FOURTH INFORMAL CONSULTATION BETWEEN THE OECD TRADE COMMITTEE AND CIVIL SOCIETY ORGANISATIONS (CSOs)

Submission by Civil Society Organisation

The Social Dimension of Globalisation

Paris, 28 October 2002

This note has been submitted by the Trade Union Advisory Committee to the OECD (TUAC). The views expressed herein are those of the author and are not necessarily shared by Members of the OECD.
INFORMAL CONSULTATIONS WITH THE OECD TRADE COMMITTEE
Paris, 28 October 2002

Note by the Trade Union Advisory Committee to the OECD (TUAC)

1. The OECD secretariat issues paper TD/TC/CSO(2002)1 poses questions on the social pillar of sustainable development in the light of the WSSD and the work of the World Commission on the Social Dimension of Globalisation. Attached, for information, is the TUAC evaluation of the outcome of the WSSD (Annex I) and the ICFTU initial submission to the World Commission (Annex II). Also attached concerning regulation issues is a joint ICFTU/ETUC/WCL statement on the GATS (Annex III) and a TUAC article on investment (Annex IV).

The Social Dimension of Globalisation

2. The trade union movement in both developing and industrialised countries is of the firm view that it was a mistake for the broader social dimension of trade and investment not to be part of the Doha conclusions. If the multilateral system is to have legitimacy then trade and investment rules must be made coherent with wider concerns of public policy regarding the observance of fundamental labour rights. The foundation of the social dimension to globalisation must be the implementation and effective enforcement of the ILO Declaration on Fundamental Principles and Rights at Work as a system wide standard applied through all multilateral institutions: - the International Financial Institutions, OECD and WTO. Effective co-operation needs to be developed between the WTO and ILO to ensure that the rules of the multilateral trading system are made consistent with observing core labour rights and environmental protection.

3. In practice, this means:

- The ILO should reinforce its role as a place where international labour standards are defined and interpreted. However there is an increasing need for ILO standards and especially the core labour rights included in the ILO Declaration on Fundamental Principles and Rights at Work to become system-wide standards for international governance. International institutions should therefore be called on to promote coherence between their own polices and legal frameworks and the ILO Declaration. For example Article XX of the WTO (GATT) on general exemptions could be revised and updated to include core labour rights, (it currently refers to prison labour.)

- Reviews of respect for core labour rights in Export Processing Zones (EPZ’s) should be included in WTO Trade Policy Reviews. Labour standards ‘embodied’ in products through their processes of production could be included in discussion of technical regulations and product standards currently regulated by agreement on technical barriers to trade. Supply chain developments also raise the issue of environmental and social labelling.

- There needs to be coherence between governments’ responsibilities on multinational enterprises and the private sector debate on corporate social responsibility by including social responsibility criteria, for example - see the observance of the OECD Guidelines on Multinationals - in government funded
programmes such as export credit and investment guarantees and other forms of public subsidies, as well as effective enforcement of the Guidelines by National Contact Points.

- Observance of core labour standards must be integrated into development aid criteria. The OECD Development Assistance Committee Guidelines on Poverty Reduction need to be made an effective tool for donor policy in this regard.

- It is important to disseminate good practice “templates” on "high road" development strategies where globalisation has been effectively managed by raising not by reducing labour standards. This could be a benchmark for other international or national organizations offering technical assistance.

- There is a need to promote better adjustment at the national level, identify good practices on handling adjustment and provide technical assistance to countries. Social Dialogue should be a key element in this regard. Also sustainable growth policies for the demand side need to be covered – not just the supply side. The role of the ILO in achieving coherence with other intergovernmental organizations is important in this respect.

4. The OECD should contribute to the work of the Commission. An interaction between the OECD Trade Committee and the World Commission on the Social Dimensions of Globalisation, such as a hearing, should be organised.

5. The OECD Trade Committee’s work programme should be developed in co-operation with other OECD Committees to include specific activities designed to promote policy coherence, including addressing the questions left unresolved in the OECD’s two studies on trade and labour standards. In particular there is a need to examine:

- The reasons for the continuing spread of EPZs;
- The effects on labour standards of China’s export drive further to its membership of the WTO;
- The relation between investment and negative policy competition, as when governments deliberately suppress labour standards in order to attract foreign investment.

6. There should also be close co-operation with ELSAC’s work on child labour, adjustment policies and migration policies.

7. The OECD should organise further meetings to broaden support for the international trading system by seeking to strengthen its social underpinning. At least three sorts of meetings would be useful:

- Meetings with a broad cross-section of NGO’s active on trade issues;
- Meetings aimed at non-member states, to discuss their concerns and priorities for the Doha development round;
- Meetings with a more analytical input, to discuss trade, equity, employment and development.

Interface between trade and development

8. Trade unions in developing countries are concerned that their countries do not benefit from the world trading system, to a point where many are questioning the benefits of WTO membership. The Doha development agenda of trade liberalisation is not an end in itself but must be seen as an element of a wider development agenda. The international trade union movement has proposed improvements in the multilateral system to benefit developing countries which include:
- Ensuring that trade is an integrated part of a development strategy to allow developing countries to increase their domestic demand and production;

- Addressing the WTO’s internal and external democratic deficit by introducing transparency, democracy and accountability into its procedures and the establishment of an effective structure for consultation with trade unions;

- Further moves to provide improved access for developing countries to industrialised countries’ markets (including, most importantly, agriculture) and particularly for least developed countries, especially when linked to the respect for human rights at work.

Regulation

9. The attached Global Unions/ETUC/WCL statement on GATS indicates that in the GATS services negotiations at the WTO, explicit reference to respect for social and environmental concerns must be made to safeguard the ability of governments to regulate or implement socially beneficial service sector activities.

ANNEX I

THE OUTCOME
OF THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT
Johannesburg, 26 August – 4 September 2002

EVALUATION

By the TUAC Secretariat

1. Trade unionists were present at the World Summit on Sustainable Development with two objectives: - firstly, to push forward the broad agenda of sustainable development agreed at Rio ten years earlier, especially as it relates to workplace implementation, through the world of work and the role of workers and trade unions; and secondly, to achieve recognition of the need to strengthen the social pillar of sustainable development through employment creation and concrete integration measures.

2. With regard to the first objective, like others we are conscious of the limited achievements of the summit, especially with respect to environmental measures and targets. With the exception of the important new commitment on the sanitation target to halve the number of the world’s poor without access to clear drinking water by 2015, the Summit Implementation Plan is an eclectic mix of past commitments, which have still to be acted on by governments. In the words of President M’Beki of South Africa “What was agreed upon at Johannesburg should not be accepted as a ceiling. People are expected to go beyond what was agreed here.” In this respect the Summit did provide the basis for raising workplace issues as part of the tools for addressing sectoral issues for WEHAB (Water, Energy, Health, Agriculture & Biodiversity).

3. With regard to the second objective, the trade unions sought to fill the huge gap that has been the social pillar of sustainable development since Rio in 1992. Here, despite some setbacks we did make progress and trade unions emerged from Johannesburg in a better position to work with other stakeholders for more effective integration of all three pillars of sustainable development, through agreed implementation tools and a new mandate for the Commission on Sustainable Development.

4. Distilling some of the elements of the WSSD Plan of Implementation (PI) and the Johannesburg Declaration (JD) it is important to note that governments committed themselves to:

- Integrate all three pillars of sustainable development in implementing WSSD outcomes. The interdependence of social and economic development and environmental protection and particularly poverty reduction is a recurring theme in both documents. The Implementation Plan also pledges urgent action to “Support the International Labour Organisation and encourage its ongoing work on the social dimension of globalization” (PI 45d);

- Provide assistance “at all levels” to increase “income-generating employment taking into account the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work”
as part of the commitment to sustainable development (PI 9b, JD 25). This ILO Declaration provides for the respect of a body of core labour standards, which incorporate freedom of association, the right to collective bargaining, non-discrimination in employment, and the prohibition of forced and child labour.

- Promote as part of the wider action to change unsustainable consumption and production patterns, “workplace-based partnerships and programmes, including training and education programmes” (PI 17d), “use a range of partnerships amongst Governments, intergovernmental organizations, mining companies and workers, and other stakeholders, to promote transparency and accountability for sustainable mining and minerals development” (PI 44a). The document also provides for the linking of production and consumption through information tools (eg ecolabels) that reflect “human health and safety aspects” PII 14c-e);

- Protect the health and safety of workers and in particular “Strengthen and promote ILO and WHO programmes to reduce occupational deaths, injuries and illnesses, and link occupational health with public health promotion” (PI 46 m), “enhance maritime safety” (PI 33) and “Protecting the health of workers and promoting occupational safety by inter alia taking into account as appropriate the voluntary ILO code of practice on HIV/AIDS and the world of work, to improve conditions of the workplace (PI 48c);

- Take “immediate and effective measures to eliminate the worst forms of child labour” and “implement strategies for the elimination of child labour that is contrary to accepted international standards” (PI 11) and take action at all levels to eliminate “ all forms of violence and discrimination against women” (PI 6d);

- Recognize measures for corporate accountability and the strengthening of government roles by taking action “at all levels” to “Actively promote corporate responsibility and accountability, based on the Rio Principles, including through the full development and effective implementation of intergovernmental agreements and measures, international initiatives and public-private partnerships, and appropriate national regulations, and support continuous improvement in corporate practices in all countries” (PI 45);

5. There was failure to make progress on recognition of the link between human rights, poverty alleviation and sustainable development. Language on this and labour rights in particular was resisted by a few members of the Group of 77 – showing that much work still needs to be done to achieve full recognition of the rights based approach to development.

6. Another major track in the WSSD was the registering of “type two partnerships”. In the words of UN Secretary-General Kofi Annan, “This Summit represents a major leap forward in the development of partnership” -- in the form of partnership initiatives by and between governments, civil groups and businesses. Officials said more than 220 partnerships, worth $235 million in resources, were identified during the Summit process to complement government commitments and many more were announced outside of the formal Summit proceedings. Some union organizations are active partners in such agreements – the International Transport Workers Federation partnership with Greenpeace against flags of convenience is just one example. There was also growing support for the “workplace assessments programmes” that trade unions proposed at the Summit and this provides potential for establishing new frameworks for action with the ILO, UNEP, WHO, OECD and other intergovernmental bodies, including the Global Environmental Facility (GEF). Elsewhere we have to monitor the quality of initiatives and campaign to make sure that governments do not retreat from their legitimate responsibilities.

7. In sum some 400 trade unionists from all parts of the world became involved in Johannesburg and this reflected a new awareness of the fact that trade union objectives for basic rights, decent work and development have to be an integral part of the agenda for sustainable development. It also represented
recognition by the workers and their trade unions that we have to engage at all levels – but particularly with employers at the workplace level to bring about needed change.

8. At the international level a renewed mandate was given by the WSSD to the Commission on Sustainable Development in which the role of trade unions, as a major group, is also recognized. Our goal must now be to ensure that the multi-stakeholder process leads to concrete follow up over the next decade. In the words of Kofi Annan “We have to go out and take action. This is not the end, it is the beginning.”
INTRODUCTION

1. The work of the World Commission on the Social Dimensions of Globalisation has reached a crucial phase with the third meeting of the Commission (Geneva, 12-16 October 2002) and with the series of national, regional and other dialogues that are taking place over the coming months. Building on the ICFTU’s statement to the first meeting of the World Commission in March 2002, this new ICFTU submission is aimed at making a contribution to the Commission at this time, both for the attention of the Commissioners meeting in Geneva and as information for participants taking part in the dialogues that are being organised around the world.

THE OUTCOME OF THE WORLD COMMISSION

2. The World Commission could and should make a major impact on the development of cooperation and regulation at the international level. The world has undergone a series of economic crises in recent years. These began with the Asian financial crisis over 1997-98, came back to the fore in Argentina in 2001 and have now seen the dishonesty, mismanagement and corruption of Enron, WorldCom and the like. Such blatant failures point to serious governance deficits in both developed and developing countries. They have caused a collapse of confidence world-wide in the capacity of the existing economic and financial system to provide growth and development. There is now widespread acceptance of the need for better governance and regulation. The Commission must seize the moment to convert that growing consensus into proposals for action.

3. The problem the Commission must tackle is that economic globalisation has taken place much faster than the social regulation of markets at the global level. Resolving this problem will require a rebalancing of the relative power of international institutions. Socially-oriented institutions and above all the ILO need to attain equal weight with organisations with important economic mandates like the IMF, World Bank and the WTO. The Commission must build a new common perception of the need to formalise and strengthen governance, including social governance, throughout the multilateral and national decision-making system. Effective global governance requires ways and means to connect governance with the popular will. It requires building or re-building connections between governance and the governed. Transparency, democracy, human rights and accountability are shared values. Many are already enshrined in universal standards. But serious and concerted measures are necessary to formalise some of the values and to implement all of them.
4. Such a process of recapturing and transforming globalisation will need to begin with transparency inside existing international institutions and national level ministries and greater national dialogue on international issues. It may eventually require the establishment of new institutions. As a minimum, it calls for the development of coherence in international policy making rather than each international organisation, anchored in its respective national ministries, going about its merry way in blissful ignorance of what is happening elsewhere.

5. The Commission should therefore aim at producing a new international Declaration. Such a Declaration must move rapidly from the abstract and principled to the concrete and specific (in order to leave no loopholes that could lead to the undermining of existing, acquired and internationally accepted standards). It should be based on reference to international legal instruments (such as the Universal Declaration on Human Rights, and the fundamental ILO Conventions) and international commitments (e.g. the Commitments of the 1995 World Summit for Social Development and the 1998 Declaration on Fundamental Principles and Rights at Work of the ILO).

6. Such a Declaration must stimulate a process of greater policy coherence among the various institutions, including the UN and its various agencies and especially the WTO, the IMF and World Bank. It should lead to effective international co-operation in which the work of each body informs and re-enforces the work of the others. The Declaration should ultimately be the tool to lever a full role for the ILO in international policy-making. This would mean consideration of the effects of policy making and implementation on basic workers’ rights as well as employment considerations. It would promote observance of standards that enable workers to participate in the governance of their own lives, through freedom of association and collective bargaining and the other fundamental labour standards enshrined in the ILO Declaration on Fundamental Principles and Rights at Work.

7. The World Commission’s Declaration, depending on its formulation, could be adopted by the governing organs of institutions like the WTO, IMF and World Bank as part of their own machinery. It is essential therefore that those institutions are fully engaged in the work of the Commission. They must be committed to structured participation in the next (and final) year of the Commission’s work.

SPECIFIC PROPOSALS FOR THE WORLD COMMISSION

1) Reorienting the Global Economy for Jobs and Justice

8. In the further development of the Commission’s work, it is essential that much attention be given to the recommendations that are made for the ILO, IMF, World Bank and WTO. The recommendations directed at them should be explicit and far-reaching.

9. The Commission should address the widening of inequalities within countries as well as between countries and the worsening development prospects for many regions of the world, particularly sub-Saharan Africa. The Commission needs to propose major changes in the IMF and World Bank model of development policies and their conditionality. It should criticise their proposals for budget austerity and tariff liberalization in developing countries, and their inequitable proposals such as cutting taxes on the rich and rewriting Labour Codes to weaken workers’ rights, both of which have led to worsening inequality and exclusion.

10. The Commission should call for co-operation between different organisations. The social dimension (including decent employment and core labour standards) must be integrated into the review
process of the economic framework of each country. Economic and social policies should be assessed simultaneously, with a strong role for the ILO, in all recommendations of the IMF and World Bank.

11. The Commission must look at overall economic policy, including:

- the need to confront recessions through expansionary fiscal and monetary policies;
- government action to enhance productivity (including promoting research and development);
- increased government expenditure on education, training and skills development;
- and policies to increase incomes and standards of living (such as increased emphasis on more adequate national minimum wages to promote inclusion and boost aggregate demand).

2) Taking the Lead on Globalisation Issues

12. There has been a failure by governments to provide a lead on globalisation issues or address the serious social implications of many WTO negotiations and rules, such as the GATS. The Commission needs to prepare for a more effective way of tackling the problems created by globalisation. It should support the “high-standard path to development and growth” approach, by showing the links between freedom of association, high standards of occupational safety and health and productivity, decent human resources development policies and successful enterprises and economies.

13. The Commission should confront the issue of preventing globalisation from worsening social problems, including abuses of workers’ rights resulting from the international trade and investment system. For a start, it should call for co-operation between different organizations, with a strong role for the ILO (looking at decent employment, core labour standards and other social issues) in preparing WTO country reviews. Furthermore, social factors should be taken into account in mechanisms and fora for the resolution of investment and trade disputes.

3) Making Foreign Direct Investment a force for Decent Employment

14. The Commission must look at the increased role of multinational companies (MNCs) in the world economy and the many failures of the current trading and investment system, such as the spread of export processing zones (EPZs). EPZs encourage competition in the form of tax rebates and through illegitimate reductions in internationally agreed workers’ rights. The Commission must build on the growing consensus that EPZs constitute unacceptable competition that is detrimental both to development and to workers’ rights.

15. Instead, the Commission must build consensus that FDI needs to take place in a policy framework that includes protections for workers’ rights and not only investors’ rights, and that encourages productive investment that helps development, rather than destructive and wasteful investment. The Commission should call for measures to produce balance, equity and protections for workers and governments in bilateral and emerging international investment regimes. For example, governments must be allowed to use FDI to boost domestic industry (e.g. through local sourcing requirements).

16. Within that context of enhanced governmental action to regulate FDI, the Commission should also promote voluntary measures including corporate social responsibility and accountability, social dialogue and framework agreements. The Commission should highlight the OECD Guidelines for Multinational Enterprises, an instrument that has global application and an important role for governments.
The UN Global Compact also offers a good opportunity to stimulate global dialogue, including social dialogue.

17. The Commission should also seek to reawaken interest in the ILO Tripartite Declaration of Principles on Multinational Enterprises and Social Policy. Even though its influence to date has been disappointing, the Declaration establishes the relevance of the principles of ILO conventions developed for governments to the behaviour of companies. It has the potential to provide a basis for enhanced social dialogue by sector and region. Instruments such as the Guidelines, the Tripartite Declaration and agreements based on social dialogue have important advantages over purely unilateral promises by enterprises.

4) Bringing the Excluded into the Mainstream of Society

18. Exclusion based on gender is a global concern. Simultaneously, there is progress on gender issues in some countries and rapid deterioration of women’s rights in others. The exclusion of women is a major threat not only to social and economic development, but also to the emergence and strengthening of democracy. Consequently, the Commission must look at how to close the enduring gender gaps in income, rights and access to resources.

19. The Commission could do much to move forward the growing debate on informal and unprotected work by throwing its full weight behind the recommendations of the International Labour Conference in 2002 on that subject. The basic points of those recommendations revolve around extending governance (re-asserting the regulatory role of government and the application of standards), boosting and achieving good quality employment, respecting the rights of workers and developing tripartite efforts to end exclusion. A clear message must be sent concerning the required role of freedom of association, in enabling trade unions to stand up for the rights of working people.

20. The Commission should propose measures in favour of the promotion of equality of opportunity and treatment of migrants, and against migrations in abusive conditions. The Commission should recognise the role of trade unions in bringing together national and foreign workers to further and defend common interests. The Commission should address the growing feminisation of migration flows and address various forms of discrimination in an integrated way. It should challenge the WTO’s flawed GATS approach to migration, which covers only the deregulation of migratory movements, and not guarantees against discrimination of migrants and special measures for their protection. A multilateral framework requires close co-operation between a number of international organisations – certainly, ILO, IOM, UNHCR, United Nations as well as WTO, IMF, World Bank, and possibly other organisations on a permanent or ad hoc basis. The ILO, not the WTO, should be a leading organisation in this framework. Such a multi-organisation, co-operative effort needs to involve employers and trade unions as well as reaching out to other appropriate civil society groups.

21. An essential element of progress on migrant workers, something that should be a major element of the Commission’s work and recommendations, is the promotion of ratification and respect for the UN and ILO instruments on migrant workers. The Commission should devote consideration to how to implement those instruments; how to increase the rate of ratification below the pitifully low present levels; and how to enforce migrant workers’ rights at national level and improve the status and working conditions of illegal migrant workers. More should be done to apply general human rights regimes to migrants, including those in key ILO instruments.

*********************************
GLOBAL UNIONS/ ETUC/ WCL¹ STATEMENT
ON THE GATS NEGOTIATIONS

Trade in services comprises a huge share of total world output and employs hundreds of millions of workers. A key objective of an increase in trade in services should be to provide benefits for the users of services and for those employed in this sector and indeed in other sectors as well. However, there are growing fears that the present negotiations under the General Agreement on Trade in Services (GATS) could jeopardise access to vital public services and to other services of general interest for a large part of the world’s population. These services are too crucial to human well-being to be subject to private sector competition under WTO disciplines. Global Unions, the WCL, and the ETUC are calling for action in the following areas:

1. All parties to the current GATS negotiations should make it absolutely clear that public services (above all, education, health and essential public utilities) including at sub-national levels of government, and socially beneficial service sector activities are not a subject for negotiation. This would mean that the parties would not call on other governments to open up those sectors. To guarantee that this will remain the case, the next WTO Conference should amend as necessary the terms of the GATS agreement to exclude formally such sectors from all further GATS negotiations.

2. WTO agreements should not undermine the ability of governments to enact domestic regulations, legislation and other measures to safeguard the public interest. However, under present WTO rules, such measures could be subject to challenge at the WTO if they are perceived as constituting a form of trade discrimination. Explicit reference to the primacy of social and environmental concerns over the principle of ‘free trade’ as well as a fundamental revision or even removal of the ‘necessity test’ on regulations is therefore required to ensure that all WTO members have complete freedom to execute domestic regulatory measures without the possibility of challenge through the WTO dispute settlement mechanism.

3. Countries must not be obliged to privatise public services against their will. Countries which make a commitment to open up their services sectors under the GATS must be able to take a future decision to increase the public sector role in these sectors, without any risk of a potential challenge through WTO disputes machinery or a need to offer some other services sector in compensation. The GATS agreement should include an explicit clause to exempt GATS commitments from the WTO disputes machinery in all cases where the public sector is concerned, so that foreign service suppliers would be unable to seek to use WTO disciplines as a tool to maintain market access. In addition, GATS negotiations should include the possibility of applying temporary safeguard measures to prevent a domestic industry from collapse (as already exists in GATT). More generally, the WTO ‘lock-in’ principle that has the effect of making commitments to open service markets ‘irreversible’ should not

¹ This statement has been adopted by the GLOBAL UNIONS GROUP - including the International Confederation of Free Trade Unions (ICFTU), the Global Union Federations (GUF) and the Trade Union Advisory Committee (TUAC) to the OECD; the EUROPEAN TRADE UNION CONFEDERATION (ETUC); and the WORLD CONFEDERATION OF LABOUR (WCL).
apply when the service market liberalisation has led to severe adverse socio-economic effects on the
country and its population.

4. Article I.3 (b) of GATS should be clarified to make it absolutely clear that ‘the exercise of
governmental authority’ allows, without threat of legal challenge, WTO members to exclude
competition from public services and services of general interest.

5. WTO members should not open up other public services to international trade liberalisation:- where
that would create a problem of insecurity in supply of the services concerned; where it would
negatively affect the supply of services to disadvantaged regions, sectors or groups of the population;
or where it might reduce government funding for other services (such as by undermining the principle
of cross-subsidisation). Members should not submit requests for market-opening where it would lead
to socially undesirable effects of this nature.

6. Article XIX of the GATS requires, for each round of negotiations, “an assessment of trade in services
in overall terms and on a sectoral basis”. Such an assessment has never been carried out. A full
assessment of the social, environmental and economic impact of the GATS negotiations should
therefore be conducted urgently. The relevant specialised agencies of the United Nations, including the
ILO, should be involved together with trade unions and other representative organisations.

7. Regarding “Mode 3” of the GATS on ‘commercial presence’ (i.e. investment), GATS negotiations
should:- ensure that the interests of developing countries are fully taken into account; omit any
provisions that give investors the right to challenge tax and regulatory measures; exclude investor-to-
state disputes provisions; include company taxation; allow for the imposition of performance
requirements especially as regards labour market provisions; ensure that foreign investments (and
incentives to attract them) do not undermine core labour standards or environmental protection; and
include binding references to the ILO Tripartite Declaration of Principles concerning Multinational
Enterprises and Social Policy, and to the revised OECD Guidelines for Multinational Enterprises.

8. With regard to "Mode 4" (i.e. temporary cross-border movement of natural persons), negotiations
should ensure:- protection of migrant workers against all forms of discrimination, and of the remittance
of their contributions to social security and insurance schemes; observance of core international labour
standards and national labour law; respect for existing collective agreements covering the sectors
concerned; and the full involvement of the ILO.

9. Finally, GATS negotiations are too important to the public interest to take place under conditions of
secrecy and without the involvement of parliamentarians and social partners. To ensure the maximum
of transparency and democratic involvement, WTO members should publish after the submission
deadline the access “requests” they intend to make of other WTO members. Over the period leading up
to March 2003, all WTO members should engage in a democratic process of dialogue concerning the
“offers” they intend to submit, and after that deadline all offer lists should be published.

********************
INTRODUCTION

1. The TUAC Secretariat welcomes the opportunity to add its perspective to the ongoing debate around a regulatory framework for international investment. The title is of course self-evident to those familiar with the last inter-governmental attempt to achieve this end, at least in the OECD context, namely the MAI. We raise this issue upfront because the failed MAI holds many lessons for both the process and the content of any attempt to negotiate an international investment treaty at the WTO. It holds valuable lessons too as regards the role of the OECD within this process: its Committee on International Investment and Multinational Enterprises (CIME) is now developing its work programme to assist the WTO around this theme.

2. Before embarking on this discussion a caveat and a few political points are worth noting. As regards the caveat the paper does not represent the consolidated views of the Global Unions’ movement on the WTO and an investment framework. Work in Geneva has not yet passed the preliminary stage, and given the Indian ‘amber light’ on negotiations, which may yet become a ‘red light’, there is no guarantee that this project will get off the ground. To that may be added the growing hostility within the broader civil society movement to any investment agreement, whether at the WTO or anywhere else for that matter. Governments would do well to reflect on the fact that many local trade unions are becoming increasingly hostile as well, and for good reason. Many workers today, especially in the South have reaped few rewards from the GATT and latterly the GATS. Many see the WTO as the ‘enemy without’ as regards employment creation or its safeguard, decent work, and the protection of human rights, in particular their trade union rights, alongside efforts to sustain or develop public services. Their communities and environment have often been despoiled so as to wring out further profits for foreign investors. Democratic processes and institutions are withering in the face of rampant bribery and corruption. Any international investment agreement, whatever the arguments in favour, therefore, risks falling foul of this. That is why it is critically important that governments get the process and the content right. And, it is also why, and until something tangible emerges from the Geneva discussions, the Global Unions will reserve their position.

3. Moving onto the political points, it is worth mentioning now that the Global Unions are not opposed in principle to an international investment framework: it’s the form and content that would shape our views. Many workers have benefited from international investment. There is no questioning that. But, equally many workers have suffered, in particular those exploited through unregulated supply chains and Export Processing Zones (EPZs). Large global corporations can play governments, indigenous enterprises, workers, and wider communities and the environment against each other to better enrich themselves. Simultaneously, and outside of a balanced regulatory framework, the International Financial Institutions invariably condition assistance to developing countries to trade and investment liberalisation, and mass privatisation, opening up the door to predatory foreign investors. Add to this the existence and use of...
patent laws and, e.g., the WTO TRIPS agreement that favour the interests of global corporations over indigenous ones. Here a harmonious framework that gives developing countries autonomy over their economic and social development, allowing for a viable public sector, or the development of domestic enterprises and capital creation, often gives way to an externally imposed blueprint, that has little regard for domestic circumstances and needs. Whole economic sectors can become monopolised by powerful foreign corporate interests, or localities and regions become export platforms with few backward and forward linkages to the local economy. All at the expense of domestic demand and production. Meanwhile, rich countries can throw money at foreign investors in a never-ending cycle of incentives to attract them to their country, region or locality. Cash strapped poorer countries meanwhile are often reduced to their three policy levers to attract investors, namely: regulatory holidays, fiscal incentives, and/or lower labour costs, usually through the ruthless suppression of trade union rights so as to cower their workforce. Bi-lateral and regional investment agreements, which have grown exponentially of late typically entrench investors’ rights, and rarely address their responsibilities in any meaningful way.

4. Those realities condition the Global Unions’ position on any investment framework. They also indicate the challenges faced by governments seeking to give effect to the Doha Declaration on this matter, whether at the WTO, or closer to home in OECD work. Meeting these challenges would begin the process of gathering, while not guaranteeing trade union support to begin negotiations.

GOVERNMENTS’ PROGRESS TO MEET THE CHALLENGES OF THE DOHA DECLARATION ON INVESTMENT

5. For the purposes of this paper two elements stand out as to governments’ progress in meeting these challenges. First, there is the Doha Declaration language on investment, and secondly there is the 2002 OECD Ministerial Communiqué to frame further work at the OECD, and the CIME work programme. As regards the Doha Declaration four elements are noteworthy. There is the commitment for the WTO to work with other “relevant intergovernmental organisations” – opening the door to the OECD involvement. Then there is the reference to a multilateral framework…. “for long-term cross border investment, particularly foreign direct investment”. Taken at face value that would seem to imply that any emerging WTO investment framework would rule out short-term capital flows – a welcome move. While the devil would be in the detail the long-term investment reference is also worrisome. As close an approximation to FDI would have been better.

6. The focus of the WTO Working Group on the Relationship between Trade and Investment offers further clues. Notwithstanding the possibility of political pressure by the powerful on the weak to liberalise, the GATS type positive list (bottom up) approach is a useful point of departure from the MAI. That was a top down approach, expected to cover all and every sector, save those exempted: that resulted in a deluge of exemptions (allegedly including an age-related chimney sweep exemption from one country). A further welcome point of departure from the draft MAI is the apparent exclusion of an investor to state dispute settlement procedure. Intriguingly, the Declaration states that any framework should allow “host countries their right to regulate in the public interest”. At this time it is unclear as to what this phrase means exactly. Potentially, it could be far reaching, allowing general exemptions to, e.g. national treatment, or MFN. Similarly, it could amount to little or nothing, simply allowing regulatory measures for those sectors not covered by the framework. A further ambiguity surrounds the inclusion of work to clarify the notion of “development provisions”. Lastly of course the Indian ‘amber light’ exists whereby (at least in theory) negotiations would only go ahead on the basis of an “explicit consensus” by WTO members at the Fifth Ministerial Conference.

7. The 2002 OECD Ministerial Communiqué offers few clues. Save for rhetorical language on the benefits of trade and investment liberalisation, Ministers merely agreed to work together “on facilitating
the negotiating process on investment”. They also “expect” the OECD to “continue and reinforce its crucial policy analysis and activities”, including on investment issues. However, at this time the CIME work programme on Doha related investment is yet to be finalised. An early draft did include a proposal for a project on Non-Discrimination, Investor Protection and the Right to Regulate. Yet at this time, and while several governments have expressed support for this (also to include social issues) that interest has still to be tested, and to materialise in an adequately resourced project proposal.

8. On the basis of this, little progress has been made to-date by governments in meeting the post-Doha investment framework challenge. True, short-term capital flows appear to have been ruled out of the scope; a bottom-up approach is favoured; and an investor-state dispute settlement procedure seems unlikely at this point; while ambiguous references to governments “right to regulate” and “development provisions” have been made, but not fully fleshed out. This points more to confusion in Geneva and an ad-hoc approach, not a coherent strategic vision.

9. The biggest failure however, is the complete absence of any sense that governments would, or indeed have the will to develop an investment framework that would bind investors to a set of responsibilities, and not simply confer and entrench through dispute settlement further binding rights. For proof look no further than the complete absence of any meaningful attempt by governments to address the social dimension of trade and investment through the Doha Declaration, or indeed at this time through what is meant to be supportive work at the OECD. The Doha Declaration entirely ignores this. So too does the 2002 OECD Ministerial Communiqué. The current work programmes of the OECD Trade Committee, Export Credit Working Group, and Employment, Labour and Social affairs Committee (ELSAC) are similarly devoid of anything that comes close to meaningfully meeting these needs. That leaves the OECD Guidelines for Multinational Enterprises, the most promising inter-governmental initiative to-date in the field of corporate social responsibility. Despite early signs of promise and progress by several key governments to live up to their commitments to enforce the Guidelines, more still needs to be done, and the OECD work programme on this is still woefully underresourced.

10. Currently, the only forum examining this issue is the ILO, following the Director-general’s initiative in establishing the World Commission on the Social Dimension of Globalisation. Among other things, Global Unions expect the Commission to develop coherence between all economic and social organisations (notably the WTO, the IMF, World Bank and OECD) that have an impact on human and in particular workers’ rights. Trade union confidence in this would certainly be raised were these organisations themselves able to signal a willingness to address the social dimension of globalisation.

A NEW AGENDA TO MEET THE CHALLENGES OF THE DOHA DECLARATION ON INVESTMENT

11. It is not too late for governments to fill this gap. The starting point must be the acceptance by governments that their human rights obligations enshrined in various United Nations’ treaties and instruments have primacy over economic treaties negotiated elsewhere, including the WTO. From that recognition the task must then be the implementation and enforcement of the ILO Declaration on Fundamental Principles and Rights as a system wide standard applied through all multilateral institutions. The Global Union movement has developed policies to achieve this goal, specific to organisations such as the WTO or IMF (see for example http://icftu.org). For the purposes of our discussion the rest of the paper will focus on the required OECD work programme on investment in a post-Doha context to help begin to build a constituency of support for a WTO investment framework. The focus will be on the CIME, but that does not rule out joint work with for example the ELSAC, the OECD Trade or Environment Committees, or the Working Party on Export Credits, and Credit Guarantees. First and foremost the CIME work should contribute to building a human rights and social dimension into international investment policy. That will
require work to clarify the primacy of, and from that how to achieve coherence between investment frameworks, and relevant human rights instruments. The foundations for that lie where the MAI left off: the then Chair had developed language on not lowering domestic labour standards to attract investment. That should then be broadened to include the core ILO labour standards. Those two elements should then be folded into language to give binding workers’ rights clause, where alleged abuses would be subject to any dispute settlement provision.

12. Work is needed to look at how best to incorporate the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy into the main body of any investment framework. That would of course require prospective adherents to set up National Contact Points to deal with Guidelines related issues. Independent of this an expanded and adequately resourced work programme is needed to ensure the effective implementation of and adherence by multinationals, to the OECD Guidelines. Related work should begin to examine the economic and social costs (and identify benefits) associated with EPZs. Any WTO investment framework would have to include the acceptance of ‘performance requirements’ (including employment related policies), and the OECD could usefully contribute to that by creating an inventory of current practices worldwide. Similarly, work should begin to put some real flesh on the concept of a clause allowing governments the ‘right to regulate’, including of course in the labour sphere.

13. A successful outcome to this work would then open the door for the Global Unions to step into the wider debate around an investment framework. A non-exhaustive list of topics could include work on any ‘expropriation clause’, including measures amounting to expropriation to give predictability to investors, but also to sustain the democratic rights of host nations to act in the interests of their societies (e.g. protecting the right to strike). CIME expertise could also be brought to bear to clarify how an investment framework would allow the imposition of controls on capital inflows (e.g. speed bumps or a transaction tax). Any investment framework to be acceptable would have to start from the principle that public or not for profit sectors (including health, social services and education) would be exempted from its provisions. Notwithstanding the bottom-up approach envisaged, OECD work to give effect to this would help build wider confidence, especially for developing countries seeking to build effective public services. Export credits are increasingly supporting overseas investment projects, typically in developing countries. Coherence would be required between a WTO investment framework that addressed the social dimension of globalisation, and export credit policy. To achieve that work must begin within the OECD Working Party on Export Credits and Credit Guarantees to condition their granting on binding labour, wider social and environmental standards, and to associate the Guidelines.

SUMMARY

14. As has been highlighted Global Unions are not collectively opposed in principle to a multilateral investment framework. There are compelling reasons from a workers’ perspective as to why such a framework should be negotiated. The challenge facing governments is how to craft such an initiative that balances the rights of investors with reciprocal obligations. The ability to enforce human rights, including workers’ rights must be promoted, not impeded by such a framework. A broader social dimension is also required. To this should be added an environmental dimension. Moreover, the sovereign right of governments to pursue a development agenda with an effective public sector, and policies for domestic capital accumulation must be sacrosanct. This paper has set out an agenda to achieve this, in particular the role of the OECD. Such an approach if enacted would provide a foundation to build upon to ensure that international investment contributes to sustainable development in both home and host countries. Anything less would further undermine the credibility, and support for multilateral institutions such as the WTO and OECD.