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Memo to Reporters

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Is the Obama Administration Working With the EU and Canada to Block Real Reform at This Week's UN Financial Crisis Summit?

Wealthy Nations Send Only Low-Level Reps; Insist Communiqué Calls for WTO Doha Round Conclusion Even as Doha Agenda Includes More Financial Service Deregulation

This week, government representatives will meet in New York for what was to be an unprecedented, inclusive high-level global debate about the causes of and solutions to the financial crisis. The summit was called to remedy the significant shortcoming of the November and April G-20 summits, which excluded most of the 192 United Nations (UN) member nations, promoted only minimal reforms to the global economic architecture and pushed further financial deregulation by calling for completion of the World Trade Organization (WTO) Doha Round talks.

Instead of the UN summit remedying the problems of the G-20 approach, reports indicate that rich countries have worked behind the scenes to ensure the UN summit does not focus on the role of existing global economic governance structures in causing the crisis nor issue a call for reforms to these institutions and policies. In a candid speech this weekend, the elected president of the UN General Assembly, Nicaraguan priest **Miguel d'Escoto noted: "…despite the growing need for major changes, many Member States, particularly those in the North, increasingly resist reforms of the IMF and the World Bank, hoping that things will return to business as usual. And they have also made it very clear that they do not want a serious global conversation to take place at the United Nations."**[1]

At the heart of the matter seems to be an increasingly strident effort by various developed countries to avoid an examination of the radical financial service deregulation that was pushed, often at these countries' behest, through international bodies such as the WTO and the International Monetary Fund (IMF). **Yet, to remedy the current crisis and avoid future meltdowns will require significant changes to the existing system of global financial governance, including the WTO's Financial Services Agreement (FSA), which explicitly requires radical deregulation.**[2] It is ironic and troubling that while many nations are calling for a global regulatory floor, a global ceiling limiting regulation is currently imposed on 105 nations through the WTO's FSA. That pact legally obligates signatory nations to continue many of the very policies that governments are now working to reform – ***making the efforts by key wealthy nations to avoid review of this WTO financial service deregulation pact at the UN summit especially shameful.***

The little-known WTO FSA promoted by the financial services industry in the 1990s contains rules that ban many obvious and necessary regulations, including:

- **Forbidding governments from limiting the size of banking, insurance and other financial service firms**. As Simon Johnson, former chief economist of the IMF has said, "too big to fail is too big to exist." Yet WTO rules explicitly forbid government from limiting the size of foreign financial service firms, even if such limits are equally applied to domestic firms;

- **Forbidding governments from establishing "firewalls**" between financial business so that, for instance, firms involved in commercial banking or in providing insurance are prevented from gambling peoples' savings on risky investment businesses; and

- **Forbidding establishment of new regulation and limiting the degree of government oversight.** The WTO FSA "standstill rule" agreed to by the United States and other Organization for Economic Cooperation and Development (OECD) countries explicitly forbids countries from any new regulatory policies that might roll back their past deregulatory commitments – which were made by previous governments with respect to a vast array of insurance, securities, banking and other financial services. Also forbidden are moves by member countries to "*apply licensing and qualification requirements and technical standards that … could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.*" This requirement conflicts with the widely accepted imperative of adopting *new* regulation of financial services.

One key question is whether the wealthy countries will force the final UN summit outcome document to repeat the glaring mistake of the G-20 summit declaration – a call for completion of the WTO's Doha Round, ***which includes further extreme financial service deregulation*****.** While most Doha Round documents are secret, a review of the documents that have leaked makes clear that a key aspect of the Doha Round talks is further financial services deregulation. This includes:

- "**Standstill on certain non-discriminatory [regulatory] measures."**[3]

- **Demands for "greater flexibility in the number and types of products which can be offered**; [and] relaxed government-directed lending or operational control."[4] It is clear that measures to limit transfers with tax havens, limitations on derivatives trading, and measures to require investment in certain priority public-interest sectors would run afoul of this Doha Round agenda item.

- **Demands to "Remove quantitative limitations on the number of service suppliers**, in the form of a numerical quotas, monopolies or exclusive providers or economic needs tests."[5] As noted above, this involves the deregulation of policies designed to limit the size of financial institutions, their legal forms or firewalls between different financial service businesses.

Further, if the Doha Round is concluded, one of the texts that could be formally adopted is the new "disciplines" to restrict non-discriminatory regulations in the accounting sector. These disciplines will restrict accounting regulations to what is "necessary,"[6] which has a specific meaning in WTO jurisprudence that requires a country employing regulations to prove the negative: that their system is the least trade restrictive.

Similarly, a key aspect of the Doha Round, if it were completed, would be the imposition of new restrictions on non-discriminatory regulation over services, including the financial sector. The March 20 draft of these provisions, unambiguously titled "Disciplines on Domestic Regulation," provides 71 separate grounds for challenging non-discriminatory regulations. WTO member countries will become vulnerable to challenges on the basis that their regulatory criteria are not "objective" or "relevant" and their approval procedures are not "as simple as possible."

Given the direct role of the WTO in promoting the radical deregulation that has been a cause of the crisis and the threat posed by the WTO Doha Round's agenda of further financial deregulation, the fact that discussion of trade agreement financial service deregulation dictates has been successfully banished from the summit is outrageous.

How Developed Countries Derailed the UN Summit from Addressing the Structural Causes of and Real Solutions to the Crisis

Last fall, UN General Assembly President d'Escoto gave hope to those seeking a real solution to the crisis. He convened a special Commission of Experts on Reforms of the International Monetary and Financial System, chaired by Nobel prize winner Joseph Stiglitz. The preliminary findings of the so-called Stiglitz commission addressed head-on the problems with the current trade and globalization model, and were presented at a UN seminar in late March.[7] The March 19 draft text read:

> "The lack of coherence between policies governing trade and finance must be rectified. Policy space is circumscribed not only by a lack of resources, but also by international agreements and by the conditionalities that often accompany assistance. ***Many*** **bilateral and multilateral trade agreements contain commitments that circumscribe the ability of countries to respond to the current crisis with appropriate regulatory, structural, and macro-economic reforms and rescue packages, and may have exposed them unnecessarily to the contagion from the failures elsewhere in the global economic system."[8]** (emphasis added)

But some governments had not yet stepped up to endorse these ideas.[9] To gain their buy-in, on April 7, the UN General Assembly approved convening a Conference on the World Financial and Economic Crisis and its Impact on Development.[10] Work began immediately towards drafting an outcome document for the conference that would represent a global consensus on financial re-regulation. An April 29 note by d'Escoto included virtually identical language to the Stiglitz Commission excerpt from above (along with positive positions on many other issues), and suggested the General Assembly use this input when drafting their own outcome document.[11]

But rich countries – led by outcome document draft co-facilitator Ambassador Frank Majoor of the Netherlands – proceeded to prepare a draft document that made nearly the opposite conclusion to the president and the Stiglitz Commission. The Majoor draft of May 6 instead read:

> "Much of the modern rise in prosperity and worldwide growth is attributable to the successes of globalization and free trade. The global recovery from this financial and economic crisis, and our future global resilience, require a speedy conclusion of the WTO Doha Round and provision of much needed trade finance."[12]

D'Escoto and other developing country leaders were rightfully floored by this proposal, and on May 8 d'Escoto used his prerogative as president to reinsert the more thoughtful April 29 text as the proposed outcome document.[13] Majoor, along with other rich countries, protested this move, claiming that the process was unfair – even though rich countries often pull this kind of procedural stunt to marginalize developing countries' views.[14] Now, the tables had turned; d'Escoto was backing the developing countries who had elected him to the presidency a year before.

Over the next week and a half, some developed countries worked behind the scenes to blow up the conference, which was originally scheduled for June 1-3 and had to be rescheduled for June 24-26.

According to the *Financial Times*, "Father Miguel accuses some industrialised states of attempting to sabotage this month's summit and accuses the British Foreign Office, in particular, of trying to drive a wedge between him and his advisers, who include Joseph Stiglitz, the Nobel prize-winning economist."[15]

As pressure from certain developed countries to back down on this language mounted, the Majoor language was reinserted in the latest May 18 draft in paragraph 26, which is now the basis for negotiation at the conference.[16] Reports have indicated that Obama administration officials have played a leading role in sidelining the views of developing nations. This is especially troubling given that President Obama prides himself on internationalism and has made numerous commitments domestically to reform trade agreements and to re-regulate financial services. In the context of this summit, his administration seems to be engaged in forcing more WTO-style financial service deregulation down the throats of the global community.

Conclusions and Recommendations

Many around the world look to the UN conference on the global financial and economic crisis this week with great expectations. The summit should be the start of a process that could involve all of the world's countries in ensuring that the causes of the crisis are properly identified and effective remedies are designed. Unfortunately, recent draft texts from the summit suggest that to the contrary, the process is being steered towards the same dead end the G-20 process has repeatedly visited. Instead of calling for completion of a WTO Doha Round that includes more financial service deregulation, among the UN summit's reform proposals should be:

1. **Remove financial services from the WTO Doha Round**. It is insanity to include further financial service deregulation in any international agreement coming after the hard-learned lesson of the crisis. Practically, this means taking demands and offers on financial services off the table.

2. **Lift existing WTO FSA and FTA terms that limit re-regulation**:
    a. *Eliminate the Understanding on Commitments in Financial Services*: Revoking this text would eliminate the most extreme FSA rules that apply to countries like the United States, Mexico, Korea and the European Union member nations.
    b. *Eliminate GATS Art XVI-2*: This is the provision that forbids governments from employing non-discriminatory limits on the size of banks, securities and insurance firms. Getting rid of this restores the right to use non-discriminatory regulation in financial services.
    c. Additionally, countries should get a window of time to withdraw existing commitments without being required to pay compensation.

3. **Shut down the WTO General Agreement on Trade in Services (GATS) Working Group on Domestic Regulation**: There is NO excuse for a negotiating group whose remit is to limit domestic regulation at the very time WTO countries are committed to re-regulating.

4. **Moratorium on financial service commitments for countries acceding to the WTO**. Countries now negotiating terms of WTO accession must not be asked to make financial service commitments, given that the crisis has shown the perils of the extreme deregulation model.

ENDNOTES

[1] Address of H.E Miguel D'Escoto Brockmann, President of the United Nations General Assembly, to the civil society event "People's Voice on the Crisis", Church of the Holy Trinity, June 20, 2009.
[2] For more information on the WTO financial services agreement, see additional OWINFS material at http://www.ourworldisnotforsale.org/en/report/end-wto-deregulation-finance-owinfs-financial-services-brief-1.
[3] "Communication from the European Communities and their Member States: GATS 2000: Financial Services," WTO document S/CSS/W/39, Dec. 22, 2000.
[4] "Communication from Australia – Negotiating Proposal for Financial Services," WTO document S/CSS/W/66, 3/26/01.
[5] "Communication from the United States – Financial Services," WTO document S/CSS/W/27, Dec. 18, 2000.
[6] WTO Council for Trade in Services, "Disciplines on Domestic Regulation in the Accountancy Sector", Adopted by the Council for Trade in Services on 14 December 1998, S/L/64, December 17, 1998.
[7] "United Nations: General Assembly president calls for unity," M2 Presswire, May 11, 2009.
[8] "Note by the President of the General Assembly," United Nations General Assembly Document A/63/XXX, March 19, 2009, at 7-8. At: http://www.un.org/ga/president/63/letters/recommendationExperts200309.pdf. Accessed June 11, 2009.
[9] The early April G-20 meeting in London echoed the tone of the November meeting, and included a call for "an ambitious and balanced conclusion to the Doha Round." Latin American countries refused to include such language in the Declaration for the Fifth Summit of the Americas, but also did not call for any particular reform to bilateral and multilateral trade agreements. See the G-20 London Communiqué, April 2, 2009, http://www.g20.org/Documents/final-communique.pdf. Accessed June 12, 2009. And also the April 15 Fifth Summit of the Americas declaration here: http://www.fifthsummitoftheamericas.org/uploadedFiles/Fifth_Summit_of_the_Americas/Knowledge_Centre/DeclarationofCommitmentofPortofSpain_2009_ENG%20%20%20%20%20.pdf. Accessed June 12, 2009.
[10] Edith M. Lederer, "UN to hold June summit on financial crisis," *Associated Press*, April 7, 2009.
[11] It read: "The lack of coherence between policies governing trade and finance must be rectified: Policy space is circumscribed by a lack of resources and the imposition of conditionalities, as well as by international agreements that often accompany assistance. Many bilateral and multilateral trade agreements contain commitments that limit the ability of countries to respond to the current crisis with appropriate regulatory, structural and macro-economic reforms and rescue packages, and may have exposed them unnecessarily to the contagion from the failures elsewhere in the global economic system." See "Note by the President of the General Assembly," United Nations General Assembly Document A/63/838, April 29, 2009, at 8. At: http://www.un.org/ga/search/view_doc.asp?symbol=A/63/838&Lang=E. Accessed June 11, 2009.
[12] United Nations Conference World Financial and Economic Crisis and its Impact on Development, Draft Outcome Document, May 6, 2009, at 8.
[13] It read: "Policy space is circumscribed not only by a lack of resources and conditionalities, but also by international agreements that often accompany assistance. *Many* bilateral and multilateral trade agreements contain commitments that circumscribe the ability of countries to respond to the current crisis with appropriate regulatory, structural, and macro-economic reforms and rescue packages, and may have exposed them unnecessarily to risks derived from failures elsewhere in the global economic system." See United Nations Conference World Financial and Economic Crisis and its Impact on Development, Draft Outcome Document, Presented by the H.E. Miguel D'Escoto Brockmann, President of the General Assembly, May 8, 2009, at 11. Available at: http://www.un.org/ga/president/63/interactive/financialcrisis/outcomedoc80509.pdf. Accessed June 11, 2009.
[14] Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO*, (London: Zed Books, 2003).
[15] Harvey Morris, "UN's turbulent priest refuses to go quietly," *Financial Times*, June 8, 2009.
[16] Paragraph 26 read: "Globalization and free trade have been important drivers, among other factors, for economic growth and prosperity, and the global recovery from this financial and economic crisis, and our future global resilience, require a speedy conclusion of the WTO Doha Round and provision of much needed trade finance." See United Nations Conference World Financial and Economic Crisis and its Impact on Development, Draft Outcome Document, May 18, 2009, at 5. At: http://www.un.org/ga/president/63/interactive/financialcrisis/outcomedoc180509.pdf. Accessed June 11, 2009.