

# CUTS Statement to UNCTAD XII

## Building Consensus for the Accra Accord

### *Trade and Development Mandate for UNCTAD during 2008-2012*<sup>1</sup>

#### 1. Introduction

1.1 The United Nations Conference on Trade and Development (UNCTAD) was established in 1964 to serve as the focal point of the United Nations for the integrated treatment of trade and development and interrelated issues in the areas of finance, technology, investment and sustainable development. The Ministerial Conferences of UNCTAD are held once every four years to debate the key issues related to trade and development and to determine the work programme for the next four years. The 12<sup>th</sup> Ministerial Conference of UNCTAD (UNCTAD XII) will be held in Accra, Ghana from 20 to 25 April 2008.

1.2 UNCTAD XII aims to reaffirm the primary mandate of UNCTAD and build on the Sao Paulo Consensus (the action-oriented document adopted by ministers at UNCTAD XI in Sao Paulo, Brazil in 2004) by providing updated policy analysis and policy responses as well as guidelines to strengthen UNCTAD and to enhance its development role, its impact and its institutional effectiveness. The overall theme of the Conference is, “Addressing the opportunities and challenges of globalisation for development”. The four Sub-themes under the overall theme are:

- Enhancing coherence at all levels for sustainable economic development and poverty reduction in global policy making, including the contribution of regional approaches;
- Key trade and development issues and the new realities in the geography of the world economy;
- Enhancing the enabling environment at all levels to strengthen productive capacity, trade and investment: mobilising resources and harnessing knowledge for development; and
- Strengthening UNCTAD: enhancing its development role, impact and institutional effectiveness.

1.3 UNCTAD membership has been negotiating a text for adoption at Accra. This text includes an introduction and four substantive sections, each dealing with one Sub-theme. The sections on the first three Sub-themes are organised into three sub-sections each that address “policy analysis” “policy responses” and “UNCTAD’s contribution” respectively. The last section on Sub-theme four brings together the relevant elements from the earlier sections to outline UNCTAD work programme and institutional machinery for the next four years.

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<sup>1</sup> CUTS International has actively followed the developments regarding preparations for UNCTAD XII by, *inter alia*, organising two civil society pre-UNCTAD XII events in Hanoi, Viet Nam ([www.cuts-citee.org/pdf/AsianCivilSocietyRecommendations-UNCTADXII.pdf](http://www.cuts-citee.org/pdf/AsianCivilSocietyRecommendations-UNCTADXII.pdf)) and in Nairobi, Kenya ([www.cuts-citee.org/pdf/AfricanCivilSocietyRecommendations-UNCTADXII.pdf](http://www.cuts-citee.org/pdf/AfricanCivilSocietyRecommendations-UNCTADXII.pdf)). CUTS also published a Briefing Paper (From UNCTAD XI to UNCTAD XII – A Stocktaking – [www.cuts-citee.org/pdf/BP08-DI-4.pdf](http://www.cuts-citee.org/pdf/BP08-DI-4.pdf)). The pre-UNCTAD XII civil society events were organised as part of CUTS project entitled “Linkages between Trade, Development and Poverty Reduction”, which is supported by the Ministry of Foreign Affairs, The Netherlands and Department for International Development, UK. CUTS International will organise several events in Accra during the UNCTAD XII Civil Society Forum.

1.5 Despite constructive engagement by all members, many differences still persist and the draft text of 9 April 2008 (future TD/L.398) that is being transmitted to Accra contains many paragraphs within square brackets indicating a lack of consensus among members on those issues. This Statement outlines the key outstanding issues with recommendations for the civil society to contribute towards a consensus at Accra that fulfils UNCTAD's primary mandate and strengthens its relationship with the civil society organisations (CSOs).

## **2. Sub-theme 1**

*Enhancing coherence at all levels for sustainable economic development and poverty reduction in global policy making, including the contribution of regional approaches*

2.1 There are two main outstanding issues under this Sub-theme:

- policy space (paragraphs 13 bis bis and 19); and
- good governance and human rights (paragraph 14).

### Policy Space

2.2 The Sao Paulo Consensus had recognised the importance of policy space for trade and development strategies of developing countries and accordingly had mandated UNCTAD to work on this issue. However, in the run up to Accra the negotiations on this issue has opened old ideological divides between those who argue for an overarching concept of policy space and those who favour focusing on building national capacities within the international obligations. "Policy Space" should be viewed as a dynamic concept where specific policy instruments can not be pre-identified for every developing country as one-size-does-not-fit-all.

*2.2.1 CSOs should support the affirmation of the concept of policy space for developing countries (and continuing work by UNCTAD on this issue) while acknowledging their commitments under the existing and future international agreements.*

### Good Governance and Human Rights

2.3 The principles of good governance are well recognised. These include: transparency and accountability, regulatory quality, rule of law, and respect for all human rights. However, developing countries resist the attempts to include such issues in any work by UNCTAD given its specific mandate on trade and development issues.

*2.3.1 CSOs can support the inclusion of the above-mentioned good governance principles provided that these are equally applicable to international governance mechanisms as well, that the focus is on economic and social rights and the right to development, and that specialised UN agencies continue to deal with these issues while UNCTAD concentrates on its primary mandate of trade and development.*

### 3. Sub-theme 2

*Key trade and development issues and the new realities in the geography of the world economy*

3.1 This has been the core of UNCTAD's work programme including the assistance to developing countries on issues related to the WTO (World Trade Organisation) negotiations as well as other regional trade agreements whether North-South or South-South. The outstanding contentious issues under this Sub-theme include:

- commodities (paragraphs 65, 65 bis, 65 ter);
- non-tariff barriers including unilateral measures (paragraphs 47, 47bis, 62);
- intellectual property rights (paragraph 85); and
- climate change (82 ter).<sup>2</sup>

#### Commodities

3.2 This is a critical issue for many developing as well as developed countries, particularly due to the dependence of many developing countries on the export and import of commodities. While there is agreement that this issue is of critical importance and that UNCTAD should continue its valuable work in this area, the views diverge on how best to address this issue, particularly given the recent increase in commodity prices including food and energy commodities. A handful of developed countries also prefer national action by developing countries concerned to deal with commodity-dependence over international agreements.

*3.2.1 CSOs should argue for the continuation of very useful work by UNCTAD on this critical issue with a view to finding adequate and workable solutions at the international and national levels and by combining both old and innovative approaches so that the current boom in commodity prices leads to sustainable development and diversification of all developing countries. UNCTAD work can focus on assisting developing countries to benefit from the opportunities arising from rising commodity prices as well as to contain the negative consequences of falling commodity prices when they do.*

#### Non-Tariff Barriers

3.3 The debate on this issue has two dimensions: a) recognition and application of international standards while developing national standard particularly in developed countries, and b) the use of unilateral measures that act as non-tariff barriers (NTBs). Safety and technical regulations serve important objectives but are also prone to be used for protectionist purposes. Moreover, most developing and least developed countries lack the resources and capacity to keep up with the ever increasing standards in developed country markets that often nullify the market access gains through multilateral trade agreements.

*3.3.1 CSOs should advocate anchoring of national safety and technical regulations on relevant international standards and provision of adequate assistance to developing countries to meet these standards. UNCTAD needs to work more on issues relating to NTBs that affect developing countries, particularly the LDCs (least developed countries) more.*

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<sup>2</sup> Intellectual property rights and climate change are also major outstanding issues under Sub-theme 3 and hence have been discussed under that section of this Statement.

#### 4. Sub-theme 3

*Enhancing the enabling environment at all levels to strengthen productive capacity, trade and investment: mobilizing resources and harnessing knowledge for development*

4.1 Under this cluster several other important elements of UNCTAD's work programme are covered. For example, investment, technology, enterprise development, information and communication, etc. These are key issues for a holistic treatment of trade and development and to assist developing countries in their better integration into the global economy. Most of the text under this sub-theme has been agreed leaving three contentious issues. These are:

- intellectual property rights (paragraphs 52, 53, 99, 99 alt, 115 alt, 115 alt bis, 115 alt ter, and 129);
- climate change (paragraphs 111, 121, 122, and 143); and
- Tunis Agenda for the Information Society (paragraph 121 bis).

##### Intellectual Property Rights

4.2 This is perhaps one of the most contentious issues, which is relevant under both the Sub-themes 2 and 3 and hence, the Chair of the PrepCom (Preparatory Committee of UNCTAD XII) has suggested discussing this as a cluster. The differences among members are essentially two: a) what kind of IPRs are more conducive for development, and b) what work, if any, UNCTAD should undertake on this issue. In a way these are old debates that had not stopped UNCTAD from working on some IPR issues as part of its work on WTO as well as investment and technology issues.

*4.2.1 CSOs, based on their earlier positions on this issue should advocate that the international IPR regimes should support the development of developing countries. The global IPR regime, whether in WTO (World Trade Organisation) or WIPO (World Intellectual Property Rights Organisation) or in the growing number of regional and bilateral agreements, should have adequate flexibilities and developing countries should be allowed and assisted in taking advantage of these flexibilities. UNCTAD can make useful contribution to this work while remaining mindful of the work of other relevant international organizations, particularly the WIPO, Convention on Biological Diversity (CBD), and World Health Organization (WHO).*

##### Climate Change

4.3 This is a new issue on UNCTAD agenda. But, like the issue of IPRs, there is sharp division on this issue as well, prompting the Chair of the PrepCom to suggest discussion in a separate cluster as this issue figures under both Sub-themes 2 and 3. While UNCTAD has a good and long track record of working on trade, development and environment issues, some members are not comfortable with UNCTAD undertaking work on climate change at this stage.

*4.3.1 CSOs can advocate UNCTAD undertaking work on climate change given its potentially critical impact on trade and development of many developing countries, particularly the small and vulnerable economies among them. This work can focus on research and analysis of relationship between climate change on the one hand and trade and development on the other to assist developing countries in their preparations to deal with climate change and to forge intergovernmental consensus for appropriate responses in accordance with the common but differentiated responsibilities of nations. This work should be undertaken in close collaboration with other relevant UN organisations.*

#### Tunis Agenda for the Information Society

4.4 The issue here is the implementation of the principles and goals, particularly paragraphs 69-71 of the Tunis Agenda for the Information Society related to internet governance. This brings in the related issues of equitable participation in global internet governance and the concerns about security.

*4.4.1 CSOs should support the agreed outcome of the inter-governmental negotiations on this issue and to benefit from the work undertaken by UNCTAD in the last 4 years.*

### **5. Sub-theme 4**

*Strengthening UNCTAD: enhancing its development role, impact and institutional effectiveness*

5.1 This Sub-theme focuses on the concrete elements of UNCTAD work programme, particularly the institutional machinery to carry out the mandate as agreed in the substantive parts of the earlier three Sub-themes. Hence, the elements under this Sub-theme cannot be fully discussed unless there is agreement on the outcome regarding the first three Sub-themes. Within this context, the main sticking issues are:

- clarity about inter-governmental consensus building role of UNCTAD (paragraphs 156, and 156 alt);
- numbers, names and mandates of Commissions (paragraphs 163, 163 bis, 164, 164 bis, 164 ter, 164 quatre); and
- themes for multi-year expert meetings (paragraph 165 bis); and role of non-state actors (paragraph 158).

#### Inter-governmental Consensus Building

5.2 UNCTAD performs three key functions: acting as a forum for inter-governmental consensus building on trade and development and related issues; conducting research and analysis; and providing technical assistance. The consensus building role replaced the earlier UNCTAD mandate as a negotiating forum at the time of UNCTAD IX in Midrand, South Africa in 1996. Some developed countries feel that this role should be further specified so that UNCTAD does not challenge the negotiated outcomes at other international fora. On the other hand, developing countries argue that this is the main role of UNCTAD and constructive inter-governmental consensus building at UNCTAD can in fact help the negotiations in other organisations as well as guide its own research and analysis and technical assistance functions, while focusing specifically on the development implications for developing countries, particularly the LDCs, of negotiations elsewhere.

*5.2.1 CSOs should support the inter-governmental consensus building role of UNCTAD. Given the non-negotiating setting, forging consensus at UNCTAD can be easier, leading to the resolution of contentious trade and development issues at other relevant negotiating, while at the same time providing the developing countries an analysis of what would be the implications of a specific result in a given negotiation .*

#### Commissions – Number, Role and Mandates

5.3 Inter-governmental Commissions are the key inter-governmental bodies of UNCTAD. Their number, names, and mandates cannot be agreed unless there is agreement on the substantive elements under the first three Sub-themes. Nevertheless, one proposal by G-77 regarding the establishment of a Commission on Globalisation merits serious consideration.

*5.3.1 CSOs should demand that the number, names and mandates of the Commissions should be commensurate with the elements of the work programme in the earlier three Sub-themes. They should support the establishment of a Commission on Globalisation that will allow the treatment and debates around this critical issue on a sustained basis.*

#### Themes for Multi-Year Expert Meetings

5.4 The Commissions convene several expert meetings each year to deal with issues within their respective mandates. These issues are identified by Commissions each year and the outcome of expert meetings is fed back into the Commission deliberations. There is general agreement that given the nature of some issues more than one expert meetings on the same issue can be convened (hence the title “multi-year expert meetings”). However, members disagree on the themes for these multi-year expert meetings.

*5.4.1 CSOs should support the establishment of some multi-year expert meetings with clear terms of reference, for example on commodities, debt management, trade facilitation, etc. However, there should be enough space left for the Commissions to convene other expert meetings on issues requiring expert inputs as UNCTAD implements its work programme for the next four years.*

#### Participation of Non-State Actors

5.5 This is an issue of utmost importance to the civil society. Several useful suggestions have been made in the pre-UNCTAD XII Civil Society events organized by CUTS International in Hanoi, Vietnam and Kenya, Nairobi.

*5.5.1 CSOs should demand that the participation of CSOs from developing countries in UNCTAD meetings and activities should be improved while maintaining the inter-governmental nature of the organisation. This can be achieved by, inter alia, strengthening the NGO Liaison Service of UNCTAD, joint research and analysis and delivery of technical assistance in partnership with CSOs, and establishing relationships with country level CSOs.*