

Letter on Trade, Investment, Digitalization, Climate Issues in the UNCTAD Mandate

September 23, 2021

Dear Member States,

The fifteenth conference of the UN Conference on Trade and Development (UNCTAD 15) will occur October 3-7 of 2021 and will set the mandate of the institution for the next quadrennial. While much of the text has already been concluded, significant disparities remain. As civil society organizations (CSOs) from both developed and developing countries, we believe that important gaps remain that must be remedied for the text to ensure that UNCTAD can best serve developing countries as the focal point for trade and development and the interrelated issues of finance, technology, investment, and sustainable development.

First, the consensus-building and technical cooperation pillars of UNCTAD must be based on the outcomes and evidence identified by the **analysis and research pillar**. Paragraph 96.bis.primus is a naked attempt to censor, *a priori*, the independence of the analytical pillar. We criticize the certain members of B who have, in recent months, engaged in censoring research publications of UNCTAD that were well within its mandate. In no other UN institution is its research subject to a "biennial review," in which topics for research that are well within the mandate must be re-litigated before the board. This paragraph must be removed for the institution to function according to its mandate. Rather, it is the policy recommendations of the other pillars which should be subject to review as to whether they are coherent with the outcomes of research and analysis, to ensure they are evidence-based. We call on all governments to go back to the negotiating table to remove the provisions of 86.bis.primus which endorse censorship.

The text fails to acknowledge the single most important issue facing developing countries in the current crisis: that of **vaccine apartheid**. Intellectual property barriers on vaccines, as well as treatments and diagnostics, enforced by the WTO are the single biggest cause of harm to developing countries, in addition to severely constraining their ability to use trade for development. Thus, UNCTAD should call for an immediate agreement to the TRIPS waiver proposal so that barriers to trade in under the rubric of intellectual property can be removed to end the pandemic for all. The acknowledgement that it "is important to ensure timely, global and equitable access to safe, effective and affordable, Covid-19 tools (vaccines, therapeutics, diagnostics, and personal protective equipment), recognizing extensive COVID-19 immunization as a global public good to help overcome the Covid-19 pandemic worldwide and recover the momentum for sustainable development. Sharing of information and technology for the detection, prevention, treatment and control of the pandemic is necessary.." in Para 7 is helpful in this regard. But it is insufficient. The text should include a recognition of the barriers that trade rules in the form of intellectual property have played in preventing billions of people to access to vaccines, therapeutics, diagnostics, and PPE, and the need for UNCTAD to work across the three pillars to remove these barriers to support recovery and development.

On **trade**, text fails to acknowledge the ways in which the current system of trade rules constrains, rather than facilitates, countries' ability to create jobs, ensure food security and financial stability, and protect environmental sustainability, and must thus be transformed. Thus,

1. Rather than lauding the WTO (an institution with liberalization, not development, at its center) and calling for its expansion, the document should call for a multilateral system with sustainable development and shared prosperity at its core. (Paras 16.bis and 77.quin)
2. Likewise, UNCTAD's mandate should never call for the continued liberalization of trade, but rather work to make the global trade system better able to allow developing countries to use trade for their development (Para 77.quin);

Thus, the mandate of UNCTAD should work across all three pillars to:

3. Assess the asymmetries and imbalances in the rules multilateral system which constrain the ability of developing countries to use trade for their development, and provide technical cooperation and build consensus towards ameliorating them;
4. Work towards concluding the development agenda, a key goal of developing countries for two decades in the WTO and mandated by SDG 17.10 and which is inexplicably absent from the UNCTAD mandate draft text;
5. Strengthen Special and Differential Treatment (SDT) provisions, not only for LDCs (77quin);
6. Remove barriers to achieving food security including through public stockholding provisions;
7. Condemn unilateral coercive measures and work for their removal under international law. This is especially important with respect to those that impede the full achievement of economic and social development, particularly in developing countries (Para 112.V). It is not particularly relevant if coercive measures that are illegal under international law affect commercial interests and that reference should be deleted (Para 82);
8. Assess critically the impacts on trade and development of various bilateral and regional agreements, such as the African Continental Free Trade Area, the Pacific Agreement on Closer Economic Relations Plus and the Regional Comprehensive Economic Partnership Agreement. Rather than inaccurately praising them as "noteworthy achievements"; (Para 16.bis)
9. Work to support developing countries in their structural transformation, including through the removal of barriers to the implementation of industrial policy;
10. Work to reduce economic concentration. Although this is one of the most significant problems of the global economy affecting developing countries' prospects for using trade for developing, it is conspicuously absent from the text;
11. Provide technical assistance to acceding countries prior to, during and in the follow-up to the accession process, as the text mandates. However, it should also include a commitment from UNCTAD Members that acceding members should not be forced to

comply with requirements that go beyond those of others in their economic category (ie “WTO-plus” provisions) (Para 77quin);

12. While we are gratified at the G77’s success in ensuring the inclusion of language “recognizing that appropriate and effective special and differential treatment for developing countries and LDCs should be an integral part of the negotiation,” in the WTO’s negotiations on Fisheries, this simply reaffirms the mandate from the SDGs and should never have been opposed (Para 60).

We commend the G77 in succeeding to ensure that the important work of UNCTAD to support **South-South cooperation** should be strengthened (64.bis.primus).

On **investment**, the negative impacts of investment policies, including those promulgated by UNCTAD in the past, such as those with investor to state dispute settlement (ISDS) mechanisms, must be acknowledged. It is not only that the expansion of investment has not benefitted all, but that developing countries have been actively harmed, including according to UNCTAD’s research. Investment rules must not only be “clear” and “predictable” but also facilitate developing countries’ development priorities and the right to regulate while ensuring that states maintain the ability to hold corporations accountable. UNCTAD’s role should focus on increasing foreign direct investment - not in volume terms but in accordance with national development priorities - and in advocating for frameworks that put development at the center of policies and practices governing investment flows (Para 112.VIII);

On **technology and the digital divide**, it is not only increasing access to technology but the digital economic divide, as demonstrated by UNCTAD’s research, that must be addressed. Efforts to utilize UNCTAD in the service of an agenda of digital behemoths based in developed countries is deplorable and must be halted. All governments need the policy space to pursue digital industrialization to create jobs and spur innovation in the digital age, free of the pernicious impacts of economic monopoly and concentration. They also need policy space to manage the governance of data in the public interest, such as in the strengthening of quality public services which are essential for development and the achievement of the Sustainable Development Goals (SDGs). Thus:

1. References to “data flow with trust” must be excised (Para 43);
2. ‘Multistakeholder approach’ is a code word for corporate driven policy making and this term should be removed; this reference opens the door to UNCTAD’s facilitation of Big Tech corporate lobbying of developing countries to open markets and create pro-corporate regulations under the guise of giving “advice” to developing countries (Para 42);
3. UNCTAD’s mandate should include work across all three pillars on digital industrialization, the value of data for developing countries and its use and governance in the public interest, and ensuring shared prosperity including by reducing economic concentration.

On **the climate emergency and environmental crisis**, the text fails to recognize the overwhelming responsibility of developed countries in causation and falls short in a number of

critical areas, including by attempting to limit the work of UNCTAD to specific groups of countries when all developing countries are affected. Thus,

1. When international instruments are mentioned, those that are most crucial to developing countries should be included;
2. Technology Transfer must be emphasized as a solution which UNCTAD's three pillars should be mobilized to accelerate (Para 55), and references to "mutually agreed terms" should be excised (Para 112.XXVII);

In addition, several key environment issues that should be part of UNCTAD's mandate are not yet mentioned in the text:

3. The efforts to support a transition to a just, sustainable and fully inclusive economy, such as UNCTAD's work to promote a global green new deal, must be strengthened;
4. The potential impacts of climate-related tariffs on developing countries should be studied.
5. Language should be included to reference learning from UNCTAD's long experience in commodity and supply management and cooperation for keeping global warming with the Paris Agreement goal of 1.5 degrees Celsius.

UNCTAD 15 will occur in a key moment in the ongoing Covid pandemic and recovery. Developing countries have suffered extensively, in large part because the international system's trade, investment, technology, and climate rules and practices have failed to provide an environment conducive to sustainable development. Developing countries will not be able to "build back better" unless the global community recognizes the need to transform the current rules. We look forward to working with you to ensure that these provisions are included in UNCTAD's mandate.

Sincerely,

Public Services International (PSI) global union federation
Public Citizen's Global Trade Watch, United States
Pacific Network on Globalisation (PANG)
Asia Pacific Forum on Women, Law and Development (APWLD), Thailand
Regions Refocus
Centre tricontinental (CETRI), Belgium
World Labor Institute (IMT-UNTREF), Argentina
Transnational Institute (TNI)
Both ENDS, The Netherlands
Association for Proper Internet Governance (APIG), Switzerland
War on Want (UK)
EcoNews Africa (ENA), Kenya
Equidad de Género: Ciudadanía, Trabajo y Familia, México
GT Agenda 2030, Brazil
Dr Uzo Adirijeje Foundation (DUZAFFOUND), Nigeria
Society for Conservation and Sustainability of Energy and Environment in Nigeria (SOCSEEN)
Gestos (soropositividade, comunicação, gênero), Brazil