needs of marginalized sectors of their populations? Or for capacity support which enables them to better integrate and protect the rights of their workers, their women, their minorities and the environment.

- A further question is whether it is increased capacity for trade per se, or increased **capacity to gain full benefit from trade**. Let me illustrate. Last week at the Commonwealth Ministerial Debt Sustainability Forum convened at the World Bank, the Finance Minister of a Least Developed but resource-rich country pointed out that in the most recent year, approximately US \$3 billion had left his

- country with only \$145 million accruing locally. Pointing out that rich governments argue that some of the escaping funds would be taxed and come back as ODA and some perhaps return as new investment, he asked if it would not be more efficient to break the cycle and have more of the funds stay at home. Capacity support and strategies for increased rent retention for domestic development and poverty reduction are what is needed, not encouragement for easing an already extensive export sector.
- Governments are told that their role in pursuit of development objectives and poverty eradication, for human rights, labour standards and environmental sustainability, is to *regulate*. However the capacity of governments to fulfill their responsibilities, IF the will was there to do so, has been increasingly restricted by trade, investment and intellectual property agreements.
 - For example, one of the areas of rapid growth in the last decade has been in the field of investor protection through so-called investor-state clauses patterned on the North American FTA, in which my own country is a constituent. That mechanism has had arguably negative effects in a number of sectors, for example, over 50 % of the cases brought by industry under it relate to the environment and challenge attempts of governments to regulate. It is now an issue in the current electoral debates in the United States.
 - The Special Representative on Business and Human Rights, Prof. John Ruggie who visited our country last week, points out that bilateral trade and investment agreements have simply gone *too far* in restricting the ability of governments to meet their regulatory responsibilities in such fields as human rights and environment. **There is an urgent need to re-balance the picture, taking into account the right and responsibility of governments to protect the human rights of their citizens and the environment.**
 - A study undertaken by the International Institute for Sustainable Development for the Ruggie mandate notes that there are currently more than 2500 investment or integrated trade and investment agreements, many between developed and developing countries and approximately 25% between developing countries themselves. [These generally provide investors from a “home state” with special international law rights and remedies to protect their investment in a “host state”.] The study found that few if any south-south agreements address such issues as labour, social rights or environment. It notes only one specific express inclusion of human rights obligations in a north-south international investment accord, that being the 2002 European Free Trade Area/Singapore agreement, and that reference to the UN Charter and the Universal Declaration is in a pre-ambular paragraph.
 - However, the study points to a way forward, toward initial steps toward what Prof. Ruggie would call a re-balancing. The Eastern and Southern African regional agreement –including a number of least developed states (COMESA)

includes in article 7.2.d, reference to social issues, human rights, labour standards, environmental impact and corruption, into a “forward looking agenda for the institutional structure which will implement the agreement: COMESA Common Investment Area Committee. As the study notes “This global first falls short of including actual standards, but the express recognition of the linkage and enabling of future standards-oriented work is still noteworthy.

- In addition to this potentially positive agenda, countries are presently taking steps to protect essential zones of regulation. This is particularly important where they wish to undertake measures to ensure help for marginalized or discriminated against populations, for positive action on the basis of gender. Thus the government of South Africa has taken steps to protect its ability to promote black economic empowerment. The government of Malaysia has similarly sought to protect its rights to empower the Bumiputras ethnic group.
- It is therefore urgent to advance work to develop appropriate “clauses” for trade and investment agreements to protect regulatory space, for the “*right to regulate*”. This should be integrated in any final declaration of the FFD process. As the IISD study indicates “the lesson here is simple: for right to regulate clauses to be effective...they must be properly constructed to protect regulatory space, as opposed to leaving the legal issues to be determined on a reading solely or principally of the investor rights.”
- A related and similarly far-reaching area is that of **the regulation of intellectual property**. The tense history around the application of TRIPS flexibilities by developing country government in order to provide for access to medicines and protect the human right to health has been raised before in the FFD process. The recent case of the issue of compulsory licenses for cancer and heart medicines in Thailand as well as for AIDS treatments in that country and my own, are instructive. Developing country governments must be free to exercise these flexibilities without threat of private or state-backed retaliation by others. What international penalties could be developed against such retaliatory actions?
- More broadly, in terms of seeking to prioritize positive development objectives, support could be given to the approach undertaken through the WIPO Activity Assessment framework which places **intellectual property in a development positive context**, and sets out performance indicators like impact of initiatives not only on GDP growth, but on the Gini coefficient, the impact on domestic innovation capacity, understanding of TRIPS flexibility, capacity to design the optimal national IP strategy, with enforcement mechanisms from a development perspective.
- Thank you for your attention