

COMMENTS ON PREPARATIONS FOR THE FOURTH MINISTERIAL CONFERENCE OF THE WORLD TRADE ORGANIZATION

Submitted to the Office of the U.S. Trade Representative
by the American Federation of Labor and Congress of Industrial Organizations
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The AFL-CIO welcomes this opportunity to submit comments on the Fourth Ministerial Conference of the World Trade Organization (WTO) to take place from November 9 to 13, 2001 in Doha, Qatar. The WTO and the U.S. government must ensure that official accreditation and sufficient space in Qatar are available to all of the civil society representatives who wish to participate in activities around the ministerial. In addition, it is absolutely essential that no limitations be put on peaceful protests in Qatar; civil society groups have a right to present their views on trade at the WTO ministerial. Any attempt to restrict freedom of expression will show that the WTO cannot tolerate public debate about its rules and its mission.

The AFL-CIO opposes the launching of a new round in Qatar and the continuation of any "built-in" negotiations at the WTO until global trade rules are dramatically reoriented to support sustainable, equitable, and democratic development, and to protect and promote the environment, public health and safety, and human and workers' rights. This ministerial presents the United States government with an important opportunity to learn the lessons of the WTO's failed third ministerial. In Seattle, developing country representatives, human rights champions, environmental activists, family farmers, consumer groups, students and youth groups, women's organizations, people of faith, and trade unions rallied against the current WTO structure and the rules of trade it enforces, arguing that the much-touted benefits of free trade are not actually reaching workers, the poor, and local communities as promised.

At Doha, the U.S. must send a clear message that it has heard and understood these concerns, and must call for a profound overhaul of the multilateral trading system. Trade rules must ensure that the benefits of globalization are shared broadly to benefit society as a whole, not just the select few. The public must have more access and input into trade negotiations at the national and international levels, and trade disputes must be opened up to public comment and participation. A new WTO round should not be launched and mandated negotiations should be suspended until the issues outlined in these comments are addressed and the legitimacy of the international trading system is rebuilt from the ground up.

The first step towards reforming the WTO must be a full and open assessment of the economic, social, labor, gender, environmental, and developmental impacts of existing WTO agreements and the potential impacts of any further negotiations. This assessment must be conducted with the participation of the WTO, UN agencies including the ILO, parliamentarians from WTO

member countries, academics, and trade unions and other civil society groups from around the world. This assessment is necessary to identify flaws and gaps in the existing trading system, to address the perceived lack of political legitimacy of the institution, to educate politicians and the public about the real impact of trade rules, and to guide negotiators in any future work. The U.S. government should insist that this assessment be completed before any new WTO negotiations begin and before "built-in" negotiations continue.

Reform of the Trading System

The AFL-CIO joins with the international trade union movement in calling on our governments to use this ministerial conference to make significant progress on a number of unresolved trade issues before pushing to launch a new WTO round or continuing with mandated negotiations. The details of this position can be found in the International Confederation of Free Trade Unions (ICFTU) Statement on the Agenda for the 4th Ministerial Conference of the World Trade Organization (attached). The ICFTU represents unions in 148 countries with a total of 156 million members, including the 13 million working women and men of the AFL-CIO.

In line with the ICFTU statement, we urge the U.S. government to work with other WTO members to address the following concerns:

- Greater openness to trade has so far not been sufficient, on its own, to stimulate robust and stable growth in developing countries or to significantly reduce poverty. The rules of trade must provide equitable and transparent market access to developing countries – especially the least developed countries – that respect workers' rights, while ensuring that safeguard provisions allow timely and effective national actions to be taken when unanticipated import surges threaten domestic industries. The WTO must also make rules on special and differential treatment more operational, reach an agreement on the extension of implementation deadlines for developing countries, and incorporate developing country concerns regarding life-saving medicines, traditional knowledge, and the patenting of life forms into the TRIPs agreement. Outside of the WTO, more must be done to provide deep debt relief and generous development aid to developing countries; for example, the IMF and World Bank should cancel 100% of the debts owed to them by impoverished countries and rich countries, including the United States, must meet the UN aid target of 0.7% of GDP.
- Trade rules must not allow countries and companies to undercut competitors and gain market advantage by violating core labor standards. Core labor standards are universal human rights, and they are defined by the International Labor Organization (ILO) 1998 Declaration on Fundamental Principles and Rights at Work to include freedom of association, the right to organize and bargain collectively, and prohibitions on child labor, forced labor, and discrimination. As a first step, the WTO must institutionalize a review of the relationship between trade and labor standards. This review should involve the ILO, but it must be housed within the WTO and report back to the WTO so that its results can serve as a basis for reforming international trade rules.
- The WTO must become more transparent and provide greater financial and technical assistance to developing countries to enable them to participate meaningfully in WTO activities. The WTO must also become more transparent and open to outside parties. UN bodies (including the ILO), member country parliaments, and trade unions and civil society

must have full information on, and be able to provide input into, the trade policy review mechanism, trade negotiations, and the dispute settlement process.

- Preservation of the environment and protection of public health and safety, including any precautionary measures and labeling programs undertaken to meet these goals, must take precedence over trade rules. Current WTO provisions on these sorts of measures give more weight to private interests than the public interest, and are insufficient to protect the environment and public health and safety.
- Trade rules must not undermine the ability of governments to provide and regulate services in the public interest. Detailed comments on services trade in the WTO follow below.
- Discussions regarding new disciplines on government regulation of foreign investment and competition policy appear to be headed in exactly the wrong direction. Rules on investment and competition must enable, not restrain, governments – especially developing country governments – to regulate investors and financial flows in the public interest. In addition, any new rules must enforce responsibilities, not just rights, for international investors.
- Any rules on government procurement must not restrict the ability of state, local, and national governments to purchase goods and services using criteria relating to the environment, human rights, workers' rights, economic development, and social equity.

Until real progress is made on these vital issues of development, workers' rights, transparency, sustainability, and social justice, the AFL-CIO will oppose the launching of a new round and the continuation of "built-in" negotiations at the WTO.

Trade in Services

Whether or not a new round is launched in Qatar, negotiations to expand the General Agreement on Trade in Services, or GATS, are slated to continue as part of a "built-in" round. Negotiators are not only trying to extend the reach of GATS to more sectors and thus more areas of our lives, but they are also working to create new GATS rules that will further limit how governments around the world regulate and provide services. Unfortunately, negotiators are prying open countries' markets to foreign service providers without any clear assessment of the impacts these negotiations may have on workers' rights, the environment, and social and economic development. The AFL-CIO is deeply concerned that GATS negotiations, if allowed to continue in the current direction, could facilitate the privatization and deregulation of services in a broad range of sectors.

Given the potentially serious and far-reaching consequences of the GATS, negotiations should be suspended until a full and open assessment of the GATS is completed. This assessment must address how existing and proposed GATS rules affect the economic and social development of poorer countries, the provision of public services, the use of government subsidies and responsible procurement policies, the effective regulation of services, and the protection of workers' rights, the environment, and human rights. This assessment must be conducted in the same open and participatory manner as the more global impact assessment of WTO rules recommended above.

As a condition of future GATS negotiations, the GATS, like all trade agreements, must include enforceable commitments to protect workers' rights and the environment. No company or country should be allowed to benefit from GATS rules if it violates ILO core labor standards. Service sector workers are some of the most poorly paid in the world, they are more likely than workers in other sectors to be women, and they receive fewer benefits and enjoy less job security than other workers. Like all workers, they must be able to freely exercise their fundamental rights if they are to enjoy the benefits of increased trade and investment.

In addition, we oppose any expansion of the GATS until the following guarantees are fully incorporated into the agreement:

- All essential public services, like healthcare, education and utilities – including public services provided in competition with the private sector – must be clearly excluded from the GATS. The U.S. must not use our negotiating leverage to convince other countries, especially developing countries, to make WTO-enforceable commitments to privatize their essential services. Countries must be free to reverse any existing commitments to privatize essential services if they determine that it is in their public's interest to do so. Rules on subsidies and procurement must fully protect the ability of governments to support and purchase services in ways that promote economic development, social justice and equity, public health, environmental quality, and human and workers' rights.
- Guestworker programs too often are used to discriminate against U.S. workers, depress wages and distort labor markets. Meanwhile, the proliferation of these programs has resulted in the creation of a class of easily exploited workers who cannot fully exercise their fundamental rights. Before any new commitments on temporary entry are made under the GATS, these programs must be reformed to include more rigorous labor market tests, involve labor unions in the labor certification process, and guarantee the same workplace protections for temporary workers that are available to all workers.
- The GATS must allow governments to regulate foreign investors and other service providers to fully protect public health and safety, consumers, local economic development, the environment, and workers' rights. In particular, GATS rules should not be based on the so-called "necessity test," which bars any regulations that are not absolutely necessary – from the WTO's perspective – to ensure the quality of the service. This test, under which everything from professional licensing requirements to city zoning ordinances could be challenged at the WTO, does not adequately balance the public interest against private interests. It would place the burden of proof on governments to show that defending the public interest is "necessary" in each individual case, giving foreign investors more rights under international law than domestic companies and local communities.
- A number of transportation service sectors, such as maritime, air transport, and trucking, should be exempt from the GATS entirely. The current GATS exemption for air transport services, for example, must be preserved to protect against foreign carrier cabotage operations, allow restrictions on foreign ownership, and preserve our obligations under international aviation agreements. The flawed idea of including air transport services in the GATS regime stands in stark contrast to the time tested system of bilateral agreements currently employed by the U.S. to expand opportunities for U.S. airlines and customers. Many of these agreements have been successful in eliminating restrictions on destination,

capacity, frequency, and pricing. In addition, inclusion of maritime matters under the GATS framework would only disadvantage the U.S.-flag industry. It would put at risk continued support for the maritime industry and eliminate its ability to effectively address unfair foreign trade barriers.

- Other sectors that are heavily regulated because they are natural monopolies or have an inherently social component, such as postal services, utilities such as water, energy, and sanitation, corrections, education, and health care, should also be exempt from the GATS. Liberalization of these sectors could reduce universal access to these services, weaken legal protections for service users, and diminish service consistency and quality. Any such liberalization must be debated amply in the domestic political arena, including at the state and local levels, and not locked in through international trade negotiations.

We understand that USTR agrees with some of these positions, and has, for example, resisted pressure to make a necessity test for domestic regulations enforceable across all service sectors and to make commitments that would significantly weaken worker protections under our temporary entry system. USTR also seems to recognize that further disciplines on government subsidies and the wholesale incorporation of government procurement rules into the GATS are unwarranted at this time. USTR has also encouraged other WTO members to release their negotiating proposals and has received input on the GATS from cleared advisors and briefed other interested segments of civil society.

Yet USTR has made a number of worrisome negotiating proposals, suggesting, for example, that countries should commit under the GATS to privatize their telecommunications systems, that the U.S. is willing to make commitments under the GATS regarding college and university education, and that a broad range of domestic regulations in other countries should be rolled back for U.S. investors. Draft USTR negotiating proposals have not been available to the public at large for comment, and the number of cleared advisors continues to be heavily tilted towards private industry. While some federal agencies review U.S. negotiating proposals and selected proposals from other countries, and a number of state officials advise USTR on GATS issues, there is no effective system in place to ensure that all relevant regulatory agencies at the federal, state, and local level have the capacity and the opportunity to analyze all GATS proposals (both our own and those of other countries) for potential conflicts with our domestic laws. Furthermore, members of Congress and state and local legislators, who write the laws that GATS rules are designed to discipline, have contributed little to the GATS negotiations so far. Given the complexity and novelty of GATS issues, and the Agreement's broad reach into many areas of our lives, it is absolutely imperative that regulators at all levels of government, members of Congress and state and local legislators, and the public at large all be able to provide informed and sustained input into the U.S. position on the GATS.

Unfortunately, we have been given no reason to believe that our government intends to press for progress on the issues outlined above in Qatar. Without a profound shift in the policy of the U.S. government, we do not see any prospect of these issues being satisfactorily addressed at the WTO. The AFL-CIO opposes the launch of a new trade round at the WTO and the continuation of any mandated negotiations unless and until there is a clear indication from our government and from the WTO that the rules of trade are being significantly reformed to make the global economy work for working families.

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

ICFTU STATEMENT¹ ON

THE AGENDA FOR THE 4TH MINISTERIAL CONFERENCE

OF THE WORLD TRADE ORGANISATION (WTO)

(Qatar, 9-13 November 2001)

Introduction

1. The collapse of the third WTO Ministerial Conference in Seattle in 1999 was a watershed in the short lifetime of the WTO, marking a crisis in the legitimacy of the multilateral trading system. Little of substance has changed since then to indicate that any of the underlying reasons for the failure of the 3rd WTO Conference have changed. Governments and their trade negotiators must heed the lessons of Seattle if they are to regain public confidence in the multilateral trading system. As part of that process, a full assessment of the economic, social, labour, gender, environmental and developmental impact of previous WTO negotiations and the potential impact of any further negotiations is needed. This ICFTU statement draws on the experience of Seattle and elsewhere to propose a reorientation of the multilateral trading system to promote sustainable world economic growth and development, thereby creating decent jobs and a broader spread of the benefits of globalisation in the interests of all people in both developing and industrialised countries.

Supporting Development Priorities

2. A major effort is needed to boost the development of developing countries, in every area of the multilateral system. This must include:
 - Greatly enhanced debt relief and a substantial increase in development assistance (combined with greater effectiveness of such assistance) for developing countries that respect human rights, including fundamental workers' rights;
 - Making more operational the WTO provisions for special and differential treatment to enable developing countries to have increased flexibility, to ensure they have the liberty to take tariff-freezing, tariff-raising or import-limiting measures when necessary;
 - further moves to provide improved market access for developing countries (addressing tariff peaks and tariff escalation in their areas of interest), particularly for least developed countries;
 - assisting developing countries to withstand business pressures to introduce patent laws that preclude socially responsible actions under the TRIPS intellectual property agreement, and review of the TRIPS agreement to incorporate developing country concerns, particularly in the area of access to life-saving drugs as with HIV/AIDS medication, protection of traditional knowledge, the patenting of life-forms and the relationship between the TRIPS Agreement and the Convention on Biological Diversity;

¹ The International Confederation of Free Trade Unions represents unions in 148 countries with a total of 156 million members. See our Web-site for further information (<http://www.icftu.org>). The ICFTU works closely with the International Trade Secretariats (ITS), representing workers in different sectors, and with the Trade Union Advisory Committee (TUAC) to the OECD (<http://www.tuac.org>). All the above organisations are on the Global Unions web-site (<http://www.global-unions.org>).

- multilateral agreement to extend the Uruguay Round implementation deadlines for developing countries, at the same time as the industrialised countries provide detailed and binding timetables for their own implementation requirements under the Uruguay Round;
- increased stable and predictable market access for developing countries to industrialised country agricultural markets, at the same time as enhanced measures to promote poverty alleviation and food security in developing countries, and to ensure that food aid in no way damages local food production in recipient countries;
- and mechanisms to promote the respect of democratic principles and human rights (including fundamental workers' rights), through means such as provision of incentives.

The need for progress on Core Labour Standards at the WTO

3. Core labour standards provoked a controversy that captured the press headlines in Seattle, but the underlying differences on this issue between the democratic countries (both developing and industrialised) that make up the bulk of the WTO's membership have been narrowing all the time. The urgency of the need for action is shown by the fact that the number of export processing zones has all but doubled in just five years while China, a huge country that systematically violates fundamental workers' rights, is generally expected to become a member of the WTO in the near future. It is therefore a priority to protect the fundamental rights of workers in other developing countries and elsewhere against unscrupulous governments or employers who seek to gain an unfair advantage in international trade through the violation of core labour standards².

4. Accordingly, the WTO must set up some form of formal structure to address trade and core labour standards, with the participation of the ILO, such as a WTO negotiating group; a WTO working group; a WTO Committee; or a WTO Standing Working Forum. Such a body should also address wider issues of social development, with particular attention to the impact of trade policies on women. Regardless of its exact format, any such structure must be set up with official endorsement from the WTO and include a reporting back mechanism to the WTO's decision-making bodies. Clearly, such discussions must not result in any arbitrary or unjustified discrimination or any form of disguised restriction on trade. The reports and recommendations should be tabled for consideration no later than the fifth WTO Ministerial Conference in 2003.

Reform of the WTO

5. The Seattle Conference saw an outstanding degree of criticism of the WTO's internal and external transparency and democracy, which must be addressed urgently at Qatar. Increased transparency and financial assistance is needed to ensure that all members (particularly the least developed) are able to take part fully in all WTO activities and procedures, including its disputes settlement mechanisms. The accession process for new WTO members must provide the opportunity for technical assistance and capacity building, as well as progress towards integration into a rules-based international system (which stands to be particularly significant in the case of China's accession). A closer link and co-ordination between the WTO

² Core labour standards are fundamental human rights for all workers, irrespective of countries' level of development, that cover freedom of association and the right to collective bargaining; the elimination of discrimination in respect of employment and occupation; the elimination of all forms of forced or compulsory labour; and the effective abolition of child labour, including its worst forms. Minimum wages have never been part of the proposal to protect core labour standards at the WTO.

and other international institutions, including the ILO, is essential, including reciprocal observer status.

6. Specific consultative structures for trade unions need to be established at the WTO, including for the Trade Policy Review Mechanism (TPRM). The scope of the TPRM should be expanded to include trade-related environmental, social and gender concerns, including core labour standards. External transparency is further required in the conduct of all WTO negotiations. In addition, forms of consultation are needed for parliaments, non-governmental organisations and other elements of civil society. Procedures are needed for the effective involvement of the relevant civil society groups concerned by any dispute settlement process, which need to be opened up for public information and involvement. All these reforms to introduce transparency, democracy and accountability into the WTO are essential preconditions to stop WTO rules being detrimental to workers' interests and to result, instead, in improvements in working and living conditions around the world.

Environment and Health and Safety

7. WTO rules must come secondary to the protection of the environment and health and safety, including the working environment and occupational health and safety. This would require recognition of the precedence of the precautionary principle in cases involving both consumers' and workers' health and safety, to render impossible any repeat of the type of challenge at the WTO that the EU has faced over its ban on trade in asbestos. There should be a multilaterally agreed clarification that Multilateral Environmental Agreements (MEAs) take precedence over WTO rules. Environmental labelling schemes should not be subject to challenge at the WTO.

Safeguarding Vital Services

8. In the current General Agreement on Trade in Services (GATS) negotiations, it must be clarified that countries can maintain the right to exempt public services (for example, education, health, water and postal services), and socially beneficial service sector activities from any WTO agreement covering the service sector, including at sub-national levels of government. Explicit reference to social and environmental concerns in the negotiations is required in order to prevent the conclusion of any agreements that undermine vital and socially beneficial service sector activities and/or the ability of governments to enact domestic regulations, legislation and other measures necessary to safeguard, monitor and develop such services. Countries must have the right to take a future decision to increase the public sector role in their services sectors (for example following a change of government) without facing a WTO dispute, as would be expected under current WTO rules. A clarifying definition is needed of Article I 3 (b) of GATS in order to protect social services that are provided or regulated by the government from the need to liberalise or open to market access. In the case of "Mode 4" services supply (i.e. movement of natural persons) it is essential that protection against all forms of discrimination, core international labour standards, national labour law and existing collective agreements should be respected by all parties to any temporary cross-border movement of workers.

Investment and Competition Policy

9. All discussions of international instruments in these areas must respect the value of public services and state ownership. They must include adequate provisions for developing countries' interests, including technology transfer; omit any provisions that give investors the right to challenge public actions including 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 the revised OECD Guidelines for Multinational Enterprises. Investment discussions should be limited to foreign direct investment only, excluding financial flows and portfolio investment, and should explicitly allow for the right to regulate capital flows. Any discussions of competition policy should focus on the regulation of mergers and acquisitions and abuse of market power by multinational companies, and must not undermine domestic competition policy.

Government Procurement

10. Any discussions in this area should cover transparency of government procurement; the protection of workers employed on government contracts, including migrant workers; and must remedy the flaws in the existing Government Procurement Agreement (GPA) by removing the ban on the use of "non-economic" criteria and authorising public authorities to engage in ethical purchasing policies.

Conclusions

11. The Qatar WTO Ministerial must address the wide range of issues raised by ICFTU members in both developed and developing countries around the world. The lesson of Seattle is that failure to do so will further reduce the WTO's credibility and legitimacy among the general public, including the trade union movement, and intensify the backlash against globalisation. WTO members must seize the opportunity they now have to address the need to build a new consensus around a social, environmental, development-oriented, democratic, accountable, transparent and fairer rules-based world trading system.
