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**THE UNCTAD XI SAO PAULO CONSENSUS:  
DEFINING UNCTAD'S MANDATE**

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**I. INTRODUCTION**

1. This analytical note has been prepared in order to give a concise overview of the salient points of the Sao Paulo Consensus of the United Nations Conference on Trade and Development (UNCTAD) at its Eleventh Session. The note seeks to outline the implications of the Sao Paulo Consensus for UNCTAD's existing mandates and work program, in particular, and on developing countries, in general, insofar as the Sao Paulo mandates may be relevant to developing countries' issues and interests in the international trade and development policy-making arena.
2. Established in 1964, UNCTAD is the focal point within the United Nations system with respect to issues on the integrated treatment of trade and development and interrelated issues regarding finance, technology, investment and sustainable development, with the view towards assisting in the development-friendly integration of developing countries into the global economy. UNCTAD currently serves as a forum for intergovernmental discussions and deliberations aimed at consensus-building; undertakes policy

research and analysis and data collection; and provides technical assistance to developing countries with respect to such issues.

3. On 13-18 June 2004, UNCTAD held its eleventh ministerial-level meeting in Sao Paulo, Brazil. The conference is UNCTAD's highest decision-making body. It meets every four years to set priorities and guidelines for the organization, and provides an opportunity to debate key economic and development issues.
4. During the week-long conference, a number of sessions on trade, investment, finance, technology and development-related topics were organized around the main theme of "*Enhancing the coherence between national development strategies and global economic processes towards economic growth and development, particularly of developing countries.*" (see UNCTAD XI/PROGR/Rev.4 for the provisional program of events at the conference). There were four sub-themes for the conference:
  - Development strategies in a globalizing world economy
  - Building productive capacity and international competitiveness
  - Assuring development gains from the international trading system and trade negotiations
  - Partnership for development
5. The Geneva preparatory negotiating phase for the conference, undertaken by the UNCTAD XI Preparatory Committee (PrepComm) chaired by Chinese Ambassador Sha, showed wide differences in perspectives between the G-77 and China, on one hand, and developed countries on the other hand – led by the US, the EU, Canada and Switzerland – mainly over two of the conference's sub-themes, i.e. "assuring development gains from the international trading system and trade negotiations" and "development strategies in a globalising world economy."
6. In general, developed countries wanted UNCTAD XI to avoid discussing issues under negotiation in the WTO. They also wanted the negotiating text to avoid criticizing the work of the major global economic organizations and for UNCTAD to have a more limited mandate. In addition, they wanted to focus and move UNCTAD's work away from broad developmental and economic policy analysis towards more narrow and focused policy research and on providing technical assistance for national governments.
7. Some internal differences of opinion notwithstanding, G-77 and China were united in their positions. Developing countries wanted to strengthen the Bangkok Declaration adopted at UNCTAD X in 2000 and to extend UNCTAD's mandate to areas such as the impacts of new bilateral agreements on developing countries and WTO accession. They wanted UNCTAD to play a monitoring and advisory role and help identify relevant development perspectives in these areas. They resisted developed countries' views that UNCTAD's work should be tied to, and must be complementary with, the work of the IFIs and the WTO. In addition, developing countries pushed hard

to introduce and support the concept of expanding the policy space for developing countries to adopt and implement policies that promote their development objectives and provide for a more sequenced liberalization process. The potential of domination by the developed country donors in defining UNCTAD's agenda also gave developing countries much worry.

8. Over eight months of hard negotiating in the PrepComm, however, enabled Member States to agree to compromise texts for most of the entire negotiating text, leaving only eighteen (18) bracketed paragraphs to be negotiated during the conference itself. These bracketed paragraphs involved the chapeau's paragraphs relating to policy space, proposals on paragraphs relating to coercive unilateral trade measures, corporate responsibility, good governance, and the role of UNCTAD.
9. Once the conference commenced on 14 June 2004, negotiations on the remaining bracketed paragraphs were intense and mostly split along North-South lines. However, by the evening of 16 June 2004, virtually all of the text of the consensus document (except for paragraph 19 in relation to debt relief and development financing) were approved ad referendum in the drafting groups. The text of the last remaining bracketed paragraph was agreed-to by the middle of 17 June 2004.
10. On 18 July 2004, UNCTAD XI formally adopted two documents: (i) a political declaration called "The Spirit of Sao Paulo"<sup>1</sup>; and (ii) its policy document for UNCTAD called the "Sao Paulo Consensus."<sup>2</sup>

## II. SALIENT POINTS OF THE SAO PAULO CONSENSUS

### A. Critique of Globalization and the Role of the State

11. In terms of the policy analysis that constitutes a major part of the Sao Paulo Consensus, UNCTAD XI has joined an increasing number of critiques of the extent to which current process of globalization has failed to deliver on their promised benefits, especially to most developing countries and their poverty-stricken populations.
12. Through the Sao Paulo Consensus, UNCTAD XI has recognized that the delivery of the benefits of the process of globalization has been unequal and that it has had, for many developing countries, adverse social impacts.<sup>3</sup>
13. Furthermore, in a clear departure from past "development policies that have centred around greater openness to international market forces and competition and a reduced role for the state"<sup>4</sup>, UNCTAD XI states that the

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<sup>1</sup> UN, *UNCTAD XI: The Spirit of Sao Paulo*, TD/L.382, 17 June 2004, available at [http://www.unctad.org/en/docs/tdl382\\_en.pdf](http://www.unctad.org/en/docs/tdl382_en.pdf).

<sup>2</sup> UN, *UNCTAD XI: Sao Paulo Consensus*, TD/410, 25 June 2004, available at [http://www.unctad.org/en/docs/td410\\_en.pdf](http://www.unctad.org/en/docs/td410_en.pdf).

<sup>3</sup> *Id.*, paras. 6 and 12.

<sup>4</sup> *Id.*, para. 13.

development process cannot be satisfactorily undertaken and its objectives achieved unless the role of the State in such a process is preserved. UNCTAD XI stresses that “[t]here is a need to strike a balance between the objectives of efficiency and equity. Both the market and the state have an important role to play in the development process, and it is essential to ensure that their respective roles are complementary.” The role of the State is to ensure that development benefits are distributed equitably through sound development policies, strategies, infrastructure development, and regulatory frameworks.<sup>5</sup>

## B. Policy Space and Development Policies

14. One of the major policy statements of UNCTAD XI is its recognition of “policy space”, especially for developing countries, and the need for a better balance between such policy space and international disciplines and commitments.<sup>6</sup>
15. “Policy space”, for UNCTAD XI, refers to “the scope for domestic policies, especially in the areas for trade, investment and industrial development.”<sup>7</sup> Essentially, it reflects the idea that governments should have the leeway to “evaluate the trade-off between the benefits of accepting international rules and the constraints posed by the loss of policy space.”<sup>8</sup>
16. The concept of policy space, therefore, is essentially a fusion of three key principles in international law and policy relevant to the formulation and acceptance of international trade disciplines and rules by States:
  - (i) the principle of the sovereign equality of States<sup>9</sup> – i.e. the binding nature and application of international rules and disciplines are dependent on the equal exercise of national sovereignty by participating States;
  - (ii) the right to development;<sup>10</sup> and
  - (iii) the principle of special treatment for developing countries<sup>11</sup> – i.e. the provision of special and differential treatment so as to be responsive and

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<sup>5</sup> Id., para. 7.

<sup>6</sup> Id., para. 8.

<sup>7</sup> Id.

<sup>8</sup> Id. In this regard, see also UNCTAD, *Notes on the concept of economic policy space*, 4 March 2004, para. 1, in which the UNCTAD Secretariat described the concept of economic policy space as referring to “the extent to which national governments have the authority to make decisions concerning economic policy and, correspondingly, the extent to which such authority is constrained by international disciplines and processes.” This concept is also linked, according to the UNCTAD Secretariat, to the concept of “open nationalism” which “suggests policies and approaches that take appropriate account of the pursuit of national objectives and goals but are consistent with the growing integration of the world economy and the increasing participation of developing countries in its challenges and opportunities. Such policies and approaches are conceived primarily as efforts to upgrade the capabilities and skills of the national labour force, as well as of national capital, in order to better integrate into the global economy.” See UNCTAD, *A conceptual note on “open nationalism”*, 4 March 2004, para. 26.

<sup>9</sup> See e.g. UN, *Charter of the United Nations*, art. 2(1).

<sup>10</sup> See e.g. UN, *General Assembly: Declaration on the Right to Development*, UNGA Res. 41/128, 4 December 1986; UN, *Conference on Environment and Development: Rio Declaration on Environment and Development*, A/CONF.151/6 (Vol. I), 14 June 1992, principle 3.

accommodating to developing countries' specific development needs and circumstances rather than be based on a "one-size-fits-all" approach that, all too often, has characterized international rule-making for international economic relations in the past two decades.

17. One should note that the international principles above which are embedded in UNCTAD XI's concept of policy space are principles that have long underlain UNCTAD's work since UNCTAD I. For example, among the general principles to govern international trade relations and trade policies conducive to development adopted by UNCTAD I in June 1964 as part of its Final Act are the following:<sup>12</sup>

*General Principle One*

Economic relations between countries, including trade relations, shall be based on respect for the principle of sovereign equality of States, self-determination of peoples, and non-interference in the internal affairs of other countries.

x x x

*General Principle Three*

Every country has the sovereign right freely to trade with other countries, and freely to dispose of its natural resources in the interest of the economic development and well-being of its own people.

x x x

*General Principle Fifteen*

The adoption of international policies and measures for the economic development of the developing countries shall take into account the individual characteristics and different stages of development of the developing countries, special attention being paid to the less developed among them, as an effective means of ensuring sustained growth with equitable opportunity for each developing country.

18. The text's language on policy space should be related to the language relating to the development of productive capacities and international competitiveness. In this regard, a major policy statement by UNCTAD XI is its recognition that a successful development process has to be based on "active and well sequenced policies to promote productive investment, develop human resources and efficient infrastructure, enhance institutional capacity, build technological capability, and support linkages between large and small enterprises."<sup>13</sup>

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<sup>11</sup> UN Declaration on the Right to Development, supra note 10, art. 4(2). See also WTO, *Agreement Establishing the World Trade Organization*, 2<sup>nd</sup> preambular clause and art. XI:2.

<sup>12</sup> UNCTAD I, *Final Act*, para. 54, in South Centre, RECALLING UNCTAD I AT UNCTAD XI (2004), at pp. 10-11, available at <http://www.southcentre.org/publications/pubindex.htm#books>.

<sup>13</sup> Sao Paulo Consensus, supra note 2, para. 36. See also id., paras. 43-44, 57.

19. Together with the policy space concept, this means that developing countries should not be required to adhere to international disciplines that they may not be ready to apply or which may yet be inappropriate for them at their respective levels of economic development.

#### C. Global Economic Policy Coherence

20. UNCTAD XI also called for more coherence in the global economic policy regime, especially with respect to international rules and disciplines in the international monetary, financial, and trading systems.
21. Of particular interest is UNCTAD XI's call for financial and capital flow volatility to be addressed and for solutions to developing countries' external debt problems to be found.<sup>14</sup> In addition, UNCTAD XI reiterated the ODA targets in the Monterrey Consensus<sup>15</sup> for developed countries to provide ODA to developing countries, with additional language that seeks to ensure that debt relief measures do not diminish ODA resources intended for developing countries and that voluntary (instead of "innovative" as suggested by developing countries) financial mechanisms be explored to support development and poverty eradication.<sup>16</sup>
22. In this respect, UNCTAD XI stresses that UNCTAD's work on contributing to increased coherence in global economic policy-making through cooperation with other international organizations should be "within their respective mandates ... while avoiding duplication of work."<sup>17</sup> This means that UNCTAD's ability, flexibility, and independence to carry out its mandated work program should not be adversely impinged upon by the work being done by other international organizations or other international forums.

#### D. Trade

23. A significant proportion of the UNCTAD XI Sao Paulo Consensus text also reflects the perception of Member States of the significant role that an open, predictable, rules-based, equitable, non-discriminatory, and transparent regime for global trade relations plays in enhancing the development prospects of developing countries, while at the same time stressing that "[t]rade is not an end in itself, but a means to growth and development."<sup>18</sup>
24. Through the Sao Paulo Consensus, UNCTAD XI reminds the WTO that the development needs and interests of developing countries are at the core of the Doha Work Program, and that such needs and interests must be pursued "with a view to bringing about concrete development-oriented outcomes from the

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<sup>14</sup> Id., paras. 17-19.

<sup>15</sup> UN, *International Conference on Financing for Development: Monterrey Consensus*, A/CONF.198/11, 22 March 2002, para. 42.

<sup>16</sup> Sao Paulo Consensus, *supra* note 2, para. 20.

<sup>17</sup> Id., para. 11.

<sup>18</sup> Id., para. 63.

multilateral trade negotiations.”<sup>19</sup> In this regard, much of the adopted text referring to the Doha Work Program reflects and reiterates, to a great extent, the development-oriented views and perspectives of developing countries that they have raised in the context of the WTO negotiations.<sup>20</sup>

#### E. Unilateral Measures

25. The Sao Paulo Consensus is also noteworthy for its statements relating to the use of unilateral measures by States that are “not in accordance with international law and the Charter of the United Nations” or that are “inconsistent with WTO rules.”<sup>21</sup> These statements were among the most controversial issues raised and discussed both in the PrepComm and in the conference.
26. While the language finally adopted cannot in any way be considered as having any prohibitory effect, it does still constitute official recognition on the part of UNCTAD XI that such measures do exist and are used by States and may have adverse impacts on the trade and development prospects of other States, and thus has some policy value and relevance in future international discussions on these measures.

#### F. Good Governance

27. One of the major issues which saw discussions also being split mostly along North-South lines was on good governance. The North wanted the text on good governance to focus on national-level actions to foster political stability, transparent and accountable governance, and the rule of law. Developing countries, on the other hand, wanted the text on good governance to also refer to international-level governance issues, arguing that the focus on the national level could provide openings for the introduction of additional good governance-related international commitments or disciplines in various international forums. The South also stressed that good governance also needs to be reflected at the international level especially in terms of ensuring international economic policy forums are transparent and foster the full participation of developing countries in global policy-making.
28. The adopted text makes reference to both the national and international levels in listing down the good governance elements that are important for ensuring growth and development.<sup>22</sup>

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<sup>19</sup> Id., para. 67.

<sup>20</sup> See id., paras. 64-68, and 70-94.

<sup>21</sup> Id., paras. 22 and 80.

<sup>22</sup> Id., para. 21.

### G. Corporate Responsibility

29. The text on corporate responsibility<sup>23</sup> was also contentious along North (mostly US) - South lines. The South was pushing for UNCTAD XI to recognize the concept of corporate responsibility, especially those of TNCs in relation to their host countries, and the need to develop and improve international instruments in this regard. At the very least, they argued that there should not be a step back from the language on corporate responsibility of the World Summit on Sustainable Development (WSSD).<sup>24</sup>
30. However, the UNCTAD XI text was a slight step back from the WSSD text, especially in respect of the development and implementation of intergovernmental agreements and measures relating to corporate responsibility and accountability. Whereas the WSSD text's language is such as would allow the future or continued development of mandatory international instruments relating to corporate responsibility and accountability, the UNCTAD XI text, while recognizing that corporate responsibility was recognized at the WSSD, focuses mostly on hortatory statements about the contributions of corporate actors to economic development of host countries, the improvement of voluntary instruments, and the promotion of corporate responsibility and accountability in the context of the development of competition policies and the establishment of competitive market structures in countries.

### H. Institutional Role of UNCTAD

31. There was also much debate and division along North-South lines with respect to the institutional role of UNCTAD in global governance, especially in relation to global trade and development issues. Developed countries' proposals would have pushed UNCTAD into focusing its activities more on national-level technical assistance tied to the technical assistance programs of other organizations such as the World Bank and the WTO rather than continuing to also provide policy research and analyses with respect to global trade and development issues.
32. The language that was adopted at UNCTAD XI essentially preserves UNCTAD's existing mandates and independence, both in terms of its technical assistance activities and its policy research and analyses activities, while at the same time encouraging (but not requiring) UNCTAD to cooperate, "within their respective mandates," with other international organizations in strengthening multilateral development coordination.<sup>25</sup> UNCTAD continues to be the UN's focal point for the integrated treatment of trade and development insofar as this would contribute to the achievement of

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<sup>23</sup> Id., paras. 45, 58, and 89.

<sup>24</sup> See e.g. UN, *World Summit on Sustainable Development: Johannesburg Plan of Implementation*, A/CONF.199/20, 4 September 2002, paras. 18 and 49.

<sup>25</sup> Sao Paulo Consensus, *supra* note 2, paras. 10-11, 26-35, 49-62, 95-109, and 114-118.



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international development goals (including the Millennium Development Goals).<sup>26</sup>

### III. IMPLICATIONS FOR UNCTAD'S WORK PROGRAM

33. When UNCTAD I established UNCTAD as an organ of the UN General Assembly<sup>27</sup>, it stated that among the principal functions of UNCTAD are the following:<sup>28</sup>

- (i) To promote international trade, especially with a view to accelerating economic development, particularly trade between countries at different stages of development, between developing countries and between countries with different systems of economic and social organization, taking into account the functions performed by existing international organizations;
- (ii) To formulate principles and policies on international trade and related problems of economic development;
- (iii) To make proposals for putting the said principles and policies into effect and to take such other steps within its competence as may be relevant to this end, having regard to differences in economic systems and stages of development;

x x x

- (v) To initiate action, where appropriate, in cooperation with the competent organs of the United Nations for the negotiation and adoption of multilateral legal instruments in the field of trade, with due regard to the adequacy of existing organs of negotiation and without duplication of their activities;
- (vi) To be available as a centre for harmonizing the trade and related development policies of Governments and regional economic groupings in accordance with Article 1 of the United Nations Charter; and

x x x

34. UNCTAD I also established a policy research, statistics compilation, and policy analysis work program (including doing work on commodity trade issues),<sup>29</sup> in addition to, for example, a substantive negotiating work program on international commodity arrangements.<sup>30</sup>

35. Forty years later, major changes have already occurred in UNCTAD's functions and work program. While its functions and main work program in policy research, statistics compilation, and policy analyses on trade and development-related issues as established at UNCTAD I continues to be carried out, UNCTAD's other primary function of serving as a trade negotiating forum – i.e. on international commodity arrangements and other trade areas – is no longer at the core of its current work program. Instead, UNCTAD has evolved into acting, in the words of UNCTAD X at Bangkok in February 2000, “as a forum for intergovernmental discussions and

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<sup>26</sup> Id., para. 10.

<sup>27</sup> UNCTAD I, supra note 12, para. 78(a).

<sup>28</sup> Id., para. 78(b), and Annex A.V.1.

<sup>29</sup> Id., para. 84.

<sup>30</sup> Id., Annex A.II.1, para. 14(a).

deliberations, supported by discussions with experts and exchanges of experience. These activities are aimed at consensus-building<sup>31</sup> with respect to the “reformulation of policies in a globalizing world from a development perspective and ... in helping developing countries, in particular the least developed countries, and the economies in transition better understand how to design policies for an efficient integration into the world economy ...”<sup>32</sup>

36. As stated above, the outcomes of UNCTAD XI preserves UNCTAD’s existing mandates coming from UNCTAD X and allows it to continue carrying out its existing technical assistance and policy research and analyses activities. The focus of UNCTAD’s activities and its expertise should be “to explore how globalization can support development, and how appropriate development strategies should be formulated and implemented in support of a strategic integration of developing economies into the global economy.”<sup>33</sup> However, as at UNCTAD X, UNCTAD XI did not result in a revitalization of UNCTAD’s mandate to serve as a trade policy negotiating forum, especially on international commodity arrangements.<sup>34 35</sup>

37. In this regard, UNCTAD is expected to undertake data collection, policy research and analyses and provide technical assistance in relation to, among others, the following broad issue clusters:

- the successful integration of developing countries into the global economy, identifying the elements for a sound macroeconomic development strategy, and looking at the impacts of international disciplines and policies on the implementation of national development strategies;<sup>36</sup>
- investment promotion and regulation (including looking at home and host country investment policies), technology development and transfer (including ICT policies), and enterprise development (especially on small and medium-scale enterprises), in support of building productive capacities and international competitiveness in developing countries;<sup>37</sup>
- building on and strengthening the Bangkok Plan of Action, from a development perspective, in relation to the evolution of the international

<sup>31</sup> UN, *UNCTAD XI: Plan of Action*, TD/386, 18 February 2000, para. 104.

<sup>32</sup> *Id.*, para. 103.

<sup>33</sup> Sao Paulo Consensus, *supra* note 2, para. 27. In this respect, UNCTAD XI echoes UNCTAD X’s Bangkok Plan of Action, which states that “UNCTAD should continue to explore, based on relevant experience, how to enhance the development opportunities at the domestic, regional and international level offered by the globalization process.” UNCTAD XI, *supra* note 30, para. 103.

<sup>34</sup> See e.g. Sao Paulo Consensus, *supra* note 2, para. 100, basically limiting UNCTAD’s role on commodity issues to a monitoring, policy research and analysis, information exchange, and technical assistance activities.

<sup>35</sup> On the other hand, the establishment of an independent international task force on commodities by UNCTAD XI, given that the task force is mandated to “address the commodity problematique in a concerted manner by proposing specific action” (albeit in an “informal and flexible manner, with partners cooperating in a spirit of voluntary endeavour”) with respect to commodity-related issues, may also conceivably result in activities that result in the development of international policies or disciplines relating to international commodity arrangements. See *id.*, Annex, paras. 2-5.

<sup>36</sup> *Id.*, paras. 27-28, and 30.

<sup>37</sup> *Id.*, paras. 50-62.

trading system (especially on issues of concern to developing countries). This would include helping develop the capacities of developing countries to establish their own negotiating priorities and to negotiate trade agreements (including in the WTO's Doha Work Program), looking at the formulation, implementation, and review of national trade and trade-related policies and their impacts on developing countries, and elaborating development benchmarks to assess how effectively developing countries are integrating into and benefiting from the international trading system;<sup>38</sup> and

- the establishment of partnerships with other organizations and making the interactions of UNCTAD with civil society, the private sector and other organizations in the UN system more systematic and better integrated with intergovernmental processes.<sup>39</sup>

38. UNCTAD XI also established a set of significant new mandates that will see UNCTAD undertake multi-stakeholder partnership activities in various areas. These include:<sup>40</sup>

- engaging in partnership activities in relation to the use of “ICT applications for improving the economic competitiveness of developing countries”;
- establishing an “independent international task force on commodities ... in consultation with interested stakeholders” to address various issues relating to international commodity trade and to “breaking the cycle of poverty in which many commodity producers and commodity-dependent countries are now locked”;
- creating a partnership called the “Investment for Development Network”, to be participated in by various organizations, including the World Association of Investment Promotion Agencies, the World Bank Group, OECD, ITC, UNIDO, International Chamber of Commerce, NGOs (such as CUTS, IISD, and ICTSD), national institutions, subregional organizations, and universities. This partnership will seek to “increased understanding of issues related to FDI; help optimize national and international policies aimed at attracting FDI and benefiting from it; and promote related human resources and institutional capacity building”; and
- establishment of the UNCTAD Virtual Institute on Trade and Development with the aim of supporting “the building of national capacities in member countries so that they can analyse international and national trade and economic issues and formulate and implement appropriate home-grown economic policies” through the engagement of academic and training institutions in developing countries and helping these “enhance their own capacity to design and deliver high-quality courses and to conduct research in the areas of trade and development.”

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<sup>38</sup> Id., paras. 95-108.

<sup>39</sup> Id., paras. 114-118 and Annex.

<sup>40</sup> Id., Annex.

#### IV. IMPLICATIONS FOR DEVELOPING COUNTRIES

##### A. UNCTAD Work Program

39. In view of the work program for UNCTAD established by both UNCTAD X and UNCTAD XI, developing countries may likely expect UNCTAD to continue providing at least the same level of data collection, policy research and analyses, and technical assistance services on approximately the same issue areas that it has been providing at least in the past few years.

40. In particular, as a result of the language used in the Sao Paulo Consensus, developing countries may be able to request UNCTAD to provide pro-active policy research and analyses and technical assistance in capacity-building that takes into account the concept of policy space in relation to, among others, the following areas:

- international policies on trade; financial and capital flows; investment; debt relief, reduction, management and sustainability; development assistance and financing; regional integration; technology transfer; corporate responsibility; ICT development; South-South trade (including revitalization of the GSTP<sup>41</sup>); commodity trading arrangements; intellectual property rights (including issues relating to TRIPS, traditional knowledge, genetic resources, folklore, fair and equitable sharing); trade and environment; competition; transport and trade facilitation; trade and debt; trade and poverty; and trade and gender;<sup>42</sup>
- national development policies, including with respect to the development of domestic productive capacity; investment; income distribution and poverty alleviation; debt management; private sector development; ICT development;<sup>43</sup> and
- the development of national capacities for the participation of developing countries in multilateral negotiating processes and international decision-making and in debt management.<sup>44</sup>

##### B. WTO Doha Work Program

41. While UNCTAD and the WTO are completely separate and independent from each other with respect to their respective juridical personalities as international organizations, there is a significant overlap of States that are

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<sup>41</sup> The Participants of the Global System of Trade Preferences Among Development Countries (GSTP) launched the Third Round of GSTP negotiations on 16 June 2004, in a special session of GSTP Participants on the occasion of UNCTAD XI, in order to accelerate South-South trade. See GSTP, *Sao Paulo Declaration on the Launching of the Third Round of Negotiations within the Global System of Trade Preferences among Developing Countries (GSTP)*, 16 June 2004, available at [http://www.unctadxi.org/templates/Press\\_927.aspx](http://www.unctadxi.org/templates/Press_927.aspx).

<sup>42</sup> See e.g. Sao Paulo Consensus, paras. 28, 50, 52, 56-58, 62, 95-108, and Annex.

<sup>43</sup> See e.g. id., para. 29-30, 51, 53-55, and 61.

<sup>44</sup> Id., paras. 31, 94, and 95 (tired 3).

members of both organizations.<sup>45</sup> Since UNCTAD XI's Sao Paulo Consensus was, in fact, adopted by consensus, the policy statements therein can be seen as reflective of the common considered opinion and positions of UNCTAD Member States and, insofar as the Sao Paulo Consensus touches upon issues relevant to the WTO's work program, of virtually all WTO Members.

42. In this light, developing countries may therefore be able to use the policy statements of UNCTAD XI in support of or to provide the basis for their policy positions and initiatives in the WTO, especially in the context of the negotiations under the WTO's Doha Work Program. For example, UNCTAD XI's policy analysis and critique of trade liberalization and globalization issues would be especially useful in terms of laying the theoretical basis for effectively stressing and achieving the developmental objectives of the WTO trade negotiations.

43. In addition, UNCTAD XI policy statements relating to WTO-relevant issues may also be useful for developing countries in terms of asserting the common recognition of UNCTAD Member States and WTO Members of the importance thereof. In particular, UNCTAD XI statements about the following issues, among others, may be of great use to developing countries in the WTO:

- recognition of the need to address commodity trade issues and to enhance the participation of developing countries in new and dynamic sectors of world trade;<sup>46</sup>
- provision of due recognition for autonomous trade liberalization already undertaken by developing countries;<sup>47</sup>
- recognition of the need to ensure that the WTO's multilateral trade negotiations must have development-oriented outcomes, and that the issues of particular concern to developing countries and economies in transition in international trade should be addressed;<sup>48</sup>
- that the agriculture negotiations should achieve substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. In addition, the agriculture negotiations should provide special and differential treatment for developing countries and should have development-oriented outcomes;<sup>49</sup>
- that the non-agricultural goods market access negotiations should reduce or eliminate trade barriers on, in particular, products of export interest to

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<sup>45</sup> Of the 147 WTO Members, all of the 143 sovereign States that are WTO Members are also Member States of UNCTAD. The only WTO Members that are not UNCTAD Member States are the European Communities, Hong Kong - China, Macao - China, and Chinese Taipei, which are eligible for WTO membership on their own account. Each of these four non-sovereign State WTO Members are considered as a "separate customs territory possessing full autonomy in the conduct of its external commercial relations ..." that is eligible for accession to the WTO under Art. XII:1 of the WTO Agreement.

<sup>46</sup> Sao Paulo Consensus, *supra* note 2, paras. 64-65, and 74.

<sup>47</sup> *Id.*, para. 66.

<sup>48</sup> *Id.*, paras. 67-68.

<sup>49</sup> *Id.*, para. 75.

developing countries and should take into account the needs of developing countries and LDCs, including through less than full reciprocity in commitments;<sup>50</sup>

- that the trade in services negotiations should also have development-oriented outcomes, such as through the provision of effective commitments on services sectors and modes of supply (including Mode 4) of export interest to developing countries;<sup>51</sup>
- that standards and technical regulations must be developed transparently and should not be unnecessary obstacles to trade. Technical assistance should be provided to developing countries to help them meet standards effectively;<sup>52</sup>
- that development issues, including the outstanding implementation-related issues and the operationalisation of special and differential treatment provisions, need to be addressed as a matter of utmost importance and in order to yield meaningful and development-oriented outcomes;<sup>53</sup>
- that issues of concern raised by LDCs and small and vulnerable economies have to be effectively and quickly addressed;<sup>54</sup> and
- that the on-going work on trade, debt and finance, and on trade and transfer of technology in the WTO should continue.<sup>55</sup>

44. While UNCTAD XI provided no political breakthroughs relevant to the WTO negotiations that may be useful in that forum, the Sao Paulo Consensus does provide a useful and comprehensive policy analysis and critique of the theory underlying the WTO trade liberalization negotiations, as well as a potentially useful compilation of political statements agreed-to by virtually all WTO Members in their capacity as UNCTAD Member States.

## V. CONCLUSION

45. UNCTAD XI's outcomes allows UNCTAD to continue to serve developing countries through its policy research and analysis, data collection, and technical assistance activities on approximately the same scale and level with respect to roughly the same issues as it has done in the recent past.

46. While UNCTAD XI did not result in a revitalization of UNCTAD's original function of serving as a policy-making negotiating forum on trade and trade-related issues, UNCTAD will continue to play a major role in helping shape and influence the development and implementation of global policy, in particular on the following issues:

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<sup>50</sup> Id., para. 77.

<sup>51</sup> Id., para. 78.

<sup>52</sup> Id., para. 79.

<sup>53</sup> Id., paras. 81-82.

<sup>54</sup> Id., paras. 83-85.

<sup>55</sup> Id., para. 90.

- international trade and trade-related issues relevant to developing countries (including commodities trade, trade and environment, trade and poverty alleviation, and trade and gender);
- national economic development strategies for developing countries;
- investment promotion and regulation in support of development objectives;
- debt relief, management, and sustainability;
- corporate responsibility;
- technology development and transfer;
- private sector development;
- intellectual property rights;
- competition law and policy;
- technical assistance and capacity-building for developing countries relating to trade negotiations and participation in global decision-making and debt management; and
- strengthening the integration and participation of non-State actors, such as civil society, the private sector, and other international organizations, in global policy-making.

47. In summary, the Sao Paulo Consensus can therefore be a valuable document for developing countries provided that they:

- ensure that the elements and issues of interest to them agreed upon for work by UNCTAD are addressed adequately in UNCTAD's work program in the next four years and the UNCTAD Secretariat is provided with intellectual independence and sufficient resources to carry out these mandates; and
- use the relevant policy statements in other international forums, including the WTO, to maintain their policy space and to contribute to development-friendly outcomes of the deliberations or negotiations in these other forums.



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