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Concerns arise over IP impact on health, technology transfer

Recent developments on the trade front have highlighted growing fears that strict standards of intellectual property (IP) protection could undermine the public interest. US-backed IP provisions for a proposed Pacific region trade pact have come under fire from civil society groups for their potential to restrict access to affordable medicines. Meanwhile, in the World Trade Organization, discussions have taken place as to whether IP protections are hindering the transfer to developing countries of environmentally sound technologies, including those needed to combat climate change.

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A matter of life and death

Of all the issues currently being negotiated on the Trans-Pacific Partnership Agreement, none are more important than the ability of patients to get life-saving medicines at affordable prices, which many fear may be a victim of the agreement.

by Martin Khor

If you or some family members or friends suffer from cancer, hepatitis, AIDS, asthma or other serious ailments, it's worth your while to follow the Trans-Pacific Partnership Agreement (TPPA) negotiations.

It's really a matter of life and death. For the TPPA, a proposed trade agreement for the Pacific Rim region, can cut off the potential supply of cheaper generic medicines that can save lives, especially when the original branded products are priced so sky-high that very few can afford them.

The fight for cheaper medicines has moved to cancer and other deadly diseases, when once the controversy was over AIDS medicines.

In February, a cancer specialist in New Zealand (one of the 12 countries negotiating the TPPA) warned that the TPPA would prolong the high cost of treating breast cancer because of new rules to protect biotechnology-based cancer drugs from competition from generics. And this will affect the lives of cancer patients.

Some cancer medicines can cost a patient over $100,000 for a year's treatment, way above what an ordinary family can afford. But generic versions could be produced for a fraction, making it possible for patients to hope for a cure and a reprieve from death.

In India, local companies are leading the fight to make medicines more affordable to thousands of patients suffering from breast, kidney, liver and gastrointestinal cancer and chronic leukaemia.

For example, an Indian company produced a generic drug for kidney and liver cancer more than 30 times cheaper than the branded product ($140 versus $4,580 for a month's treatment) after it was given a compulsory licence.

India has a patent law that disallows patents for a newer form of drug unless it improves the medicine's efficacy or effectiveness. Under World Trade Organization (WTO) rules, countries are free to set their own standards for novelty, or whether a product is novel enough to be eligible for a patent.

Also, in many countries, the patent law allows for companies to obtain compulsory licences to import or make generic versions of original medicines. Governments grant such licences if the branded products are too expensive and the originator companies do not offer attractive terms for a voluntary licence to other firms.

Data exclusivity

Multinational companies have strongly opposed compulsory licences or the Indian-type laws that allow for patents only for genuine innovations.

This is where the TPPA comes in. Mainly at the insistence of the United States, the other countries negotiating the TPPA are being asked to accept "TRIPS-plus" standards of intellectual property protection that go beyond the rules of the WTO's TRIPS Agreement on intellectual property rights.

Especially noteworthy is the US insistence that the TPPA countries agree to give a type of intellectual property known as "data exclusivity" for five years to companies producing original medicines. This is extended to eight or 12 years for "biologics", or medicines made with biotechnology. Many of the new medicines for treating cancers are biologics.

This will cause immense problems for patients waiting for cheaper medicines because data exclusivity prevents generic companies from relying on the safety and clinical trial data of the originator company to get safety clearance for their generic products.

Thus, even if a generic company can prove that its medicine is bio-equivalent to the original medicine that has already passed the safety standard required by the health regulatory authorities, it will not be allowed to sell its medicine unless it comes up with its own safety and clinical trial data.

This goes against current practice

relating to generic medicines and safety standards. But the US is insisting on this in the TPPA.

Few generic companies have the funds or technical ability to do their own clinical trials, and thus generic medicines could well be prevented from being used in TPPA countries for five to 12 years – even if the medicines are not patented.

Being deprived of affordable medicines is a matter of life and death, and will cost many lives. That is the most outrightly significant aspect of the TPPA, and this is why so many groups of patients, health organizations and independent medical experts have been outraged and outspoken in their opposition to the TPPA.

George Laking, a cancer specialist in New Zealand, has raised the alarm that the TPPA could make cancer treatment unaffordable because the data exclusivity clause would lock in the extraordinarily high prices of cancer drugs.

In a 21 February article in the *New Zealand Herald*, Laking uses the example of Herceptin, an anti-cancer medicine which costs $100,000 for a year's treatment.

Once Herceptin comes off patent, it will become cheaper because generic forms can be made, he says. Also, new medicines that have fewer side-effects and greater efficacy are being developed all the time.

That means more people will get through the treatment with less pain and distress. But the cost of new "generic" versions of Herceptin and other such pharmaceuticals looks likely to become a casualty of the TPPA, said Laking.

"The new drugs will stay expensive for longer, because access to generic versions will be delayed between eight and 12 years" because of the new data exclusivity rules in the TPPA, he remarked.

"These extended monopoly rights go far beyond existing international norms … This would be the first time in the history of such agreements that exclusive long-term monopoly rights over these 'biologic' medicines will have been guaranteed…

"Each additional year of exclusivity will cost … consumers and taxpayers many millions of dollars. This will be profitable for the pharmaceutical industry, but not so good for cancer patients and their families."

According to Jamie Love of Knowledge Ecology International, an expert on drugs and patents, the average cost of eight biologic cancer drugs registered with the US drug authorities in 2011-13 is $128,000 (for a year's treatment), with the most expensive being over $390,000. At such prices, hardly anyone in developing countries can afford these medicines.

On 12 February, several prominent organizations including Medecins Sans Frontieres, Oxfam, Public Citizen, Health GAP and Knowledge Ecology International issued a strong statement on their deep concern about the public health implications that the TPPA's measures will have for millions of patients in need of access to affordable medicines around the whole Asia-Pacific region (see following article).

The groups said that the TPPA negotiations must take into account the health needs of all patients living in TPPA countries, and the US must halt its efforts to limit countries' freedom and flexibilities, otherwise the TPPA will "jeopardize many, if not millions, of lives".

Prioritizing public health

Developments in India, which is not a TPPA country, show the patient-friendly policies that can emerge when public health concerns are given priority.

Two generic companies are producing generic versions of the drug sorafenib which treats kidney and liver cancers. The original product, named Nexavar, cost some $4,600 per patient per month. A compulsory licence was granted to a local firm to produce a generic version of sorafenib for $140 a month, or over 30 times cheaper.

Another Indian company is producing a generic version of the drug Gleevec, which is used to treat a chronic form of leukaemia as well as gastrointestinal cancer, bringing the cost of treatment down from $70,000 a year (in the US) to $2,500 a year in India. This was possible because the Indian government denied the originator company a patent on Gleevec because it was not judged to be novel enough, and an objection to that decision was rejected by the Indian Supreme Court.

India also rejected a patent application on tenofovir, a drug to treat AIDS, after opposition to its application was filed by several organizations. Cheaper generic versions are now available.

Another Indian company Biocon has produced a generic version of the breast cancer drug Herceptin. Due to a challenge by the originator company, its production has been stalled. There is a citizens' campaign on affordable trastuzumab (which is the non-proprietary name for the drug) to make the drug available cheaply.

Countries that join the TPPA will find it very difficult or impossible to undertake policies and practices similar to India's, should the US proposals in the intellectual property chapter be accepted.

Moreover, countries that don't produce the generic drugs have the option to import them from India. But if the TPPA imposes data exclusivity rules of the type desired by the US, it would be difficult or impossible to sell them in these countries.

Patients would be deprived of the much cheaper generic medicines for treating cancer, hepatitis, AIDS and many other diseases, at least for many years. How many lives would be affected?

Some countries are however opposed to some of the US proposals. According to a briefing on the TPPA by the Malaysian Ministry of Trade and Industry on 20 February, the intellectual property chapter remains the most problematic, with many differing views.

Of these views, the positions that defend public health must prevail, for after all, it is a matter of life and death.

Martin Khor is Executive Director of the South Centre, an intergovernmental policy think-tank of developing countries, and former Director of the Third World Network.

Civil society slams USTR's proposal for TPPA's IP chapter

A US proposal for differentiated intellectual property protection terms for developing countries negotiating the TPPA falls far short of securing access to affordable medicines for these countries, civil society groups charge.

by Kanaga Raja

GENEVA: A group of civil society organizations has voiced deep concern over the public health implications of a "differential treatment approach" proposed by United States trade negotiators for the intellectual property (IP) chapter of the Trans-Pacific Partnership Agreement (TPPA).

In a joint statement issued on 12 February, the groups said that this "new" approach "not only preserves the life-threatening and access-restricting proposals that USTR [US Trade Representative] has been pushing since 2011, forcing all TPP [Trans-Pacific Partnership] countries to go far beyond internationally agreed World Trade Organization obligations contained in the Trade-Related Aspects of Intellectual Property [Rights] Agreement (TRIPS), but also fails to provide adequate recognition of the urgent access to medicines needs of patients living in developing countries".

Among the groups taking this joint position were Medecins Sans Frontieres (MSF), Oxfam America, Public Citizen, Health GAP, Knowledge Ecology International (KEI), Fundacion Mision Salud, the American Medical Student Association, the Student Global AIDS Campaign, CEPFAR and the Alianza LAC-Global.

The concerns of civil society organizations resurfaced following an address delivered by USTR Michael Froman at the Washington-based Center for American Progress on 18 February, in which he, amongst others, touted the US-proposed "differentiated approach" for IP protection for pharmaceuticals in the TPPA.

In his address, Froman covered various aspects of US trade policy. Speaking about broadening the benefits of innovation to the public and enabling cross-border collaboration, Froman said that the US was "working to find better ways to foster affordable access to medicines, support freedom of information and encourage the free flow of ideas across the digital world".

The USTR went on to offer some examples, one being the TPPA, on which he said: "We are asking our TPP partners to accept WTO agreement provisions allowing for the export of generic versions of patented drugs to countries with insufficient manufacturing capacity. In the TPP, we are proposing a 'differentiated approach' for pharmaceutical IP protections which takes into account countries' individual levels of development and other challenges to ensure that the benefits of innovation are shared with the world's poor."

(A post by Ben Beachy, Research Director with Public Citizen's Global Trade Watch, on Public Citizen's "Eyes on Trade" blog on 19 February has countered the USTR's assertions about fostering access to affordable medicines in the TPPA, saying: "Leaked negotiating texts reveal that US proposals for the TPP go beyond prior US pacts in handing large pharmaceutical corporations unprecedented monopoly patent protections that would restrict the availability of life-saving generic medicines and raise healthcare costs in TPP countries."

(Titled "Fact-checking Froman: The Top 10 Myths Used by Obama's Top Trade Official", the blog post said: "The US TPP proposals would empower pharmaceutical firms to extend medicine patents beyond what the World Trade Organization allows, to patent even the methods for treating patients, and to re-patent existing medicines without actually inventing anything new. A broad array of public health groups have condemned the overreaching US TPP proposals, warning that they would 'jeopardize many, if not millions, of lives.'")

Excessive IP protections

In their joint statement of 12 February, the civil society groups said that over the last three years, they as well as public health and development experts, the Vatican, Members of the US Congress and trading partners of the US in the TPPA negotiations have repeatedly expressed concerns about "the public health and global access to medicines implications of the United States Trade Representative (USTR) efforts to augment pharmaceutical monopoly power by creating excessive and additional intellectual property (IP) norms in the TPP".

In response, the groups noted, in November 2013, during the Salt Lake City round of the TPPA negotiations, US trade negotiators proposed a "differential treatment approach" to the TPPA's IP chapter claiming to be extending some of the public health flexibilities included in the 2007 New Trade Policy (May 10 Agreement) to the developing countries currently negotiating the TPPA.

"We are deeply concerned about the public health implications that these measures will have for millions of patients in need of access to affordable medicines around the whole Asia-Pacific region, and about the mis-characterization of this proposal as being coherent with the May 10 Agreement," said the civil society organizations.

Recognizing the detrimental impact of excessive IP protections for developing countries, the groups said in their statement that the May 10 Agreement "took a necessary, though still insufficient step" in the right direction.

"The deal provided developing countries negotiating trade agreements with the United States at the time – Peru, Colombia and Panama – flexibilities for the implementation of the most burdensome IP provisions on the table during those negotiations (patent linkage, patent term extensions, and data exclusivity)."

The groups said that they are concerned that "even the principles of the May 10 Agreement – to avoid the harmful effects of excessive IP protections in less wealthy countries where many people still live in poverty – are not being maintained in the TPP negotiations".

The groups were specifically concerned that the USTR's proposal will impose undue burdens on public health in the following ways:

- The USTR's proposal seeks to impose unprecedented and excessive "TRIPS-plus" IP protections for both developed and developing countries.

In this regard, the joint statement said that the USTR's proposal seeks to limit the flexibilities granted under the TRIPS Agreement aimed at protecting public health, and oblige countries to implement new and harsher measures that will endanger access to medicines. Such measures favour the expansion of drug monopolies at the expense of patients' health, it added.

● The USTR proposal fails to preserve even the modest pro-access steps achieved under the May 10 Agreement.

According to the groups' joint statement, the TPPA imposes new and harsher measures for health that were never part of the US trade agreements with Peru, Colombia and Panama and therefore were not considered in the May 10 Agreement.

Yet, the statement stressed, all TPPA countries are expected to adopt these new provisions, which include:

- lower patentability standards that will expand the scope of what can be patented, thus facilitating patent "evergreening" and prolonging access barriers for existing medicines;

- patents for methods of treating patients such as surgical, diagnostic and therapeutic medical procedures that will increase healthcare costs and limit availability of medical best practices, knowledge and care; and

- a special, extra-long additional period of data exclusivity for biologics that will block access to more affordable biotech medicines that are urgently needed to treat diseases such as cancer and hepatitis.

● The USTR's differential treatment proposal is not only inadequate in scope – failing to fully incorporate the May 10 Agreement – it is also unacceptably limited in scale.

According to the civil society groups, under the USTR's proposal, only a few of the less wealthy countries will be eligible for differential treatment, and they would still be forced to adopt access-restrictive IP protections in the long term.

"USTR's differential treatment proposal simply consists of the limited application of some of the harmful provisions of the IP chapter (patent linkage, patent term extensions, and certain types of data exclusivity) for certain developing countries," they said. "Yet, the terms of these provisions may still be more restrictive than those afforded to developing countries under the May 10 Agreement."

Further, these different standards would only be available until those countries cross a certain income threshold. And they may not be available for other developing countries that may accede to the TPPA in the future.

By contrast, the groups noted, the terms offered to Peru, Colombia and Panama under the May 10 Agreement were permanent.

"We stress the importance of ensuring the negotiations take into account the health needs and economic disparities of ALL patients living in TPP countries, and urge USTR to halt its efforts to limit countries' freedom and flexibilities under accepted international norms to implement IP standards that are most appropriate for their public health needs," said the groups' statement.

Otherwise, it warned, the proposed "high-standard, 21st century" trade deal will prove to be a low standard for public health and jeopardize many, if not millions, of lives. *(SUNS7749)* ❐

MSF defends India's measures to protect public health

The medical charity Medecins Sans Frontieres (MSF) has criticized pressures applied on India for including public health safeguards in its patent laws, saying that such measures conform to global trade rules and benefit patients across the developing world.

by Kanaga Raja

GENEVA: The international medical humanitarian organization Medecins Sans Frontieres (MSF) has voiced strong objection to the pressure being exerted by the United States on developing countries, including India, over their use of legal flexibilities to protect public health.

This came in MSF's oral testimony to the US International Trade Commission (USITC) public hearing on "Trade, Investment and Industrial Policies in India: Effects on the US Economy" held on 12-13 February in Washington.

The USITC investigation on this subject was initiated at the instance of the US Congress (House of Representatives and Senate) and backed by several US industry associations including the Pharmaceutical Research and Manufacturers of America (PhRMA).

The MSF testimony was delivered by Rohit Malpani, Director of Policy and Analysis at MSF's Access Campaign.

"Pharmacy to the developing world"

In its testimony, MSF said that every country has the right to take steps to increase access to medicines and implement a patent system in line with its public health needs.

"India's measures are fully compliant with global trade rules and with the laws of India. These attacks undermine the global trading system as well as the independence of the Indian judiciary, which was responsible for the decisions under discussion today."

Most importantly, said MSF, the measures India has implemented to safeguard public health are of critical importance to protect the health of millions of people across the world.

"India has been nicknamed the 'pharmacy to the developing world' in recognition of this fact. Losing this 'pharmacy' would be devastating for patients and for treatment providers," MSF added.

MSF urged the USITC to evaluate the decisions made by the Indian government under international trade rules, taking into consideration its impact on public health.

In its testimony, MSF underscored that as a medical treatment provider with more than 40 years of experience caring for vulnerable people, it is able to speak about the relationship between intellectual property rules and access to medicines, and about the role India has played in enabling access to life-saving medicines for millions.

In 2001, MSF said, it faced "what seemed like insurmountable barriers in meeting critical health needs and saving the lives of our patients. In particular, we faced an astronomical 10,000-dollar per-person per-year price-tag for life-saving HIV medicines, which barred millions from treatment and prevented us from being able to reach more than a very limited number of people".

But a solution was found in India, it added, pointing out that the legal safeguards introduced in the country's 1970 patent law excluded patents on life-saving medicines and resulted in boosting the manufacture of low-cost, quality generic medicines for a fraction of the existing price.

In 2001, the cost to treat someone

with HIV fell by over 96% – literally overnight – to $360 per person per year. Since then, generic competition has seen the cost fall even further.

As a result, said MSF, nearly 10 million people worldwide today receive treatment for HIV, many of those from PEPFAR (the US President's Emergency Plan for AIDS Relief) and other US government-funded programmes like the Global Fund to Fight AIDS, TB and Malaria.

"India's role in this treatment scale-up has been – and continues to be – a critical one. As the 'pharmacy to the developing world', and as the biggest source of quality generic medicines, governments and donors such as the United States rely heavily on Indian generic medicines."

According to the latest data, 98% of the medicines used in the American taxpayer-funded PEPFAR programme rely on low-cost generic medicines.

"This represents important cost savings that stretches America's significant investment in global health further and saves millions of lives," said MSF, adding that according to the last US government budget, in fiscal year 2014, this US government investment amounts to more than $7 billion dollars for HIV/AIDS, TB and malaria alone.

"The generous contributions of the US government in the global fight against HIV and AIDS have been pivotal in bringing us to the point where we can, for the first time, talk about reversing the AIDS epidemic as a feasible policy objective."

Access under threat

MSF welcomed new ambitions and efforts on the part of the US government to translate the new science – that HIV treatment is, in fact, prevention – into policies that will scale up access to treatment.

But, it said, the ability to implement these policies is directly linked to the ability of patients, treatment providers and donors, including the US government, to access medicines at affordable prices.

"HIV/AIDS is just one example. We need access to affordable treatment for a variety of medical problems that affect our patients, including both communicable and non-communicable diseases."

Noting that international trade and intellectual property rules govern what governments can and cannot do to protect public health and access to affordable medicines, MSF underlined that member states of the World Trade Organization (WTO) – including the US and India – have agreed to these rules which set standards for what deserves a patent and for how long a patent should last.

In 2001, WTO member states, including the US and India, also signed the Doha Declaration on the TRIPS Agreement and Public Health, which enshrines the right of governments to implement safeguards and flexibilities to protect public health.

In recent years, MSF noted, the US has made additional commitments to recognize the importance of public health. For example, through the 2007 New Trade Policy, the US recognized the importance of public health safeguards for developing countries. The US again committed to the importance of public health in the 2008 World Health Organization (WHO) Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property.

"India's patent law and its judiciary are under pressure for policies which we consider are entirely in line with its obligations as a WTO member," said MSF.

"In compliance with its international obligations, India has started to provide significant patent protection for medicines: between 2005 and 2008, India granted over 2,000 patents for medicines, and continues to grant patents today, including on new antibiotics for TB treatments, which we urgently need in our medical operations."

Treatment providers are already seeing the impact of these patents, which delay generic competition, keeping newer medicines out of affordable reach, said MSF.

Taking the HIV example again, although first-line treatment has benefited from important price reductions, more people need to be switched to newer and more effective medicines, MSF explained, adding that it has started to switch HIV patients who develop drug resistance onto newer medicines, which are expensive because they are under patent and there is no competition.

"At our clinic in Mumbai, India, salvage regimen drug raltegravir is prohibitively priced at 1,775 dollars per person per year."

According to MSF, new medicines to treat hepatitis C, which affects around 180 million people worldwide, provide another critical illustration. New medicines entering the market, including the recently approved sofosbuvir, will be priced by brand-name companies at as high as $1,000 per pill in the US.

"While it is likely that these medicines will be less expensive in India and other countries, we know that without generic competition, affordable and effective treatment for millions of people living in developing countries will not be possible," said MSF.

Striking a balance

While India does grant patent monopolies to a vast number of pharmaceutical products, it is trying to strike a balance between providing intellectual property protection and having the flexibility to protect the constitutional right to health.

According to MSF, it does so in at least two ways.

MSF said that the first way is by defining strict patentability criteria. Under the TRIPS Agreement, governments have the right to define "scope of patentability" – what does and does not deserve a patent – in a way that addresses the needs of their own citizens, as long as they abide by international agreements.

The US recently contributed to its own definition when the Supreme Court reaffirmed strict patentability criteria for gene patents.

"India has adopted a standard of patenting that is stricter than that in the US or Europe, but which is in line with international trade rules," said MSF, adding that there are numerous examples of how India's application of strict standards of patentability has resulted in improved access to medicines.

For example, MSF noted, a secondary patent application on a life-saving cancer drug, imatinib, by Novartis was rejected because it was for a modified form of an already known substance. Novartis challenged this decision.

"When the Indian Supreme Court upheld the decision of the patent office last year, it was legally validating a choice by the Indian parliament to better define standards of patentability for medicines. While a patent should reward innovation, in reality, the overwhelming majority of patents are applied for incremental developments on existing medicines."

In contrast to India's stricter patentability criteria, the US, MSF said, has patent standards which allow for the granting of secondary patents for very obvious modifications of existing medicines. This practice, known as "evergreening", acts to delay generic competition and keep prices high, and is a common tactic by which the pharmaceutical industry extends their monopoly on drugs beyond the original patent's 20 years.

According to MSF, a recent study found that evergreening extends patent protection by an average of more than six years.

"Allowing companies to extend patent protection and keep prices high is expensive for US consumers and the US government," MSF emphasized.

For example, it said, the patent on the active ingredient in imatinib, marketed as Gleevec, the cancer drug at the heart of the Novartis case, will expire next year in the US. However, secondary patents will extend Novartis's market monopoly in the US until 2018, preventing more affordable generics from entering the market.

MSF noted that the US recognizes that excessive patenting can undermine innovation and American economic productivity across many sectors. President Obama's State of the Union address reflects this in his calls for reform of the US patent system and limits to costly patent litigation that "[allow] our businesses to stay focused on innovation".

The US government continues to make adjustments to its patent system to achieve a better balance between rewarding innovation and providing for public health needs, said MSF. The US should allow other governments, like India, to do the same.

"The measures taken by the Indian government do not undermine rewarding innovation through the patent system, but rather curtail the worst excesses of it, ensuring that companies focus their energies on scientific innovations and research for new drugs, rather than business strategies that extend existing patent monopolies with low or no inventive contribution."

When it comes to incentivizing innovation, determining the right balance for governments to strike in deciding what deserves a patent and what does not is a complex matter, acknowledged MSF.

It said it supports the Indian government decision that patents should only be granted for innovations that satisfy rigorous criteria to assess inventive step and have accomplished something significant in terms of therapeutic efficacy.

Apart from strict patentability criteria, MSF stressed that compulsory licences are another legally recognized safeguard that allows a country to balance intellectual property protection with the right to protect public health.

"The US government has threatened or used compulsory licences for medicines in the past to meet public health needs, and stated that it would look to use them in the future if necessary."

The Indian Patent Office has had the ability to use compulsory licences for many years but, unlike the US and others – and despite the unaffordable medicine prices charged by multinational drug companies – had never issued one until very recently, MSF noted.

In 2012, the country issued its first – and so far only – compulsory licence in the interest of public health, when faced with a price tag for a cancer drug which kept it out of reach of 98% of those eligible for treatment. Granting the compulsory licence reduced the price by 97%. The Indian courts also recognized the innovation behind the drug, and obliged the generic manufacturer to pay a 7% royalty to the patent holder.

MSF expressed hope that where access barriers exist, compulsory licences will be issued for the newest drugs to address critical health priorities, enabling affordable generic versions to be available not only in India but in the rest of the developing world.

"With new HIV, cancer and hepatitis C medicines priced beyond the reach of patients and treatment providers, the use of public health safeguards in India will be necessary to ensure that medicines are affordable to the millions who require treatment," it said.

Financing innovation

"Make no mistake – MSF recognizes the need to reward innovation and the need to finance research and development. We are a humanitarian medical organization that needs and welcomes biomedical innovation to improve treatment options for our patients. R&D is important, and someone needs to pay."

However, it added, the reality is that relying on high prices for medicines, backed up by intellectual property monopolies, is "a flawed paradigm" to pay for medical innovation.

"It creates both access problems due to high prices – as we have seen – and at the same time it does not stimulate innovation for many of the diseases affecting people in developing countries, where patients have limited purchasing power and the private sector sees no incentive. Today, we basically have a trade-off between innovation and access. If you have wide access, says the industry, you aren't supporting innovation."

New approaches to medical innovation are demonstrating that significant medical breakthroughs with access are possible – in particular, models of innovation that break the link between the cost of research and development and the high price of the end product.

According to MSF, seeking greater intellectual property norms in countries like India that are the source of access for millions around the world not only does little for innovation but perpetuates a failed business model.

"Instead of aggressively pushing governments, such as India, to ignore its legal rights under international trade rules to ensure affordable medicine prices, the US government should work with India and other countries, to invest in and develop new models of innovation that promote both innovation and access," MSF concluded in its testimony before the USITC. *(SUNS7747)* ❐

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In addition to a more democratic governance structure – we are hearing rumours that each of the BRICS countries will contribute an equal share of money to the NDB pot, meaning that they would all have the same number of votes on its board – the NDB should ensure that representatives from recipient countries are also part of the process. There are many ways in which it could do so – the best might be to create a governance mechanism that includes representatives from other structures such as the African Union or the bloc of least developed countries (LDCs) as well as members of Southern civil society.

If the NDB can establish governance structures more equitable, more transparent and more tilted towards ensuring that the needs of poor countries are at the fore, it may add to the already building pressure for meaningful reform of the Bretton Woods institutions. ❐

Sameer Dossani, ActionAid International's international advocacy coordinator, has been working on issues of debt, development, human rights and international economic justice for over a decade, including as director of NGO Forum on the Asian Development Bank and 50 Years Is Enough: US Network for Global Economic Justice. This article is reproduced from the February 2014 edition of the Bretton Woods Bulletin *(www.brettonwoodsproject.org/publications/bulletin-february-2014), which is published by the UK-based Bretton Woods Project.*

WTO discusses IP and transfer of green technologies

Whether intellectual property rights impede the diffusion of environmentally friendly technologies was a subject of discussion at the latest meeting of the WTO's intellectual property body.

by Alexandra Bhattacharya

GENEVA: Developing countries are pressing for the World Trade Organization (WTO) to deal with the role of intellectual property (IP) in transferring technology to address climate change.

The WTO's Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS), in its first meeting for 2014, discussed the topic of "Contribution of intellectual property (IP) to facilitate the transfer of environmentally rational technology".

The inclusion of this agenda item, at the request of Ecuador, constitutes part of the country's proposal submitted in February 2013 to initiate a discussion on IP, climate change and technology transfer in this WTO body.

The TRIPS Council is the WTO body that is responsible for administering and monitoring the operation of the TRIPS Agreement, a multilateral treaty that sets minimum standards for IP protection in WTO member states.

Barriers to technology transfer

During the TRIPS Council meeting here on 25-26 February, India, in its intervention, stated that "it is high time that the role of intellectual property is addressed in a constructive and balanced manner to address the issue of greenhouse gas emissions and climate change adaptation and mitigation efforts".

It stressed that since any effort in this direction was dependent on the diffusion of environmentally sound technologies (ESTs) to the developing countries, it was essential that barriers in accessing these technologies be suitably addressed.

India noted that currently, a significant portion of research and development (R&D) relevant to climate change was in the hands of a few private companies.

Citing data from the World Intellectual Property Organization (WIPO), India said that 215,000 "clean energy" patents were filed between 2000 and 2008 worldwide. This, it added, showed that environmentally rational technology was controlled by private monopolies through patents and other intellectual property rights (IPRs).

Further, according to India, in the six energy technologies (wind, solar, photovoltaic, concentrated solar power, biomass-to-electricity, cleaner coal and carbon capture) it was observed that the US, Japan and Germany were clear leaders in energy innovations. It said that India, China or Brazil did not have any organizations amongst the top positions in this field. Therefore, any diffusion of these technologies would be controlled by these few OECD companies.

India underlined that in a scenario dominated by a business approach to a planetary problem, IPRs were likely to play a key role in determining access to technologies and the cost of using them.

India further stated that climate change mitigation and adaptation required not only a massive effort to develop suitable technologies, but also mechanisms to make them readily available.

Technology transfer could be termed successful only when the recipient enterprises developed expertise to develop technology through imitation or reverse engineering to adapt to the local conditions and eventually design and manufacture original products, stressed India.

India further added that while the owners of technology believed that a free-market approach would address all the issues, including diffusion into the developing countries, it was a fact that the owners would never transfer their technology willingly for fear of creating competitors.

Further, according to India, it had been observed that even when there had been some sort of technology transfer, it had normally happened through second- or third-tier companies and that too at an exorbitant price and with several strings attached.

It was therefore not possible that any efficient technology at affordable prices could ever be transferred through a market-based approach.

India reiterated that since a global problem could never be addressed comprehensively through a commercial approach, a proactive role of public policy at national and international level would be critical.

It was in this regard that it supported the approach proposed by Ecuador to facilitate the transfer of environmentally rational technology and also supported the proposal from Ecuador for further discussion on this subject at the next meeting of the TRIPS Council.

"Excessive protection"

Ecuador also made two interventions under this agenda item at the 25-26 February TRIPS Council meeting.

In its opening intervention, Ecuador stated that the agenda item had been requested for two reasons: firstly, because it was a topic of importance to all member states, and secondly, because no member in the TRIPS Council had come out against the view that it was necessary to address the adverse effects of climate change and it was clear that this was an issue which affected the entire international community.

Responding to the request by Switzerland during the June 2013 TRIPS Council meeting to indicate specific cases where the existing tools and procedures of the IP system had posed a problem, Ecuador stated that the information summarily included in patent applications did not allow the exercise of real transfer of technologies to developing countries. In particular, patent applications did not include the information necessary to exploit the invention once the patent term expired or to be able to grant a licence.

Switzerland had also requested Ecuador to elaborate on what it meant by "excessive protection", as found in paragraph 4 of its proposal. Ecuador responded that "excessive protection" was understood as not meeting the objective of Article 7 of the TRIPS Agreement, which states that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations".

Ecuador referred to the interventions by several countries such as the US and the European Union during the last meeting of the TRIPS Council which had referred to several studies which showed the important role of patents in generating innovation and transferring technologies. It asked those delegations to provide figures and statistical data to support their statements and particularly point to the number of licences for clean energy that have been granted to developing countries or concrete cases of technology transfer.

Ecuador referred to a study by Levin and Boldrine (Chapter 8, *Against Intellectual Monopoly*) which argued that the patent system and monopolies were not the best way to promote innovation. It added that authors such as Nobel laureate Joseph Stiglitz and Becker had also stated that there were no suitable incentives offered by the patent system.

Ecuador also referred to an article by Matthew Littleton titled "The TRIPS Agreement and Transfer of Climate-Change-Related Technologies to Developing Countries", which was also referenced in Ecuador's proposal. The article stated: "Despite the numerous international commitments to promote transfer of climate-change-related technologies to developing countries, these transfers are not occurring at a rate fast enough to help these countries in mitigation and adaptation to the effects of climate change."

In its second intervention, Ecuador said that it was willing to include missing studies on the topic in its proposal and to prepare a new document on this basis. It also called on the WTO secretariat to add new elements to the paper. It stated that it was appropriate to continue the discussion on the basis of a reformulation of the proposal during the next session of the TRIPS Council.

Ecuador's proposal to the TRIPS Council

On 27 February 2013, Ecuador had formally submitted a proposal (WTO document IP/C/W/585) to the TRIPS Council which put forward the need to review the TRIPS Agreement in light of the need to transfer environmentally sound technology, especially to combat climate change.

The main aim of the proposal was "to prevent IPRs from becoming a barrier for the transfer of technology to the developing countries".

The proposal was submitted as "a contribution by the multilateral trading system to global strategies to enhance access to clean energy, increase energy efficiency and accelerate worldwide implementation of renewable energy technologies from the standpoint of intellectual property".

It put forward considerations for WTO members to assess the benefits of eliminating or reducing restrictions or barriers and facilitating the use of ESTs in the WTO and specifically in the TRIPS Council.

The specific objectives of Ecuador's proposal are to:

a. reaffirm the existing flexibilities in the TRIPS Agreement so that members use them in connection with ESTs, for example, through a declaration addressing flexibilities in the TRIPS Agreement, climate change and access to ESTs;

b. initiate a review of Article 31 of the TRIPS Agreement to determine which of its provisions may excessively restrict access to and dissemination of ESTs, and particularly its paragraph (f) and the need to include provisions on, as the case may be, the transfer of expertise or know-how to implement compulsory licences;

c. evaluate the regulation of voluntary licensing and the conditions thereof from the standpoint of the most pressing needs of the most vulnerable developing countries in relation to adaptation to and mitigation of climate change;

d. recognize that adaptation to and/or mitigation of the harmful effects of climate change should be assimilated to the concept of "public interest", with the adoption of a provision authorizing exemption from patentability, on a case-by-case basis, for inventions whose exploitation is vital for the diffusion of ESTs needed for adaptation and/or mitigation of climate change;

e. evaluate Article 33 of the TRIPS Agreement to establish a special reduction in the term of protection for a patent of [X] years in order to facilitate free access to specific patented ESTs for adaptation and/or mitigation of the effects of climate change because of urgent need in the public interest; and

f. inclusion of a mechanism in the TRIPS Agreement to promote open and adaptable technology licensing for results obtained from research into climate change and ESTs financed through public funds.

Ecuador's proposal also called for recognition in the WTO of the need for cooperation and consistency in the actions of both the UN Framework Convention on Climate Change (UNFCCC) and the WTO, with a view to eliminating or reducing restrictions or barriers to access to ESTs, and consequently facilitating their use by developing countries.

The proposal had also asked members to consider adopting at the Bali WTO Ministerial Conference last December a declaration in which members would enshrine the principle that "nothing in the TRIPS Agreement can minimize or impair the flexibilities provided for in that Agreement, nor prevent or limit members taking measures they consider necessary to protect their population from the effects of climate change and to make use of 'environmentally sound technologies'".

The Ecuadorian proposal had also been discussed during the TRIPS Council's previous session held in October 2013 and briefly in its June 2013 session where a number of developing countries (Cuba, Bangladesh, Bolivia, Brazil, India, Indonesia, Nepal, Rwanda and the Dominican Republic) had expressed their broad interest in continuing the exchange on the topic.

Continuing debate

The debate on the role of IPRs in combating climate change is not new to the WTO. For example, in 2011, China and India, in a communication to the WTO Trade and Environment Committee, highlighted that IPRs must not become a barrier to the transfer of technology to developing countries.

With the submission of Ecuador's proposal to the TRIPS Council, the specific issue of the transfer of environmentally sound technology and the role of IP in this context has shifted to the WTO's IP body.

The opening paragraph of the preamble to the Marrakesh Agreement establishing the WTO lists among the guiding principles and objectives of the world trading system the objective of sustainable development together with protection and preservation of the environment.

However, as seen in discussion in other fora, the premise of the debate is whether IPRs, and in this context particularly the TRIPS Agreement, can adversely effect or impede the transfer of ESTs, particularly to the developing world.

The TRIPS Agreement, in its preamble, specifically refers to the promotion of technology transfer to developing countries and this is furthermore underpinned by the provisions of Articles 7 (Objectives) and 8 (Principles).

However, developing countries have long maintained that IPRs, particularly patents, do limit the possibility to adopt ESTs, since patent holders, mainly concentrated in developed countries, are able to raise the cost of access or deny it altogether.

However, developed countries particularly the US have maintained that IPRs play a positive role in promoting both green technology innovation and its transfer to the developing world.

During the October 2013 TRIPS Council session, several other developed countries such as the EU, Japan, Canada, New Zealand, Australia and Switzerland, as well as Chile, countered the argument that IP protection did not allow technology transfer, noting also that the comparison with pharmaceutical patents was inappropriate because green technologies were considerably more competitive.

The next meeting of the TRIPS Council is scheduled for 11-12 June, when the agenda item is expected to feature again. *(SUNS7754)* ❐

(coninued from 14)

peso crisis, and gross foreign portfolio inflows came to a sudden stop. The Mexican economy took a hit, with projected growth at 1.22% for the year. This was mostly because, as the IMF noted, "Mexico's deep and liquid foreign exchange and domestic equity and sovereign bond markets can serve as an early port of call for global investors in episodes of financial turbulence and hence are susceptible to risks of contagion". This vulnerability is also a result of the policies that NAFTA was designed to facilitate.

As was well known at the time of NAFTA's passage, the main purpose of NAFTA was to lock in a set of economic policies, some of which were already well under way in the decade prior, including the liberalization of manufacturing, foreign investment and ownership, and other changes. The idea was that the continuation and expansion of these policies would allow Mexico to achieve efficiencies and economic progress that was not possible under the developmentalist, protectionist economic model that had prevailed in the decades before 1980.

While some of the policy changes were undoubtedly necessary and/or positive, the end result has been decades of economic failure by almost any economic or social indicator. This is true whether we compare Mexico to its developmentalist past, or even if the comparison is to the rest of Latin America since NAFTA. After 20 years, these results should provoke more public discussion as to what went wrong. ❐

The above is the text of the executive summary of "Did NAFTA help Mexico?: An assessment after 20 years", a report written by Mark Weisbrot, Stephan Lefebvre and Joseph Sammut and published by the Washington, DC-based Center for Economic and Policy Research (CEPR) (February 2014). The full report is available on the CEPR website www.cepr.net. Mark Weisbrot is co-Director of CEPR. Stephan Lefebvre is a research assistant and Joseph Sammut is an intern at CEPR.

Emerging economies – from easy money to hard landing?

As emerging economies experience increasing financial turbulence, *Yilmaz Akyuz*, chief economist of the Geneva-based South Centre, outlines policy measures required to avert another crisis.

GENEVA: Before the world economy has been able to fully recover from the crisis that began more than five years ago, there is a widespread fear that we may be poised for yet another crisis, this time in emerging economies.

The signs of external financial fragility in several emerging economies have been visible since the beginning of the financial crisis in the US and Europe.

The South Centre has constantly warned that the boom in capital flows that had started in the first half of the 2000s and continued even after the Lehman bank collapse is generating serious imbalances in the developing world along with the danger of a sudden stop and reversal.

Policy choices in advanced economies, notably in the US as the issuer of the main reserve currency, in response to the crisis are key to understanding what is going on.

Reluctance to remove the debt overhang caused by the financial crisis through timely, orderly and comprehensive restructuring, and an abrupt turn to fiscal austerity after an initial expansion, has meant an excessive reliance on monetary means to fight the Great Recession, with central banks entering uncharted policy waters, including zero-bound policy interest rates and the acquisition of long-term public and private bonds (quantitative easing).

This ultra-easy monetary policy has not been very effective in reducing the debt overhang or stimulating spending. It has, however, generated financial fragility, at home and abroad, notably in emerging economies.

In several emerging economies, policies pursued in recent years have no doubt made a significant contribution to the build-up of external vulnerability. Many commodity-dependent economies have failed to manage the twin booms in commodity prices and capital flows that started in the early years of the millennium and continued until recently, after a brief interruption in 2008-09.

These countries, and several others, have stood passively by as their industries have been undermined by the foreign exchange bonanza, choosing instead to ride a consumption boom driven by short-term financial inflows and foreign borrowing by their private sectors and allowing their currencies to appreciate and external deficits to mount. Hastily erected walls against destabilizing inflows have been too little and too late.

The International Monetary Fund (IMF), the organization responsible for safeguarding international monetary and financial stability, has also failed to promote judicious policies not only in major advanced economies, but also in the South.

It has been unable to correctly identify the forces driving expansion in emerging economies and joined, until its recent U-turns, the hype about the "Rise of the South", arguing that major emerging economies are largely decoupled from the economic vagaries of the North and have become new engines of growth, thereby underestimating their vulnerability to shifts in policies and conditions in the North, notably the US.

Even when it became clear that capital inflows posed a serious threat to macroeconomic and financial stability in these economies, its advice was to avoid capital controls to the extent possible and introduce them only as a last resort and on a temporary basis.

Policy response

Policy response to a deepening of the financial turbulence in the South and tightened balance of payments should be similar in many respects to that recommended by the South Centre in the early days of the Great Recession.

The principal objective should be to safeguard income and employment. Developing countries should not be denied the right to use legitimate trade measures to rationalize imports through selective restrictions in order to allocate scarce foreign exchange to areas most needed, particularly for the import of intermediate and investment goods and food.

Emerging economies should also avoid using their reserves to finance large and persistent capital outflows. Experience suggests that when global financial conditions are tightening, countries with large external debt and deficits find it extremely difficult to restore "confidence" and regain macroeconomic control simply by allowing their currencies to freely float and/or hiking interest rates. Nor should they rely on borrowing from official sources to maintain an open capital account and to remain current on their obligations to foreign creditors and investors.

They should instead seek to involve private lenders and investors in the resolution of balance-of-payments and debt crises and this may call for, inter alia, exchange restrictions and temporary debt standstills. These measures should be supported by the IMF, where necessary, through lending into arrears.

The IMF currently lacks the resources to effectively address any sharp contraction in international liquidity resulting from a shift to monetary tightening in the US. A very large special drawing rights (SDR) allocation, to be made available to countries according to needs rather than quotas, would help. (SDR is a weighted basket of major currencies defined by the IMF.)

But a greater responsibility falls on central banks in advanced economies, notably the US Federal Reserve, which can and should – as the originators of destabilizing impulses that now threaten the South – act as a quasi-international lender of last resort to emerging economies facing severe liquidity problems through swaps or outright purchase of their sovereign bonds.

The Federal Reserve could buy internationally issued bonds of these economies to shore up their prices and local bonds to provide liquidity, and there is no reason why other major central banks should not join this undertaking.

The extent to which these tools – exchange restrictions and temporary debt standstills, IMF lending into arrears, a sizeable SDR allocation and provision of market support and liquidity by major central banks – should be used would depend on the specific circumstances of individual emerging economies.

The world is facing bleak prospects largely because the systemic shortcomings in the global economic and financial architecture that gave rise to the most serious postwar crisis remain unabated.

The Outcome Document of the 2009 UN Conference on the World Financial and Economic Crisis and Its Impact on

Development had clearly recognized that "longstanding systemic fragilities and imbalances" were among the principal causes of the crisis and proposed "to reform and strengthen the international financial system and architecture" so as to reduce the likelihood of the occurrence of such crises.

It pointed to many areas where systemic reforms are needed, including regulation of "major financial centres, international capital flows, and financial markets", the international reserves system including the role of the SDR, the international approach to the debt problems of developing countries, and the mandates, policies and governance of international financial institutions.

So far, the international community has failed to address any of these issues in a significant way. They need to be put back on the agenda if recurrent financial crises with severe international repercussions are to be averted. *(IPS)* ❒

G20 urges US action on IMF reforms by April

The G20 major economies have called on the US to approve reforms at the International Monetary Fund (IMF) that would give developing countries a greater say in the running of the multilateral lending institution.

by Carey L. Biron

WASHINGTON: The Group of 20 (G20) industrialized and emerging economies on 23 February formally expressed frustration with the ongoing inability of the United States to approve a major reform package that would see governance at the International Monetary Fund (IMF) shift more towards developing countries.

The reforms were approved by the IMF in 2010 and have since been ratified by more than three-quarters of the Fund's member governments. Yet while the administration of President Barack Obama has been a key proponent of the reforms, the US Congress has thus far been unwilling to approve the changes.

Because the United States, with around 17% of voting rights (or "quota" shares), has an effective veto within the IMF, the reforms cannot go forward without the US vote. The process has now missed a January deadline, while a second deadline for a subsequent round of changes is looming.

"Given that the US is a big part of the G20, it is no small victory that emerging market and developing countries were able to get IMF reform so formally prioritized," Kevin P. Gallagher, co-director of the Global Economic Governance Initiative at Boston University, told Inter Press Service (IPS). "Such pressure is basically the US administration and the rest of the world against the US Congress."

The G20, which has been a key organizer of the international financial response in recent years, strongly criticized the deadlocked IMF reforms process. It also offered a new deadline for US action.

"We deeply regret that the IMF quota and governance reforms agreed to in 2010 have not yet become effective," the G20 stated in a communique on 23 February following a ministerial meeting in Australia, which is hosting the grouping this year.

"Our highest priority remains ratifying the 2010 reforms, and we urge the US to do so before our next meeting in April. In April, we will take stock of progress towards meeting this priority."

IMF Managing Director Christine Lagarde echoed this concern, saying on 23 February that the Fund "share[s] this view and urge[s] rapid progress on implementation".

Quota shift

The Washington-based institution is considered the world's "lender of last resort".

The quota changes would significantly increase the currently underweighted influence of fast-rising economies such as Brazil, China, India and Turkey. It would do so largely by decreasing the cumulative share of European members, considered outsized in terms of gross domestic product. The Netherlands and Spain, for instance, both have voting shares similar in size to Brazil's, despite the fact that the Spanish economy is less than two-thirds the size of the Brazilian.

Given the problems in the eurozone, the European countries have also been prime beneficiaries of IMF support in recent years.

Under the quota reforms, the so-called BRICS countries – middle-income countries including Brazil, India and China – would see their vote shares expand most significantly. The 2010 reforms would shift around 9% of these shares towards developing countries, while also doubling the size of the Fund's overall lending capacity.

"The Europeans love it – they're gloating. They have excessive power, are significantly over-represented, and they love that [the United States] is not moving the reforms process forward," Jo Marie Griesgraber, the executive director of the New Rules for Global Finance Coalition, a Washington-based international network, told IPS.

"On the other hand, the BRICS are wondering why they put up their money when nothing is happening. They're most unhappy. In the long term, the BRICS countries could say this doesn't work for them and move more seriously away from the IMF."

On 23 February, a top Indian finance official warned that the failure to move forward on quota reform was threatening to undermine both IMF and G20 legitimacy.

"This is perhaps the first visible failure of G20. This has reduced the credibility of G20," India's economic affairs secretary Arvind Mayaram said in Sydney, calling implementation of the 2010 reforms "vital for the credibility, legitimacy and effectiveness of the IMF".

Although an esoteric topic, the IMF governance reforms have received widespread approval from important constituencies in the United States, including major business and financial lobby groups as well as a long list of Republican luminaries.

In fact, President Obama bears some blame for the current situation, having decided in 2012 for political reasons not to request approval from the US Congress. Yet since then, his administration has tried to do so repeatedly. Each time, however, the Republican-controlled House of Representatives has rebuffed these requests, though apparently less for ideological than for political reasons.

The last such attempt took place in January, when Republicans agreed to include the IMF reforms proposal in a major appropriations bill – but only if the Democrats would agree to stop the US Treasury from imposing proposed restrictions on political "dark money". Obama reportedly refused the trade, and there are few legislative options left for moving related legislation through Congress in coming months, particularly as national elections loom at the end of the year.

(On 23 February, US Treasury Secretary Jacob Lew told the G20 his office "will continue to work with Congress to pass legislation as soon as possible to secure the 2010 reforms, which are vital to our economic and national security interests".)

Some observers say that such a situation should only strengthen an ongoing process under which developing countries are building multilateral structures outside the IMF.

"Upcoming Congressional elections may lead to further entrenchment by the US on this issue. Thus, it is imperative that the developing world continue to build alternative institutions such as the BRICS bank and the BRICS exchange reserve pool," Boston University's Gallagher says.

"Just as important is for these bodies to have more equitable and transparent processes, so they can be held up as models against the arcane structures in the international financial institutions."

The BRICS countries announced their intention to create a new multilateral development bank last year. Yet since then, progress has reportedly been slow, particularly as ongoing economic roiling is being felt particularly strongly in emerging economies.

"There is good talk about these projects, but most countries remain very reluctant to walk away from the [IMF]. Nonetheless, we are already seeing a gradual erosion in the use of the institution," New Rules's Griesgraber says.

"From our perspective, we need to get through this current reform process so we can move on to the larger governance issues that need to be addressed at the fund. Let's equalize the power, introduce greater transparency around the board, and ensure that likely consequences for poor people are assessed before the IMF acts." *(IPS)* ❐

Mexico's poor record under NAFTA

Twenty years after Mexico's entry into the North American Free Trade Agreement (NAFTA), the country's economy has fared poorly compared to the rest of Latin America and to its past performance, according to a new study from the Center for Economic and Policy Research, the executive summary of which is reproduced here.

It is now 20 years since NAFTA went into effect, bringing Mexico into a new commercial agreement with the United States and Canada. At the time, it was argued, and forecast, that the agreement would boost Mexico's growth and development.

A new report published by the US think-tank Center for Economic and Policy Research, "Did NAFTA help Mexico?: An assessment after 20 years", compares the performance of the Mexican economy with that of the rest of the region over the past 20 years, based on the available economic and social indicators, and with its own past economic performance. Among the results:

- Mexico ranks 18th of 20 Latin American countries in growth of real GDP per person, the most basic economic measure of living standards.
- From 1960-80, Mexican real GDP per person almost doubled, growing by 98.7%. By comparison, in the past 20 years it has grown by just 18.6%.
- Mexico's per capita GDP growth of just 18.6% over the past 20 years is about half of the rate of growth achieved by the rest of Latin America.
- If NAFTA had been successful in restoring Mexico's pre-1980 growth rate – when developmentalist economic policies were the norm – Mexico today would be a relatively high-income country, with income per person significantly higher than that of Portugal or Greece. It is unlikely that immigration reform would be a major political issue in the United States, since relatively few Mexicans would seek to cross the border.
- According to Mexican national statistics, Mexico's poverty rate of 52.3% in 2012 is almost identical to the poverty rate of 1994. As a result, there were 14.3 million more Mexicans living below the poverty line as of 2012 (the latest data available) than in 1994.
- We can use the poverty statistics of the UN Economic Commission for Latin America and the Caribbean (ECLAC) to compare Mexico's poverty rate with the rest of Latin America. These statistics are computed differently and show a decline in poverty in Mexico. However, according to these measures, the rest of Latin America saw a drop in poverty that was two and a half times as much as that of Mexico: 20 percentage points (from 46% to 26%) for the rest of Latin America, versus 8 percentage points (from 45.1% to 37.1%) for Mexico.
- Real (inflation-adjusted) wages for Mexico were almost the same in 2012 as in 1994, up just 2.3% over 18 years, and barely above their level of 1980.
- Unemployment in Mexico is 5.0% today, as compared to an average of 3.1% for 1990-94 and a low of 2.2% in 2000; these numbers seriously understate the true lack of jobs, but they show a significant deterioration in the labour market during the NAFTA years.
- NAFTA also had a severe impact on agricultural employment, as US subsidized corn and other products wiped out family farmers in Mexico. From 1991-2007, there were 4.9 million Mexican family farmers displaced, while seasonal labour in agro-export industries increased by about 3 million. This meant a net loss of 1.9 million jobs.
- The very poor performance of the Mexican economy contributed to a surge in emigration to the United States. From 1994-2000, the annual number of Mexicans emigrating to the United States soared by 79%. The number of Mexican-born residents living in the United States more than doubled from 4.5 million in 1990 to 9.4 million in 2000, and peaked at 12.6 million in 2009.

Poor policy choices

NAFTA was just one variable among others that could account for Mexico's poor economic performance over the past 20 years. However, it appears to be related to other economic policy choices that have negatively affected the Mexican economy during this period. The International Monetary Fund (IMF) notes that "Mexico competes directly with China in the US market, where China accounts for 23 percent of US imports and Mexico accounts for 12 percent." This is a very tough competition for Mexico for a number of reasons. First, Mexico was and remains a higher-wage country than China. Second, China has maintained a commitment to a competitive exchange rate, in effect fixing this exchange rate against the dollar or (since 2005) a basket of currencies. The Mexican central bank by contrast has, as the IMF notes, "a firm commitment to exchange rate flexibility". In other words, the Mexican central bank will raise or lower interest rates as necessary to reach its target inflation rate (3%), and let the exchange rate go where it may. This means that Mexico's exchange rate is unlikely to be competitive with China's, which further worsens its cost disadvantage. The Mexican central bank's form of rigid inflation targeting also adds a large element of unpredictability to the exchange rate, which has a negative impact on foreign direct investment; foreign investors will find it difficult to know how much their assets or output will be worth internationally in the future.

China has other advantages that make it a formidable competitor for Mexico in the US market. The Chinese government owns most of the banking system in China, and can therefore ensure that its most important exporting firms have sufficient access to credit. In Mexico, by contrast, 70% of the banking system is not only private but foreign-owned. The Chinese government also has an active industrial policy that enables it to help its exporting firms in various ways, and spends vastly more on research and development – both in absolute terms and as a percentage of its economy.

NAFTA also increasingly tied Mexico to the US economy, at a time when the US economy was becoming dependent on growth driven by asset bubbles. As a result, Mexico suffered a recession when the stock market bubble burst in 2000-02, and was one of the hardest-hit countries in the region during the US Great Recession, with a drop of 6.7% of GDP. The Mexican economy was even harder hit by the peso crisis in 1994-95, losing 9.5% of GDP during the downturn; the crisis was caused by the US Federal Reserve raising interest rates in 1994.

The vulnerability to developments in US financial markets continues: In May of 2013, after the US Federal Reserve announced a future "tapering" of its quantitative easing programme (QE3), there were fears of a repeat of the 1994

(continued on page 10)

BRICS bank: New bottle, how's the wine?

Sameer Dossani **examines whether and how the new multilateral bank mooted by the BRICS emerging economies grouping can promote development in the South.**

At the 2012 Delhi summit of Brazil, Russia, India, China and South Africa (BRICS), the leaders of the five nations agreed to launch a BRICS development bank. The following year in Durban, the initiative was given a name – the New Development Bank (NDB). While perhaps not the most original of monikers, the name does beg questions – how new is the New Development Bank? Whose development are we talking about here? And does the world need another multilateral bank?

We are still awaiting answers on these questions, and judging by the latest reports, so are the five BRICS countries. According to reports from the latest BRICS meetings, aside from the question of how much capital the NDB should have in its "vaults" ($10 billion per country, $50 billion in total), there is little that the countries seem to agree on.

While official information is hard to come by, rumours abound. Whether or not those rumours are considered positive developments depends in part on what questions are being asked. If the questions are "Will there be adequate social and environmental protections?" or "Will the NDB actually finance alternative forms of development such as decentralized renewable energy production?", the conclusion is likely to be negative. But if the questions are "Does the world need a Southern-led and controlled financial institution?" or "Would NDB loans come with the kind of harmful macroeconomic conditions that the IMF pushes?", the conclusion would be more positive.

Do we need a new development bank?

The World Bank and its sister institution the International Monetary Fund (IMF), established 70 years ago, have lent billions to developing countries. Yet in their heyday – in the 1980s and 1990s – these institutions did not produce results in terms of poverty reduction or even in terms of increasing economic growth. In almost all regions, inequality skyrocketed during this period. Even now, with the exception of Latin America, the gap between rich and poor continues to grow.

While the World Bank would be quick to point out that it cannot be blamed for these failures, it is telling that institutions supposedly meant to foster development have to this day very few examples of countries that they have actually helped to develop.

Part of the failure can be attributed to the triumph of ideology over evidence. "Washington consensus" policies – fiscal and trade liberalization, privatization and budget austerity – were required of every developing country that sought international assistance. The results have not been pretty. As has been extensively documented, the period from 1980-2010 was in part defined by extremely slow growth globally. Where growth did occur in the North, it often turned out to be the result of speculative bubbles. In the South, the only countries to grow were those that ignored Washington consensus policies – China, Malaysia, Singapore and a few others – and used state-backed borrowing and investment to drive an industrial policy.

In the last decade or so, middle-income countries, including the BRICS, have been investing in – and sometimes giving what we would usually call "aid" to – less developed countries in Asia, Africa and Latin America. China is by far the biggest player here, but Brazil, India and others are also extending their reach.

What does the increasing role of Southern countries as agents of "development" in other Southern countries mean for the world's poorest and most marginalized? Is this yet another layer of exploitation, or do these events possibly offer a way out of poverty to communities who have been denied their rights for centuries? Will the NDB help countries improve policies and practices or will it be a mechanism whereby rich countries like China gain access to more resources and markets using the fig leaf of multilateralism?

There are no straightforward answers. But before we explore deeper, we should be clear about what is not on the table.

Whose development model?

Progressives have long critiqued the development model of the North being exported to the South as environmentally and socially exploitative. The focus on GDP growth to the exclusion of other aims (externalities, in economic jargon) is highly problematic, especially in countries that do not yet have strong social and environmental regulations. In countries like India, social movements have strongly opposed a development model focused on urbanization, infrastructure development and expanding market reach, which almost necessarily entails the destruction of traditional and indigenous communities and lifestyles.

Even in a best-case scenario, initiatives like the NDB are unlikely to challenge any of this – quite the opposite, they are likely to take a GDP-centred, Northern-development-model approach. That is the model that these countries are following, with megaprojects like the Three Gorges dam in China, Jirau dam in Brazil and Kudankulam nuclear power plant in India being showcased by their respective governments as development successes. But the NDB's failure to challenge the lack of environmental and social protection in the development model does not mean that all hope is lost.

While the neoliberalism of the 1980s and 90s promoted a worldview in which growth and a certain model of development are ends in themselves, it did not even deliver the growth and development that it promised. Amidst recent triumphalism about the achievement of the UN's Millennium Development Goals sits a sad truth: progress against poverty has been made in only a handful of countries. Take out China, Brazil and a few others, and poverty reduction has a poor track record in the last 30 years. Even GDP growth has been disappointing at the global level (with a handful of exceptions), and a lot of the growth that has happened has been deeply inequitable – consider Mexico and India for some of the less equitable growth stories.

The failure is not surprising. Neoliberals argue that countries should find their comparative advantage to create a trade-based strategy to growth – countries should export what they have. However, neoliberalism has never explained why the economies of the US and Japan are not dependent on the export of fur and fish, commodities that they were exporting when they began their development process.

True proponents of development understand that industrial transformation, not comparative advantage, is the key to the story. Countries like the US and Japan were not developed as long as their economies were primarily exporting raw materials – only when the economies began to produce and export manufactured goods could they be called developed (or even developing). The process of industrial transformation is something that the World Bank and IMF have not supported – in fact the institutions have opposed and blocked these policies.

What the BRICS bank could do

Might a BRICS bank be different? It is certainly possible. Many of the BRICS countries (China being the most obvious example) are going through the process of industrial transformation themselves, with state support for domestic companies a key component of economic policy. And the BRICS countries (unlike the G7 countries who still dominate the World Bank and IMF) have no history of trying to force economic policy down others' throats.

To be clear, that does not mean that we can expect better results in terms of human rights or environmental protection. Early development in Great Britain, for example, was characterized by high levels of pollution and worker exploitation at every level. But it was a development process (albeit an awful one) that centred around the transformation from an agrarian economy to an economy that manufactured goods. The NDB, if consistent with BRICS rhetoric so far, should not hinder (and might even support) this process of industrial transformation.

Many non-governmental organizations (NGOs) critical of proposals for a BRICS bank have pointed to the decades of struggles to force the World Bank and other international financial institutions to adopt and enforce policies to protect vulnerable communities and the environment. They point to controversial projects like the Brazilian-Japanese-Mozambique ProSavana project, which involves state-owned Brazilian Agricultural Research Corporation adapting Brazilian export crops for Brazilian agribusinesses to start large-scale agriculture projects in northern Mozambique, with export infrastructure paid for by the Japanese aid agency. The critics say it puts Mozambican small farmers at risk while benefiting Brazilian and Japanese multinational companies in their production and processing of soy, maize, sugarcane and other cash crops.

These criticisms are certainly valid; problems related to bilateral financing of projects are likely to reappear in these multilateral efforts. But it is unlikely that a development bank can be founded in 2015 and not have some kind of social and environmental protections in place. What those protections will look like and how they will be enforced are questions with which NGOs and other stakeholders should be engaged.

Unfortunately, it is not clear how NGOs or other civil society actors are meant to engage with this process. Unlike other developing-country formations (notably IBSA, the grouping that includes BRICS countries India, Brazil and South Africa), there is no formal mechanism for civil society consultation or engagement. Even if this does not change for the BRICS, civil society organizations (CSOs) should be pushing hard to include CSO consultations on the policies and programmes of the NDB.

Despite its many potential flaws, the proposal to establish the NDB should be viewed with cautious optimism. The key countries driving the process – Brazil, India and China – are not motivated only by a desire to expand their political and economic influence. They are already doing that without an international development bank. They are also motivated by a desire for legitimacy coupled with a desire to compete with (perhaps even show up) the G8 countries that did not live up to promises made in 2008 and 2009 to give developing countries more say over the IMF, World Bank and other international financial institutions (IFIs). At that time, the BRICS countries and others were promised more say over the IFIs in exchange for putting in billions which the IMF ultimately directed to Europe. The rich countries have yet to live up to their end of the bargain.

The BRICS' desire to be seen as the promoters of "genuine" development gives campaigners an inroad to help the BRICS countries define what genuine development is. If the development discourse were to focus less on mosquito nets and vitamins (important as those may be) and more on sustainable economic transformation, industrialization and job creation, we might all be better off. Both the BRICS and CSOs can be part of the process.

A bank that is willing to fund policies aimed at economic transformation would be a step in the right direction. But would it really contribute to development and poverty reduction? There are a few things to look out for on the off-chance that it can meet this lofty goal.

First, the NDB should lend not just to BRICS countries (who have many other potential sources of income), but also the world's poorest countries.

Secondly, the NDB should not focus on a specific sector, but rather it should fund those projects that countries identify as key to their industrialization and development policies. If that is not feasible – we are already hearing that there will be sectoral focus on infrastructure – it should only operate in countries where investment in the niche sector is already part of the national development strategy.

Thirdly, in addition to financing projects, the NDB should be building up technical expertise, research and documenting various development experiences. Despite the noble efforts of some, such as Cambridge economist Ha-Joon Chang, there still is not enough documentation on why and how countries develop. There is even less documentation putting that theory into practice in the context of a particular developing country, and where that documentation exists it is usually coloured by the political agendas of the World Bank and the IMF. The NDB should build up a counterweight to those narratives and work with underdeveloped countries who may request help to develop their own strategies of economic transformation.

A new global architecture

If the NDB is really trying to push in a different direction, it should be cautious about working with the existing IFIs, especially the World Bank and the IMF. While those institutions are already preparing to greet the NDB as a potential partner, partnership would come with a lot of baggage for an institution promoting itself as an alternative. In order to create such a genuine alternative, it should look elsewhere, perhaps to more participatory institutions like the Global Fund to Fight AIDS, TB and Malaria.

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