

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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Obama's claims on US trade pacts fail to convince

US President Barack Obama has claimed that trade agreements the US is negotiating will not undermine consumer and environmental protection. However, this is unlikely to assure critics of US-spear-headed trade deals envisaged for the Atlantic and Pacific regions, in light of proposed provisions that stand to gravely harm public interest.

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Obama, the TTIP and the TPPA

US President Barack Obama's response to public criticisms on the proposed US trade deals with Europe and Asia-Pacific is less than convincing, contends *Martin Khor*.

US President Barack Obama will soon be making a trip to Asian countries. The Trans-Pacific Partnership Agreement (TPPA) will surely be on his agenda, just as the Transatlantic Trade and Investment Partnership (TTIP) was a priority during his March trip to Europe.

The TTIP is the agreement the US and the European Union are negotiating, a counterpart to the TPPA that the US is negotiating with 11 other Asian and Pacific countries.

At a press conference during his European trip, Obama responded to strong public criticisms against the TTIP. There was no point worrying about the provisions having effects on consumer and environmental protection until the deal was done, he said.

Consumer and environmental protection would in fact be strengthened by trade deals. "I spent my whole political life fighting for consumer protection," he said, adding that there was no ground for worries that companies can take action to weaken consumer and environmental protection.

The president's comments on the TTIP presumably apply also to the TPPA since both contain similar provisions, and the criticisms from US and other lawmakers and non-governmental organizations (NGOs) also apply to both.

Consumer and health groups have indeed been vocal in their criticisms and protests against the TPPA and TTIP. They include Public Citizen, an organization founded by leading US consumer advocate Ralph Nader, and Medecins Sans Frontieres (MSF), the Nobel Prize-winning medical group.

Unsatisfactory response

Obama's response will not assure the critics. His first point, that there is no point worrying until the deal is done, will hit a raw nerve.

Lawmakers, including in the US Congress, and NGOs in countries involved in the two trade deals have been disgruntled that the talks are held in secret and that they don't have access to

the texts.

The secrecy of the negotiations, the inability of the public to give feedback, and the lack of legitimacy of the process is one of the major criticisms against these two trade deals. Nevertheless, there is enough information, from leaked chapters and from provisions in existing US free trade agreements (FTAs), for the public to have a good idea of what the trade deals entail.

Obama's advice that there is no point worrying until the final texts are revealed is likely to earn scorn rather than assurance.

Second, the critics have good reasons to be worried or outraged. These agreements would, for example, make it very difficult or even impossible for patients and government health authorities to have access to the much cheaper generic versions of patented medicines, because of the tighter patent regime the US is proposing in the TPPA. As a result, millions of patients could be deprived of life-saving drugs since they, and their governments, cannot afford to buy the branded products.

According to MSF, the first generation of HIV/AIDS drugs have come down in price by 99% over the last decade, from \$10,000 per person per year in 2000 to roughly \$60 today, thanks to production of generics in India, Brazil and Thailand, where these drugs were not patented. This dramatic price drop enabled HIV/AIDS treatment to be scaled up for over six million people in developing countries.

According to MSF, the US proposals in the TPPA would cause many problems, including extending the term of patents beyond the already lengthy 20 years, the provision of "data exclusivity" (which will require generic companies to undertake their own costly clinical trials), and widening the scope of what medicines are patentable.

In Malaysia, one of the countries negotiating the TPPA, several patient and medical groups in 2012 issued a joint statement opposing the US proposals, which they say will reduce access to

medicines.

"We categorically oppose US demands for longer and stronger patents on medicines and medical technologies that are essential to save Malaysian lives," said leaders of the National Cancer Society Malaysia, Breast Cancer Welfare Association, Malaysian AIDS Council, MTAAG+, Malaysian Thoracic Society and Malaysian Mental Health Association.

They said that cancers require affordable chemotherapy medicines. Second-line HIV/AIDS medicines like Kaletra are required to save lives but are often out of reach to persons living with HIV. Many other conditions depend on generic medicines, such as tuberculosis, malaria and diabetes.

But it is not only medicines that are affected. Consumers of information, media and books will be affected by tighter copyright laws that are likely to result in more expensive use of information materials and the Internet.

Health groups point out that measures to control cigarette sales, such as requiring plain packaging, will be threatened as the tobacco companies can sue the governments for affecting their revenues.

Under a proposed investor-state dispute settlement (ISDS) system in the TPPA, foreign investors can sue governments in an international tribunal on grounds that their future revenues are affected by new policies.

Many cases against governments for their health and environmental policies have already been brought by companies under existing FTAs that contain ISDS provisions, and bilateral investment treaties. A tobacco firm has sued Australia and Uruguay for their plain-packaging policy. A Swedish company made a \$2 billion claim against the German government for its policy to phase out nuclear power after the Fukushima nuclear accident.

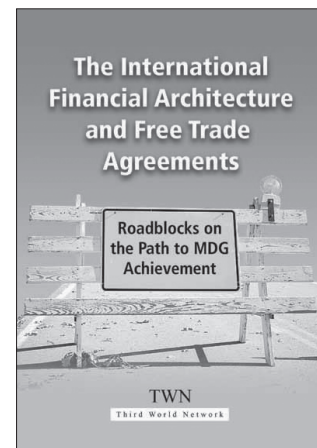
Germany has told the European Commission to exclude the ISDS mechanism in the TTIP, and the Commission has suspended negotiations with the US on ISDS.

In the TPPA, however, the ISDS is still the lynchpin of the whole agreement, as it is a strong enforcement mechanism

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WTO rules against China in rare earths dispute

A WTO tribunal has held that China's restrictions on rare earth exports violate the country's WTO obligations.

by Kanaga Raja

GENEVA: A World Trade Organization (WTO) dispute panel has handed down a ruling that Chinese measures relating to the exportation of rare earths, tungsten and molybdenum are inconsistent with China's WTO obligations.

In the ruling issued on 26 March, the panel said that, having found that China has acted inconsistently with Article XI: 1 of the General Agreement on Tariffs and Trade (GATT) 1994; Paragraphs 1.2, 5.1 and 11.3 of China's Accession Protocol; and Paragraphs 83, 84, 162 and 165 of China's Working Party Report, it recommends that the WTO Dispute Settlement Body request China to bring the existing measures at issue into conformity with its obligations under the GATT 1994, China's Accession Protocol and China's Working Party Report.

The panel report and ruling is a majority one, with one panellist recording his dissent on a systemic issue of the relationship between the Chinese Accession Protocol and the GATT 1994.

The panel disagreed with the first main premise of China's argument regarding the systemic relationship between its Accession Protocol and the GATT 1994, namely, that the Accession Protocol-specific provisions in post-1994 accession protocols that relate to trade in goods, including Paragraph 11.3 of China's Accession Protocol, automatically became an "integral part" of the GATT 1994.

The panel said this argument regarding the systemic relationship between its Accession Protocol and the GATT 1994 is not a "cogent reason" for departing from the Appellate Body's finding that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994.

The panel found that Paragraph 11.3 of China's Accession Protocol (an Accession Protocol-specific provision regarding export duties) is not an "integral part" of the GATT 1994, but that China's Accession Protocol is, according

to its Paragraph 1.2, an integral part of the WTO Agreement.

The dissenting member (not otherwise identified, according to the Dispute Settlement Understanding practice), however, said that a proper interpretation of the relevant provisions at issue leads to the conclusion that the obligations in Paragraph 11.3 of China's Accession Protocol are subject to the general exceptions in Article XX of the GATT 1994.

In its ruling and findings concerning export duties and export quotas on various forms of rare earths, tungsten and molybdenum, and restrictions on the trading rights of enterprises exporting rare earths and molybdenum, the panel said it has found that the series of measures have operated to impose export duties and export quotas on various forms of rare earths, tungsten and molybdenum, and restrictions on the trading rights of enterprises exporting rare earths and molybdenum (i.e., the prior export experience requirement, the export performance requirement, and the minimum registered capital requirement), that are inconsistent with China's WTO obligations.

The panel, therefore, recommended that the Dispute Settlement Body request China to bring its measures into conformity with its WTO obligations such that the series of measures does not operate to bring about a WTO-inconsistent result.

Second dispute

This is the second dispute involving China's natural resources. Back in February 2012, the Dispute Settlement Body had adopted the Appellate Body and panel reports in a separate dispute brought against China by the United States, the European Communities and Mexico concerning Chinese measures related to the exportation of various raw materials. In that dispute, the Appellate Body had upheld an earlier panel ruling that had found that export restraints

imposed by China on certain raw materials were inconsistent with its WTO obligations.

The present dispute concerning China's rare earths, tungsten and molybdenum was brought separately by the United States, the European Union and Japan, and a single panel was subsequently established to hear the dispute.

A press release by the Office of the United States Trade Representative has quoted USTR Michael Froman as saying: "Time and again, the Obama Administration has made clear that we are willing to go to the mat for American workers and businesses to make sure that the playing field is fair and level."

"China's decision to promote its own industry and discriminate against US companies has caused US manufacturers to pay as much as three times more than what their Chinese competitors pay for the exact same rare earths. WTO rules prohibit this kind of discriminatory export restraint and this win today, along with our win 2 years ago in an earlier case, demonstrates that clearly," he further said.

According to the USTR press release, rare earths, tungsten and molybdenum are key inputs in a multitude of US-made products for critical American manufacturing sectors, including hybrid car batteries, wind turbines, energy-efficient lighting, steel, advanced electronics, automobiles, petroleum and chemicals.

In a separate press release, the EU Mission to the WTO said that the panel's ruling backs the claims of the EU and its co-complainants, the US and Japan. The verdict is clear, it added: export restrictions cannot be imposed supposedly to conserve exhaustible natural resources if domestic use of the same raw materials is not limited for the same purpose.

In a statement released by the Chinese Mission to the WTO, the Head of the Department of Treaty and Law in the Chinese Ministry of Commerce (MOFCOM) said that the panel recognized China's comprehensive resource and environment conservation measures taken for rare earths, tungsten and molybdenum products, and rejected the EU's claim that the export performance requirement imposed by the Chinese government on enterprises applying for molybdenum export quotas discriminated against foreign enterprises.

While welcoming this, the Head of the Department of Treaty and Law ex-

pressed regret over the panel's ruling that China's export duty, export quota, and export quota administration and allocation measures imposed on the products at issue were inconsistent with the WTO rules and China's Accession Protocol. He pointed out that facing increasing resource and environment pressure, the Chinese government has been reinforcing and improving its comprehensive regulation on high-polluting, high-energy-consuming and resource-consuming products in recent years.

"Such efforts are China's response to the needs to conserve exhaustible natural resources and protect environment, which also shows China's endeavour to maintain global sustainable development," said the MOFCOM statement.

"China believes that these regulatory measures are perfectly consistent with the objective of sustainable development promoted by the WTO and contribute to the coordinated development of resources, environment and human beings. China will continue to strengthen its regulation on resource products in a WTO-consistent manner and maintain fair competition," said the Head of the Department of Treaty and Law.

Systemic relationship

According to the panel report, the dispute concerns China's use of export quotas and export duties on various forms of rare earths, tungsten and molybdenum, and the complainants also challenge the administration and allocation, including through export licensing, of the export quotas.

The raw materials at issue are either naturally occurring minerals or materials that have undergone some initial processing. "Rare earths" is the common name for a group of 15 chemical elements in the periodic table with atomic numbers 57 to 71. These elements are part of the so-called "lanthanide group", composed of: lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium and lutetium. Two other rare earth elements are included in the scope of this dispute, namely, scandium (atomic No. 21) and yttrium (atomic No. 39).

With respect to export duties, the panel noted that Paragraph 11.3 of China's Accession Protocol states that "China shall eliminate all taxes and

charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994".

The complainants assert that, in 2012, China imposed export duties on 363 products, including 58 rare earths products, 15 tungsten products and nine molybdenum products. The complainants submit that these latter 82 products are not identified in Annex 6 of China's Accession Protocol, and that China's imposition of export duties on these products is therefore inconsistent with Paragraph 11.3 of its Accession Protocol.

According to the panel report, China does not dispute the complainants' allegation that it has acted inconsistently with Paragraph 11.3 of its Accession Protocol. However, China argues that the obligation in Paragraph 11.3 is subject to the general exceptions in Article XX of the GATT 1994, and submits that the export duties at issue are justified under Article XX(b) of the GATT 1994 because they are "necessary to protect human, animal or plant life or health".

In its analysis, the panel concluded that in 2012, China imposed export duties ranging from 5% to 25% *ad valorem* on 58 rare earths products, 15 tungsten products and nine molybdenum products. The panel concluded that these products are not included in Annex 6 of China's Accession Protocol. Accordingly, the Panel found that China's imposition of export duties on those products is inconsistent with Paragraph 11.3 of its Accession Protocol.

With respect to China's argument regarding the systemic relationship between the provisions of China's Accession Protocol and those of the GATT 1994, the panel concluded that the legal effect of the second sentence of Paragraph 1.2 is to make China's Accession Protocol, in its entirety, an "integral part" of the Marrakesh Agreement Establishing the WTO (WTO Agreement), and not that, in addition, the individual provisions thereof are also integral parts of Multilateral Trade Agreements annexed to the Marrakesh Agreement. The panel said it has also rejected China's argument based on Article XII: 1 of the Marrakesh Agreement.

The panel therefore disagreed with the first main premise of China's argument regarding the systemic relationship between its Accession Protocol and the

GATT 1994, i.e., that the Accession Protocol-specific provisions in post-1994 accession protocols that relate to trade in goods, including Paragraph 11.3 of China's Accession Protocol, automatically became an "integral part" of the GATT 1994.

Accordingly, the panel said it is not strictly necessary for it to address the remaining elements of China's argument, which include the propositions that: (i) the obligation in Paragraph 11.3 is "intrinsically" related to Articles II and XI of the GATT 1994; and (ii) assuming that Paragraph 11.3 is an "integral part" of the GATT 1994, Paragraph 11.3 is therefore subject to the general exceptions in Article XX of the GATT 1994 "unless there is explicit treaty language" to the contrary.

As for the proposition that the obligation in Paragraph 11.3 is "intrinsically" related to Articles II and XI of the GATT 1994, the panel observed that there is no provision of the GATT 1994 that requires Members to eliminate export duties. Article II: 7 of the GATT 1994 provides that the schedules annexed to the GATT 1994 are an integral part thereof. It would appear to be possible for Members to include commitments regarding the use of export duties in such schedules. Indeed, some Members have done so. However, the export duty commitments at issue were not inscribed in China's schedule.

With respect to Article XI: 1, the panel noted that this provision concerns prohibitions or restrictions on the exportation (or importation) of any product "other than duties, taxes or other charges". The obligation in Paragraph 11.3 of China's Accession Protocol does not relate to the same subject matter as Articles II or XI of the GATT 1994.

In light of the foregoing, the panel found that China's argument regarding the systemic relationship between its Accession Protocol and the GATT 1994 is not a "cogent reason" for departing from the Appellate Body's finding that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994.

The panel then addressed China's next specific argument, which is that "[t]he terms 'nothing in this Agreement' in the chapeau of Article XX of the GATT 1994 do not exclude the availability of Article XX to defend a violation of Paragraph 11.3 of China's Accession Protocol". In this regard, China submits that

the exceptions under Article XX of the GATT 1994 are also available to excuse violations of what it labels intrinsically GATT-related "WTO-plus" provisions contained in post-1994 accession protocols.

Following its analysis, the panel found that China's argument regarding the terms "nothing in this Agreement" in the chapeau of Article XX of the GATT 1994 is moot as a consequence of the panel's finding that Paragraph 11.3 of China's Accession Protocol (an Accession Protocol-specific provision regarding export duties) is not an "integral part" of the GATT 1994; China's Accession Protocol is – according to its Paragraph 1.2 – an integral part of the WTO Agreement.

Accordingly, the panel found that China's argument cannot be regarded as a "cogent reason" for departing from the Appellate Body's finding that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994.

Environmental protection

On China's argument relating to the object and purpose of the WTO Agreement, the panel noted that China's argument rests on a key premise: that the result of the Appellate Body's ruling on the non-applicability of Article XX as an exception to the obligation in Paragraph 11.3 is that "trade liberalization must be promoted at whatever cost – including forcing Members to endure environmental degradation and the exhaustion of their scarce natural resources".

China argues that this result is inconsistent with the object and purpose of the WTO Agreement. More specifically, China argues that such a result cannot be reconciled with the requirement to interpret treaties in a "holistic manner", with the requirement to give due meaning to a treaty's "object and purpose", with the specific reference to "the objective of sustainable development" in the preamble of the WTO Agreement, and the need to "balance trade liberalization with non-trade-related objectives".

The panel agreed with China that an interpretation of the covered agreements that resulted in sovereign states being legally prevented from taking measures that are necessary to protect the environment or human, animal or plant life or health would likely be in-

consistent with the object and purpose of the WTO Agreement. In the panel's view, such a result could even rise to the level of being "manifestly absurd or unreasonable".

However, the panel considered that the premise underlying China's argument is false. The Appellate Body found that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994. Paragraph 11.3 of China's Accession Protocol concerns one type of instrument only – export duties. Thus, the only result that follows from this finding is that when seeking to address environmental concerns and protect the life and health of its population, China must use instruments and means other than export duties to do so (unless those export duties are imposed on products within the maximum rates "specifically provided for" in Annex 6 of China's Accession Protocol).

Such alternative instruments and means include the entire universe of instruments and means that governments maintain to protect the environment and human health, and that do not violate WTO obligations – or that may violate one or more WTO obligations, but which may be justified under Article XX of the GATT 1994.

In sum, the panel agreed with China that an interpretation of the covered agreements that resulted in sovereign states being legally prevented from taking measures that are necessary to protect the environment or human, animal or plant life or health would likely be inconsistent with the object and purpose of the WTO Agreement. However, the panel disagreed with China that this is the result of the Appellate Body's finding that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994.

Accordingly, the panel found that China's argument cannot be regarded as a "cogent reason" for departing from that finding.

The panel recalled that in its prior adopted reports in the China – Raw Materials dispute, the Appellate Body found that there is no basis in China's Accession Protocol to allow the application of Article XX of the GATT 1994 to China's obligations in Paragraph 11.3 of China's Accession Protocol.

The panel concluded that China has not presented it with any cogent reason for departing from the Appellate Body's

finding. Accordingly, the panel found that the obligation in Paragraph 11.3 of China's Accession Protocol is not subject to the general exceptions in Article XX of the GATT 1994.

The panel said it wishes to emphasize two points. The first is the narrow scope of this finding. "The question that has been presented to the Panel, and the only question that we have addressed, is the applicability of Article XX of the GATT 1994 to the obligation contained in Paragraph 11.3 of China's Accession Protocol. The Panel has not expressed, in this respect, any view, and its findings should not be understood as implying any view, on whether Article XX of the GATT 1994 is applicable to other provisions of China's Accession Protocol, other provisions of other Members' protocols of accession, or other provisions contained in the Multilateral Trade Agreements annexed to the WTO Agreement."

Second, the panel said it wishes to underscore how limited the implications of this finding are in terms of China being able to adopt and maintain measures to protect the environment and the life and health of its population. When seeking to address environmental concerns and protect the life and health of its population, China must, according to Paragraph 11.3 of its Accession Protocol, use instruments and means other than export duties to do so (except to the extent it has provided for in its Accession Protocol).

"That is the only implication of this finding. In our view, this finding in no way impairs China's ability to pursue those legitimate objectives."

Dissenting opinion

The panel report took note that one panellist was unable to agree with some of the findings and conclusions (contained in paragraphs 7.63 to 7.117 of the report).

According to this panellist: "I agree with the ultimate conclusion reached by this Panel that, in this dispute, China cannot justify its export duties on rare earths, tungsten, and molybdenum products pursuant to Article XX(b) of the GATT 1994 (GATT Article XX(b)). However, contrary to the finding made by the Panel's majority, I believe that a proper interpretation of the relevant provisions at issue leads to the conclusion that the obligations in Paragraph 11.3 of China's Accession Protocol are subject to the gen-

eral exceptions in Article XX of the GATT 1994.”

Setting out his opinion, the panellist said that in sum, he believes that Paragraph 11.3 of China’s Accession Protocol is an integral part of China’s obligations on trade in goods in the sense that it adds to the basic obligations of the GATT 1994 relating to border tariffs. A proper interpretation on the availability of Article XX of the GATT 1994 to Paragraph 11.3 of China’s Accession Protocol should take into account the fact that Paragraph 11.3 must be read cumulatively and simultaneously with related GATT Articles II and XI and as an integral part of the GATT system of rights and obligations.

“Therefore, in my view, unless China explicitly gave up its right to invoke Article XX of GATT 1994, which it did not, the general exception provisions of the GATT 1994 are available to China to justify a violation of Paragraph 11.3 of its Accession Protocol. I see nothing in China’s Accession Protocol that clearly indicates such a waiver. In my view, finding that the obligation in Paragraph 11.3 is subject to the general exceptions in Article XX of the GATT 1994 allows China to exercise its rights and obligations with a view to favouring its sustainable development. This concludes my separate opinion.”

In other findings, the panel, in its conclusions with respect to the chapeau of Article XX of the GATT 1994, concluded that China has demonstrated that the mining and production of rare earths, tungsten and molybdenum have caused grave harm to the environment and to the life and health of human, animals and plants in China.

The panel recognized that in recent years China has considerably enhanced the scope of the environmental measures it has adopted with a view to addressing this harm. In this regard, the panel recalled the Appellate Body’s statement that “few interests are more ‘vital’ and ‘important’ than protecting human beings from health risks, and that protecting the environment is no less important”.

However, the panel found that China has not demonstrated that its export duties are designed to address this problem, or that they are apt to make a material contribution to addressing this problem, or that the alternative measures identified by the complainants are not reasonably available or would not make the same contribution to addressing this

problem. In addition, the panel found that China has not demonstrated that the measures are applied in a manner that satisfies the chapeau of Article XX of the GATT 1994.

For these reasons, the panel found that China has not demonstrated that its imposition of export duties on the products at issue is justified under Article XX(b) as measures necessary to protect human, animal or plant life or health.

Overall conclusions

In its overall conclusions on claims relating to export duties, the panel found that: (i) China’s imposition of export duties on the products at issue is inconsistent with Paragraph 11.3 of China’s Accession Protocol; (ii) the obligation in Paragraph 11.3 is not subject to the general exceptions in Article XX of the GATT 1994; and even if it were, (iii) China has not demonstrated that its export duties on the products at issue are justified under Article XX(b) of the GATT 1994 as measures necessary to protect human, animal or plant life or health.

Turning to export quotas, amongst other findings, the panel did not agree with China that its sovereign right over its natural resources allows it to control international markets and the domestic and international allocation and distribution of rare earths.

It said that China, as a sovereign WTO Member, can control the amount of rare earths it extracts, but once such resources enter the market, they are subject to WTO rules, which prohibit quotas unless justified under one or more of the GATT exceptions. China has not convinced the panel that the right in Article XX(g) to adopt measures for conservation provides China with the right to control the domestic and international allocation and distribution of rare earths.

In its overall conclusions on China’s export quotas on rare earths, the panel concluded that China’s export quota on rare earths is inconsistent with Article XI: 1 of the GATT 1994 and Paragraphs 162 and 165 of China’s Working Party Report. The panel also concluded that China’s export quota on rare earths is not justified under either subparagraph (g) or the chapeau of Article XX of the GATT 1994.

With respect to China’s export quota on tungsten, the panel concluded that China’s export quota on tungsten is inconsistent with Article XI: 1 of the

GATT 1994 and Paragraphs 162 and 165 of China’s Working Party Report. The panel also concluded that China’s export quota on tungsten is not justified under either subparagraph (g) or the chapeau of Article XX of the GATT 1994.

On molybdenum, the panel concluded that China’s export quota on molybdenum is inconsistent with Article XI: 1 of the GATT 1994 and Paragraphs 162 and 165 of China’s Working Party Report. The panel also concluded that China’s export quota on molybdenum is not justified under either subparagraph (g) or the chapeau of Article XX of the GATT 1994.

In respect of claims concerning export quota administration and allocation, the panel found that:

a. the restrictions on the trading rights of enterprises exporting rare earths and molybdenum (i.e., the prior export experience requirement, the export performance requirement, and the minimum registered capital requirement) that China applies by virtue of the series of measures at issue are inconsistent with Paragraphs 83(a), 83(b), 83(d), 84(a) and 84(b) of China’s Working Party Report, as incorporated into China’s Accession Protocol by virtue of Paragraph 1.2;

b. the restrictions on the trading rights of enterprises exporting rare earths and molybdenum (i.e., the prior export experience requirement, the export performance requirement, and the minimum registered capital requirement) that China applies by virtue of the series of measures at issue are inconsistent with Paragraph 5.1 of China’s Accession Protocol;

c. China is entitled to seek to justify the restrictions on the trading rights of enterprises exporting rare earths and molybdenum referred to in paragraph 8.3 pursuant to Article XX(g) of the GATT 1994;

d. China has failed to make a prima facie case that the violations of its trading rights commitments are justified pursuant to Article XX(g).

The panel also found that the EU has not established that the prior export performance criterion in the 2012 Application Qualifications and Application Procedures for Molybdenum Export Quota is inconsistent with the commitment in Paragraph 84(b) of China’s Working Party Report as incorporated into China’s Accession Protocol by virtue of Paragraph 1.2. (SUNS7773) □

Remembering “a staunch advocate of Southern progress”

At a recent seminar convened in honour of the late Gamani Corea, colleagues, collaborators and comrades gathered to pay tribute to the former UNCTAD Secretary-General hailed for his “spirit of service to development and to genuine and purposeful North-South dialogue”.

by Kanaga Raja

GENEVA: A special tribute seminar commemorating the life and intellectual legacy of the late Dr Gamani Corea of Sri Lanka, a former Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) (1974-84) and Chairman of the Board of the South Centre (2001-02), was held here on 20 March.

The seminar in honour of Corea, who passed away in Sri Lanka on 3 November 2013, was hosted by UNCTAD and organized by the South Centre, an intergovernmental organization of developing countries, with the support of the Permanent Mission of Sri Lanka to the United Nations in Geneva.

Contributor to the cause of the South

Martin Khor, Executive Director of the South Centre, opened the seminar, saying that Corea, after retiring from UNCTAD, was instrumental in the establishment and operations of the South Commission and (later) the South Centre.

In his opening remarks, Benjamin W. Mkapa, the Chairman of the Board of the South Centre, said that “like everyone else here, we at the South Centre were deeply saddened with the news about the passing away of Dr Gamani Corea”, adding that Corea was a statesman and one of the most eminent economists of the developing and developed world.

He had been the governor of the Central Bank and Secretary of the Department of Planning of Sri Lanka as well as a distinguished diplomat of his country. He was best known as the Secretary-General of UNCTAD between 1974 and 1984.

“In this capacity, he led the multi-lateral efforts to strengthen the position of developing countries in various areas, including in commodities, other areas of trade and development and in the efforts to establish a new international economic order,” said Mkapa.

Corea, Mkapa added, was a great contributor to the cause of the South and to South-South cooperation, having been instrumental in the establishment of the Group of 77 (G77) developing-country grouping and UNCTAD.

Corea was also a major leader in the establishment and development of the South Centre, Mkapa said, adding that he was one of the 29 members of the South Commission which functioned from 1987 to 1990 under the leadership of Mwalimu President Julius Nyerere of Tanzania. Corea provided immense intellectual and personal support to the Commission’s report, “Challenges of the South”, released in 1990, recognizing the pressing need for greater cooperation between countries of the South.

Corea remained closely associated with the South Centre from its inception in 1991 and was one of the founding fathers of the Centre, providing it with policy and substantive guidance to its work, thus assisting Nyerere to gradually build the Centre into an institution with a global standing, making possible its transformation into an intergovernmental organization of the developing countries for promoting and safeguarding their interests.

Mkapa also noted that Corea played a direct role in the work of the South Centre, including by the writing of some of its most important documents on such issues as environment and development, commodities, the Non-Aligned Movement (NAM) agenda, the reform of the UN system, South-South trade and external debt.

Corea chaired the NAM Ad Hoc Expert Group on External Debt and also made an important contribution in the establishment of the Heavily Indebted Poor Countries (HIPC) debt relief initiative.

He later became a member of the Board of the South Centre in 1995 when the Centre was transformed into an intergovernmental organization, and was appointed a member of the first South

Centre Board which was chaired by Nyerere. He remained on the Board until 2002 when he was appointed the Chair of the Board, a position he undertook until 2003 when he retired for health reasons.

“We at the South Centre were especially grateful to Gamani Corea for his strong and sustained moral and political support for the Centre during the difficult period that it traversed following the passing away of Chairman Nyerere,” said Mkapa.

The remarkable career and trajectory of Gamani Corea, Mkapa said, places him among those few towering personalities and intellects which have ably led the South and endowed it with its own identity in the global arena, which is a historical and substantive achievement. Corea spoke always with passion about the causes of the developing world and of the South Centre.

“In his life, and his writings, he was a staunch advocate of Southern unity, Southern solidarity and Southern progress. We celebrate today the contributions of a man who advanced the development goals and all-round capacity-building of the South.”

“With his passing away, the developing countries have lost a great champion and the world has lost a tireless leader in fostering international cooperation. He leaves behind a rich and valuable legacy that will continue to benefit and inspire successful leaderships for the people of the South and the world for many years to come,” Mkapa added.

“Embodiment of the confident South”

Richard Kozul-Wright, Director of the Division on Globalization and Development Strategies at UNCTAD, speaking on behalf of UNCTAD Secretary-General Mukhisa Kituyi, said that the Secretary-General wished to express his deep regrets for being unable to be present, as unfortunately the tribute seminar was taking place on the same date as a long-planned mission to Cambodia and India.

Reading out the message from the Secretary-General, Kozul-Wright recalled Kituyi’s short eulogy last fall at a special commemoration ceremony organized by UNCTAD’s Trade and Development Board, where Kituyi had called Corea an “embodiment of the confident South”. Kozul-Wright said that it is an apt description that is, in part, a reflection of the political drive of the develop-

ing world in the two-and-a-half decades from the Bandung Conference to the onset of the debt crisis of the early 1980s.

"UNCTAD was, of course, very much a product of that confidence. But it also tells us a lot about how Gamani's leadership helped steer a course for UNCTAD that continues to serve as a beacon for us today."

More than simply taking up where his predecessors left off, Corea, Kozul-Wright said, moved the North-South dialogue in a constructive direction.

"There have certainly been bumps in the road since then; indeed, the shift towards a neoliberal development consensus, which began in the final years of Gamani's tenure as Secretary-General, has posed profound intellectual and political challenges for UNCTAD. But one lasting consequence is UNCTAD's *Trade and Development Report*, launched by Gamani in 1981."

Led by Geri Arsenis, it was a bold response to the World Bank's *World Development Report* established a couple of years earlier and already refocusing the development discussion on "getting prices right" and downplaying the influence of international economic conditions on national policy on the grounds that the prime culprit behind the debt crisis was domestic economic policy errors.

According to Kozul-Wright, this positioning of the World Bank was quickly consolidated around adjustment lending. This opened up the possibility of an alternative approach to interpreting the issue of central concern to UNCTAD – the design of development strategies in an interdependent world of asymmetric economic power relations and distorted international markets.

"Indeed, it is worth recalling here that even at the height of the disagreements between the North and the South during Gamani's tenure, he inspired the respect of no less than Henry Kissinger himself – who encouraged him to stay the course no matter what their intellectual or ideological differences might have been.

"It is therefore for his spirit of service to development and to genuine and purposeful North-South dialogue that we honour him today. We keep alive his principles and his aspirations for a better world. He put into practice his dream of an UNCTAD that makes a difference, and we are committed to that dream today," Kozul-Wright added.

"Although today the world may

have changed – and with it UNCTAD – in the organization itself, Gamani's spirit and legacy live on. UNCTAD remains an intellectual centre of excellence on development thinking in the United Nations system, and in the broader development community. And the quadrennial UNCTAD conference remains the only major UN conference on development that takes place on a regular and permanent basis," he said.

Son of Sri Lanka

Ambassador Ravinatha Aryasinha of Sri Lanka, whose mission here co-organized the event with the South Centre, said: "Dr Corea was a cake where the icing was put abroad but which was essentially baked in Sri Lanka."

Born on 4 November 1925, Corea was educated at Royal College, one of the most prestigious schools in Sri Lanka, and graduated from the Oxbridge universities and held a PhD in Economics from Oxford. He also received honorary doctorates from a number of national and foreign universities.

Recounting Corea's early career, the Sri Lankan envoy said that Corea's encounter with Raul Prebisch, the world-renowned development economist and first Secretary-General of UNCTAD, during one of his visits to Geneva resulted in a new turn of events in his professional life.

At the invitation of Prebisch, Corea joined the panel of experts who were making arrangements for the first session of UNCTAD, held in 1964. Corea was also the chief architect of the resolution which established the G77 at the conclusion of the first UNCTAD (session).

The principles Corea enunciated for a new international economic order continue to remain increasingly relevant and valid in the present global context, said Aryasinha. "Of late, the 2008 financial crisis and the ensuing consequences have proven to us beyond any doubt that the economic welfare of the people cannot be solely left at the hands of the private enterprises which are driven by markets and profits. Even the most affluent nations eventually acknowledge this harsh reality."

Corea's active role in reinforcing unity among nations of the global South and their position in multilateral negotiations is well recognized and appreciated globally. His vision and active role in the promotion of South-South and

North-South cooperation remains an inspiration for all, including for the Group of Fifteen (G15), a summit-level group of 17 developing countries currently chaired by Sri Lanka.

"His legacy and intellectual prophecy continues to inspire international institutions such as the South Centre as well as cross-regional groups of nations such as the G15 to continue to strive and work tirelessly for a more equitable and just world order," he said.

Ending with an anecdote relating to Corea, Aryasinha recounted that it was said that when Corea served Sri Lanka, he, together with two others, had gone to Rome (where the UN Food and Agriculture Organization is based) to seek food aid for Sri Lanka. All three were very well-built gentlemen, and a member of the press there had remarked to them that when he saw them, he did not think that Sri Lanka had a food crisis. Back came the reply: "We represent the aspirations of our people."

Consolidating UNCTAD

The part of the tribute seminar devoted to Corea's life and work was addressed by Rubens Ricupero, a former Secretary-General of UNCTAD (1995-2004), and Chakravarthi Raghavan, Editor Emeritus of the *South-North Development Monitor (SUNS)*.

Ricupero said that he was not one of the happy few who had the privilege to have worked closely with Corea. "I cannot refrain from remarking at the outset that there is no better proof of the lasting mark that our dear friend, the late Gamani Corea, left than the presence here of so many of his close collaborators, of the people who worked with him or under him and who travelled from distant places to be among us today. This is not something that happens every day and it is in itself a tribute without words."

"If it is true that in philosophy we all stand upon the shoulders of giants who came before us, then I can also say that I enjoyed the privilege of standing upon the shoulders of giants like Dr. Prebisch, Dr. [Manuel] Perez-Guerrero [second UNCTAD Secretary-General], Dr. Gamani Corea. In my time at UNCTAD, I could sense every day how much of this organization is due to their vision, to their efforts, to their gifts," he said.

Ricupero noted that after the two initial attempts at creating UNCTAD,

first by Prebisch and then by Perez-Guerrero, the organization was still looking for a permanent identity and there were no assurances that it would survive the conferences of Geneva and New Delhi.

"My conviction is that it was Gamani who consolidated the organization because he had the wisdom of understanding what was behind the apparently arid legal problem of the role of UNCTAD within the United Nations organization."

UNCTAD had been created as a subsidiary body of the UN General Assembly. For some people, that was seen as a sort of minor, diminished status as compared to the independent specialized UN agencies which had their own processes of choosing their Secretary-General or Director-General, had their own budgetary processes and, for all practical purposes, were almost completely independent from (UN headquarters in) New York in administrative matters.

The aspiration of UNCTAD becoming a specialized agency had always been present in the mind of some well-intentioned people, Ricupero said. However, there were others who thought likewise but with intentions that were not so pure or positive, who did not want to improve matters but, on the contrary, would like to see UNCTAD less well protected against the pressure of the powers to be.

"I am not imagining things. It is enough to read what Professor Richard Cooper, for instance, wrote on the history of international economic organizations to understand that many never concealed their inconformity with the fact that every member of the United Nations General Assembly had to share the burden for UNCTAD's existence even when they did not like the work the organization was doing. The reason was simple: being a subsidiary body of the UN General Assembly, UNCTAD had become intrinsically indissociable from the United Nations.

"When Gamani was UNCTAD's Secretary-General in the middle of the 1970s, there was a moment when it was offered to him that UNCTAD could become a specialized agency. Those were brilliant, golden days where everything seemed to go the developing countries' way after the two oil shocks. For a moment there was even an illusion that there had been a sort of change in the correlation of forces. Others, in UNIDO, for instance, accepted the offer believing it would make them stronger and more prestigious.

"Gamani had the wisdom of turning the offer down. In doing that, Gamani consolidated the basis for something that is much more important than administrative independence, something that is, to this day, the unique characteristic of UNCTAD: its role as a source of independence and integrity of critical thought in the field of development. If UNCTAD wants to remain the voice of those who have no voice, the poorest amongst the poor, the vulnerable, it should never forget that there will be a price to be paid."

Ricupero added: "When we say that we pride ourselves – I still speak as a former member of UNCTAD – of thinking outside of the box, of being ahead of the curve, we know that we will have to pay a price. As Keynes himself said, 'economists will rather be wrong in the mainstream than to be right out of it'. The price to be paid is pressure, threats, the denial of material resources."

"It was Gamani who gave us the guarantee that we would be protected because we were linked to the democratic ground of the international community, to the grassroot process of the UN which is the General Assembly. It may not have too much power like the Security Council but it has the highest degree of legitimacy because it is the uttermost expression of the universality of the planet. In maintaining our role as a subsidiary organ of the General Assembly we were able to keep our integrity."

Ricupero concluded: "Let me just finish by saying that for all of us who cherish Gamani Corea's legacy, perhaps the most valuable part of that legacy is the fact that UNCTAD remains to this day the moral and intellectual conscience of development. It will only remain so if it resists the temptation to become a part of the mainstream, a very strong and permanent temptation. If you say what others more powerful want you to say, then you may get some rewards but you will have lost your soul."

A friend remembered

In his statement to the tribute seminar, Chakravarthi Raghavan said that he really came to know Corea fairly well after he came to Geneva in 1978 to work at the International Foundation for Development Alternatives (IFDA) and with the IPS news agency on an "Alternative Information Project" to report from a Third World perspective on the activities of UN agencies in Geneva in general and the trade and development scene –

UNCTAD, GATT etc – in particular.

Soon after, in March 1978, they met at Corea's office, and discovered that though they were from different backgrounds, their lives and thinking had been shaped by national freedom struggles in their countries of South Asia under British colonial rule – Corea in what was then Ceylon (now Sri Lanka) and Raghavan in then Madras (now Chennai) in India.

UNCTAD at that time was at the centre of the North-South dialogue and negotiations on a range of issues and subjects like commodities and what is now known as services – shipping, technology etc – as well as core issues of the world economy including trade, money and finance. There were a large number of meetings on variegated issues, with these meetings often running late into the night, especially on Fridays. Raghavan recalled that Corea could be found at his desk on the 9th floor of the secretariat and sometimes in the coffee lounge, waiting for meetings to convene while regional groups conferred among themselves.

"As a journalist following these meetings, I was there too, and soon we would spend time together – waiting around, in his office or at the lounge on the first floor – discussing UNCTAD matters and wider issues of international political economy but also touching on our own personal lives and background."

Recalling his own youth, Raghavan said that at a young age, soon after high school but before entering college, he had gone through his father's library, reading haphazardly – law books, religious and philosophical literature in Sanskrit and some in Tamil and English, English classic novels, and writings of Adam Smith, Karl Marx, Mahatma Gandhi, Jawaharlal Nehru, among others. After joining the profession too he had done some haphazard reading of politics and economics.

When he met Corea in 1978 and came to know him well, Corea took on hand the task of guiding him in some detailed reading and re-reading of economics literature – classical, neo-classical, Marxian and development economics, and trade, money and finance – an almost one-to-one economics crash course (without having to do term papers!).

During Corea's tenure at UNCTAD, and later when he retired and was staying not too far from Raghavan's home in Geneva, they used to meet at least once

a week.

Touching upon some aspects of Corea's life and work, Raghavan said that Corea was born into a renowned and affluent political family of Sri Lanka – his mother's brother, Sir John Kotlewala, was a Prime Minister of Ceylon, while his grandfather, Victor Corea, was a freedom fighter. He was an only child and the family on his mother's side was so affluent that no one in the family ever thought of guiding him into any particular educational discipline or a professional career.

Everyone, on both sides of his family, was in politics and belonged to prominent political families of Ceylon/Sri Lanka, but Corea was thought to be too shy and reserved for the rough and tumble of political life.

However, by himself, Corea began taking an interest in the national politics of Ceylon (but not to plunge into politics); till the end, he had good relations with both the main political parties of Sri Lanka, and in terms of even national polity, both sides listened to him, although they did not always follow his wise counsel.

Raghavan said that when Corea learnt that a meeting with Gandhi in 1945, and spending 10 days with him in camp, had changed Raghavan's outlook and brought him first into politics briefly and then to journalism, Corea told him that in his student and younger days, he had been very much influenced by the freedom struggle under Gandhi and Nehru in neighbouring colonial India.

Raghavan recounted Corea telling him: "I would get hold as a young man of every writing of Jawaharlal Nehru and read him avidly. It gave me a perspective and impelled me to take [an] interest in politics and development that carried over into my post-university career in the Central Bank, and then United Nations and the development aspects there."

Raghavan said that after an educational career in Colombo and then Oxford and Cambridge (1945-52), Corea came back to Colombo to enter government service in the economic departments of planning, as research director in the central bank, as Secretary of the Department of Planning and as governor of the central bank. He then went into diplomatic service, as Ceylon's ambassador to the European Economic Community in Brussels, and several UN positions, including as member of the UN Committee for Development Planning.

"Visionary, developmental and egalitarian" outlook

Prebisch named him to a panel of experts preparing for the first UNCTAD session (UNCTAD I), and later in the work of UNCTAD itself where, during the Prebisch era, he chaired a commodity conference on cocoa. Raghavan added that Prebisch too, in conversations with him (Raghavan) in 1979 at UNCTAD V in Manila and again in 1983 at the G77 ministerial meeting in Buenos Aires, thought very highly of Corea.

Raghavan noted that Corea was appointed in 1973 as Secretary-General of UNCTAD for an initial three-year term, when the second Secretary-General, Perez-Guerrero, resigned to become a minister in Venezuela. He assumed the post in April 1974 and was reappointed thrice, his last term ending in December 1984.

He continued in the post at the request of then UN Secretary-General Javier Perez de Cuellar, and then was told (indirectly) that he would not be continued, said Raghavan. Raghavan recalled that the developed OECD countries were by then dead set against Corea for his role in giving intellectual support for the G77 efforts at restructuring the world economy and international economic system (money, finance and trade) for a more equitable and just order.

At the 1982 General Agreement on Tariffs and Trade (GATT) ministerial meeting in Geneva, when the US was trying to expand the role of GATT by including many unrelated areas into the ambit of the trading system, (merely by adding the prefix "trade-related"), Corea spoke out very strongly and firmly in support of the position of the developing countries. United under the leadership of Brazil and India, the informal group of developing countries insisted that the unfinished business of the Tokyo Round trade talks should be taken up first and accords reached, before any new issues like intellectual property, services or investment could be considered as subjects for trade negotiations.

Raghavan said that Corea also undertook and published studies at UNCTAD on services, technology, intellectual property and other subjects sought to be brought onto the GATT agenda, in particular their wider role in development.

Sometime later, when Corea was on the South Commission, he told the Commission secretariat's Branislav Gosovic that the main reason for annulling his

third term in UNCTAD and giving him only one year was the fear by the US and the OECD group of countries that Corea "would spoil" their attempts to launch a new round of GATT multilateral trade negotiations with new issues.

"Prebisch, as head of UNCTAD, shaped international economic thinking in development economics and raised awareness within the UN system of the development problematic in the newly independent ex-colonies, and their need for special treatment and assistance for development, such as official development aid, generalized schemes of preferences in trade and the like," said Raghavan. He added that Corea carried forward the Prebisch outlook, providing intellectual weight and economic arguments to the secretariat proposals, and with calls for restructuring the global economy and international economic relations and governance, and addressing problems of development and money, finance and trade in an interdependent manner.

"He had an inner conviction and strength, and an outlook that was visionary, developmental and egalitarian. Within UNCTAD, he developed several programmes to help development, and remained firm in his view that UNCTAD should remain a part of the UN, an organ of the UN General Assembly devoted to trade and development. While not confrontational or using harsh language, he stood up throughout his tenure to pressures and bullying tactics of the United States or European Communities and their attempts to influence senior staff appointments by planting their own men. He also stood up to the IMF [International Monetary Fund] and World Bank, whose leadership attempted sometimes to scoff at UNCTAD views and alternative thinking differing from the IMF/World Bank ideology and rulebook," Raghavan recalled.

After retirement from UNCTAD, Corea continued in international public life, especially in the economic and development arena, and was a member of the South Commission. After the Commission wound up and the South Centre was set up in 1991, he played an important role in its work. He was trusted by South Centre Chair Nyerere and acted as the final authority and filter approving policies, documents and publications of the Centre.

He was consulted on a daily basis, both while he was in Geneva (a lot of the time) and when he was in Colombo, and

was one of the key persons to help put the Centre on its feet. He became Chairman of the Board of the South Centre, assuming the post about three years after Nyerere died. He resigned his chairmanship after a mild stroke which impacted on his writing abilities.

Raghavan said that as an important member of the Centre, Corea participated in some of the civil society meetings in the run-up to the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro.

At the time of the 1991 second preparatory committee meeting in Geneva for UNCED, it was fashionable for officials of the secretariat, including the Secretary-General of UNCED Maurice Strong, to advise developing countries not to adopt or follow a consumerist Northern style of development, Raghavan noted. "Speaking at the civil society meeting at that time, Corea scoffed at such efforts of the North to constrain the development of the South to maintain the North's own consumption and lifestyles. He told the NGO forum and the Group of 77 that if such an effort is made, even if governments of the South accept at Rio such instruments to curb their development, 'long before global warming, the world will be engulfed in global disorder'."

Raghavan said that Corea was also present at Rio itself as a member of the Sri Lankan delegation. At the end of UNCED, in an interview with Thalif Deen of Inter Press Service for the conference newspaper *Terra Viva*, Corea famously summed up the outcome as follows: "We negotiated the size of the zero."

"Sustainable development" pioneer

The second part of the tribute seminar was devoted to the intellectual legacy of Corea, with invited speakers being Saman Kelegama, Executive Director of the Institute of Policy Studies of Sri Lanka; Gerasimos Arsenis, former Director of the Money and Finance Division of UNCTAD; Jan Pronk, former UNCTAD Deputy Secretary-General; Michael Zammit Cutajar, former UNCTAD staff and former Executive Secretary of the UN Framework Convention on Climate Change; and Michael Sakbani, former Director of the Division of Economic Cooperation, Poverty Alleviation and UNCTAD's Special Programmes.

Zammit Cutajar spoke of his many associations with Corea – in the

UNCTAD secretariat, at the time of the 1972 UN Conference on the Human Environment in Stockholm when Zammit Cutajar had joined the team of Maurice Strong heading that secretariat. Corea, Zammit Cutajar said, was a "pioneer on the interface of 'development and environment', later known as 'sustainable development'".

At the time of Stockholm, when developing countries looked suspiciously on that conference, Corea chaired a panel of experts on Development and Environment convened by Strong that met at Founex near Geneva, and was largely instrumental in drafting the Founex Report that was instrumental in securing the proactive participation of developing countries.

The central messages of Founex – of poverty eradication as the overriding aim of economic and social development; of environmental norms, costs and benefits being integrated in the development framework; and additional development assistance to developing countries to cover the incremental cost of environmentally advantageous technologies – echo through the decades and "we still hear them today", said Zammit Cutajar.

The Founex Report brought out important differences in the perspectives of industrialized and developing countries, while making a compelling case for common action in some areas. "This tension between differentiation and commonality is with us to this day," he added.

As head of UNCTAD, Corea also convened a symposium, along with the UN Environment Programme (UNEP), on "Patterns of Resource Use, Environment and Development Strategies" held in Cocoyoc (Mexico) in October 1974, whose proceedings were much influenced by the political context of the times in the UN – the period of Special Sessions of the General Assembly, the New International Economic Order and the Charter of Economic Rights and Duties of States.

This resulted in the Cocoyoc Declaration, whose content and tone were thus more radical and more ideological than the Founex Report: redefining the purpose of development – "not to develop things but to develop man"; attacking inequality; rejecting "trickle down" and "growth first" models; proclaiming the diversity of self-reliant development paths; and exploring the scope for social justice in the space between the physical "outer limits" of the planet and the "inner limits" of basic human needs and

human rights.

It is not surprising that this Declaration drew the wrath of US Secretary of State Henry Kissinger on the heads of UNEP and UNCTAD, though Kissinger did not decline to attend the UNCTAD IV conference two years later in Nairobi, the home of UNEP.

In the next few years, Corea lent his name and gave advice to initiatives following up on Founex, Stockholm and Cocoyoc: the 1975 Dag Hammarskjöld Foundation project entitled "What Now? Another Development" and the International Foundation for Development Alternatives, set up in 1976 in Nyon, both directed by Marc Nerfin, who was Strong's chef de cabinet in the Stockholm secretariat – and Zammit Cutajar's boss. Strong was involved in both initiatives and Jan Pronk, as the Netherlands' Minister of Development Cooperation, was one of their main supporters.

Zammit Cutajar also spoke of Corea's role in the South Centre, where he had chaired a working group on "The South and UNCED", convened by Nyerere to remedy the disarray in the negotiating positions of the G77. The group, including Khor and Raghavan, proposed "a comprehensive negotiating strategy for the South" towards UNCED and the parallel negotiations on biological diversity and climate change.

The vision and strategic objectives outlined by the group included ensuring adequate "environmental space" for the future development of developing countries; obtaining on the right terms the resources, technology and access to markets required for development; and the bold and complementary vision on climate change, encompassing long-term convergence of per capita emissions of greenhouse gases and international trade in emission rights.

The discussion in this working group, Zammit Cutajar added, led to the later formulation by the G77 of its position on "common but differentiated responsibilities" that was incorporated in the Rio Declaration.

The "development consensus"

In his remarks, Jan Pronk, former Dutch minister and former Deputy Secretary-General of UNCTAD (during Corea's tenure there), spoke of Corea's contribution in terms of the "development consensus".

Corea, Pronk said, coined this concept, a new phrase but not a new approach to Corea himself, who had been

involved at the UN in development issues as a member of the UN Committee for Development Planning and in the formulation of the strategies for the UN Development Decades.

In 1985, Pronk added, Corea described the need for such a consensus as follows: "The motivating factors now are not only the political need to respond to the problems of newly-emerging nations or the humanitarian compulsion to alleviate poverty and reduce the widening gap between rich and poor countries. There is now also the need for a framework of international economic relations which provides for the maximum utilization of mutually reinforcing and interacting forces for growth and prosperity throughout the world economy ... The underlying theme for systems adaptation must be the incorporation of a 'development consensus' comparable to the 'full employment consensus' which was written into the post-war systems. This is not, by any means, a sectional interest of the developing countries. It is an imperative for the world economy and hence for the developed countries as well."

In the 1970s, developing countries, having become frustrated by the lack of results of previous international strategies, had demanded a new order, leading to the adoption by the UN General Assembly of the New International Economic Order (NIEO) Declaration and Programme of Action.

Then US Secretary of State Kissinger took a confrontational position, declaring, "We do not need a new international economic order, because the present order, based on open trade, free movement of capital and technology and freely disposable raw materials and natural resources, has served us well."

This was the very period when Corea had chaired the UN Committee for Development Planning, as a successor of Jan Tinbergen, and taken over the helm of UNCTAD. The confrontation between the North and the South at that time had not been overcome, despite the adoption of the NIEO Declaration and Programme of Action. The implementation of the action programme would require ongoing negotiations on the basis of a specific agenda, which itself had to be agreed in advance.

"This is what Gamani accomplished," Pronk said. Negotiations about money, finance and trade would be essential in order to make progress towards systematic change, but the Bretton Woods organizations and GATT kept

aloof. UNCTAD was the only forum which adopted an agenda towards the implementation of an NIEO.

This happened at UNCTAD IV in Nairobi, and later at UNCTAD V in Manila and UNCTAD VI in Belgrade. For a period of about 10 years intense negotiations took place on all chapters, step by step. Corea saw the Integrated Programme for Commodities not only as valid per se, but as a first step in a comprehensive attack on prevailing structural inequalities and instabilities in the system, to be followed by many others.

By choosing this approach as an international civil servant, Corea showed courage, demonstrating impartiality in his contacts with governments but telling them that he could not be neutral about underdevelopment: "a scourge to be eradicated and there has to be a total commitment to [its] eradication".

He asked the North to see the NIEO "not as a one-way street, not as involving any loss and transfer of the gains achieved ... but rather as a new set of relations without which the global economy itself can hardly survive or function smoothly in the future".

At the same time, he told the South that "agreements to introduce changes in the prevailing order of things do not come about easily; they do not come about only by convening meetings and launching negotiations. They depend on the climate and attitude of the times, on the study and analysis of problems, the mobilization of opinion and the reconciliation of interests".

Common interest

Corea had presented the need for an NIEO not in terms of a conflict of interests but as a common interest, and from 1980 onwards, he tried to address the stalemate in North-South negotiations by referring to the interdependence between nations. This meant a digression both in philosophical terms – away from Prebisch's centre-periphery dependency model – and politically, from polarization towards consensus. However, in the mid-1980s, negotiations came to a complete standstill.

In Pronk's view, the approach failed in the end, not due to a deficient analysis of international economic structures but rather a political failure, due to short-sighted perceptions on both sides of the North-South divide. In the end, the concept of interdependence was only paid lip service to by all.

Now 30 years later, Pronk said, the

world has changed tremendously. While the Cold War has ended, a new confrontation between East and West is emerging, which will also affect the South. Globalization has entered a new phase. Within many countries, domestic conflicts have escalated into violence, with consequences across frontiers, endangering other countries. Environmental setbacks and climate change are threatening the welfare of future generations. New tensions between states are emerging, in the Middle East, in Asia as well as in Europe.

"Gamani Corea foresaw that an international development consensus is crucial if we want to run the system, rather than that the system is running us," Pronk said.

During the 1970s and 1980s, negotiating parties could perhaps yet be excused for not following a rationale of consensus and common interests as put forward by Corea and Willy Brandt. However, presently there is no excuse whatsoever anymore. The threats to world economic and political stability have become even bigger than they were 30 years ago.

"Rational intellectual analysis of what is going on in the world compels us to conclude that there is no alternative than aiming at a consensus in the common interests of mankind. If not, the chances that 'there could be serious political and social destabilization with global repercussions' would be even greater than at the time when Gamani Corea issued his warning," Pronk said.

If Corea were alive, Pronk added, he would consider today's investment protection treaties and the Transatlantic and Pacific Trade and Investment Partnerships as a deviation from a world development consensus.

The pluralistic dualism of the world's economy – both between and within countries – calls for renewed efforts to define Corea's world development consensus, a consensus that in the 21st century, people's interests will no longer be served by governments confining their efforts to better market conditions, a consensus that will be more difficult than 30 years ago, but one urgently needed to avoid the dangers of further "political and social destabilization with global repercussions" as foreseen by Corea.

Michael Sakbani earlier spoke at the tribute seminar of Corea's pioneering work in UNCTAD on commodity policy and in promoting programmes for Economic Cooperation among Developing Countries. (SUNS7774) □

IMF the equality champion?

While the IMF now appears to recognize the need to tackle inequality, this stance may not come to be reflected in the multilateral lender's policy advice on the ground.

In February and March the International Monetary Fund (IMF) published two papers on inequality, addressing its impact upon growth and the implications for government spending. The papers generated international debate and led to suggestions that the IMF is changing its longstanding approach to macroeconomics, rejecting cuts to public spending with which it has long been associated. However, the Fund has not examined its own policies' role in creating inequality, nor has it sought to explore changes to the conditionalities it currently imposes on borrowing countries.

In a widely reported February speech, IMF managing director Christine Lagarde argued that "rising inequality and economic exclusion can have pernicious effects", adding that policy can no longer "look simply at economic growth" and must instead "ask if this growth is inclusive". Media reports and NGO statements celebrating this stance appear to be contradicted by the IMF reports' small print, which indicated that little will change with the Fund's policies.

Big headlines, little influence

A February IMF staff discussion note (SDN) found that advanced economies reduced inequality by roughly one-third between 1960 and 2010 by combining social transfers with redistributive taxes. The paper found that lower net inequality is "robustly correlated with faster and more durable growth" and that income redistribution appears "generally benign" in terms of its impact on growth. The authors consistently highlighted that in "extreme" cases it "may" have "negative effects on growth". Redistribution has been discouraged in the past by the IMF due to the belief that it would impede growth.

The SDN recommended four considerations in ensuring redistribution could be efficient and effective. These were to ensure redistribution is consistent with macroeconomic stability objectives; that taxes and expenditure policies be evaluated jointly; that policy design

balances redistribution and efficiency; and that all policies take into account administrative capacity. It found that "effects of redistribution ... are on average pro-growth".

IMF conditionalities on borrower countries, requiring policies which exacerbated inequality and disproportionately harmed poorer and lower-income groups, were historically justified as growth-friendly. The paper acknowledges, without referencing the IMF's role, that this stance is not valid based on its results and review of the prevailing literature, concluding that "we should be careful not to assume that there is a big trade-off between redistribution and growth. The best available macroeconomic data do not support that conclusion." The authors find that "evidence for the growth-destroying effects of ... redistribution" is "surprisingly little". Nevertheless, they are "mindful about over-interpreting these results, especially for policy purposes".

Aldo Caliari, of US-based NGO Center of Concern, pointed out in a February blog post that the Fund's paper was little more than an "instrumental" case for reducing income inequality, justifying redistribution only in terms of what is beneficial for growth and development. He noted that though leaders as diverse as US President Barack Obama, Lagarde and the Pope seem to be "in agreement about the problem", they still need to "throw their weight behind the solutions".

International NGO Oxfam concluded in a January study that inequality also poses social and political risks, arguing that "institutions become undermined and governments overwhelmingly serve the interests of economic elites to the detriment of ordinary people", such that inequality "erodes the social contract between citizens and the state".

Caveats aplenty despite more evidence

The IMF has made no indication that this paper will change its policies. The

Fund's first deputy managing director David Lipton commented in a March *IMF Survey* article that for redistribution, "[policy] design matters", otherwise it can be "pushed too far" and is "distortive".

The SDN's caveats were deemed irrelevant by some World Bank staff. A March blog post (one of several similar Bank blogs) by Jean-Pierre Chauffour, lead Bank country economist for Morocco and former IMF staffer, questioned whether the IMF paper's view on tackling inequality would be "smart economics". He suggested that the paper confused the causality of growth as being driven by reduced inequality, suggesting that growth leads to less inequality, making redistributive policies a "pale palliative". Hence policies which directly address inequality should be avoided, despite the SDN's review of the overall evidence. Chauffour dismissed this and the extensive literature it documents, arguing that "for the World Bank, the lesson would be that accelerated economic growth – not redistribution" – remains the best way to "eliminate extreme poverty" and boost "shared prosperity". Chauffour takes a swipe at the paper's "methodological shortcuts", speculating that debt-financed redistribution caused the global slowdown in growth and warning that this paper's conclusions should not "derail ... sustained accelerated economic growth" policies.

"Bringing redistribution to the IMF discourse is welcome," commented Isabel Ortiz, of the International Labour Organization, "however it needs to be translated into policy advice; currently there is a disconnect between the IMF's progressive research pieces in headquarters and operations and surveillance in countries. Tackling inequalities through inclusive policies, from progressive taxation to social protection floors, is at the core of the United Nations development agenda, now also evidenced by IMF research, therefore IMF country policy advice should not remain 'business as usual'."

It appears doubtful that IMF policy advice will change as a result. Speaking to news agency Bloomberg in March, Nicolas Mombrial of Oxfam argued that the Fund's policy paper should trigger a "long-term change in IMF policy advice to countries" in favour of investment in "health and education and more pro-

gressive fiscal policies". However, SDN lead author Jonathan Ostry stated in a press conference to launch the report that "I want to draw a line between this analytical paper and Fund policy advice and design of programmes ... there's no direct implication for Fund policy advice or programme design."

Policy shift?

The February SDN was followed by a policy paper in March examining the role of fiscal tools to reduce inequality. The paper focused on how to better target social spending and considered alternatives to large cuts in welfare transfers, which have been the primary mechanisms for fiscal management that the IMF has advocated in both historic and current lending programmes.

Lost on most commentators was that the paper and its findings were prevented from being approved by the board. A frontpage disclaimer declared that "the executive directors met in an informal session, and no decisions were taken". This unusual non-approved status for a policy paper suggests that major member states would not have approved it for publication. The Fund's supposed change of heart favouring redistributive policies is therefore even more questionable.

The policy mix set out by this quasi-official policy paper rarely deviates from longstanding Fund positions, such as championing means-testing, and ignores the political challenges facing governments to ensure redistributive policies are democratically embraced. Though the Fund generated positive headlines which implied a significant change of approach, Peter Bakvis of the International Trade Union Confederation argued in March that the paper "is very guarded in its policy proposals" and that the paper ignored "any underlying causes of inequality", including weakened labour market institutions and financial deregulation, and "breezily dismisses employment protection regulations". Bakvis concluded that the paper will "have to do further work if it is to develop serious and actionable policy proposals against inequality".

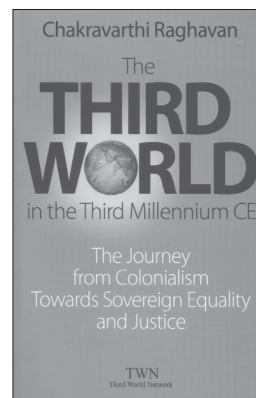
In a February paper, the Arab NGO Network for Development examined the IMF's policies on subsidy reform in the Middle East region. They concluded that rather than seeking to reduce inequality,

The Third World in the Third Millennium CE
The Journey from Colonialism Towards Sovereign Equality and Justice

By *Chakravarthi Raghavan*

The development path traversed by the countries of the Third World since emerging from the colonial era has been anything but smooth. Their efforts to attain effective economic sovereignty alongside political independence, even till the present day, face myriad obstacles thrown up on the global economic scene. This drive to improve the conditions of the developing world's population has seen the countries of the South seek to forge cooperative links among themselves and engage with the North to restructure international relations on a more equitable basis – not always with success.

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an economic model based on fiscal consolidation and privatization has been advocated by the Fund in countries as diverse as Jordan, Tunisia, Morocco, Egypt and Yemen.

They noted that the IMF's approach is based explicitly on familiar policies of encouraging "private sector-led growth" and "stringent fiscal austerity measures" including removing food and energy subsidies, whose cost would be borne most by vulnerable groups. Examining IMF recommendations since 2007, they found that the IMF has "intensified its calls for the reduction of food and, in particular, fuel subsidies" in the region despite surveys which found that local populations were "overwhelmingly opposed [to] the reduction of food subsidies" and "large majorities favoured ... redistributing funds to the poor and to public services, namely education and healthcare services".

Jihen Chandoul, of Tunisian NGO l'Observatoire de l'économie, confirmed that "the IMF's stand-by agreement with Tunisia was conditional on compliance with a harsh package of regressive policies such as elimination or reduction of subsidies, wage bill caps, pension and healthcare reform." □

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(continued from page 3)

that hangs over the heads of governments that naturally do not like being sued by companies in an international tribunal for millions or billions of dollars.

Thus, Obama's assurances that there should be no worries about companies taking action against governments for their consumer and environmental policies ring hollow when many such actions have already been taken under existing US FTAs and other treaties. □

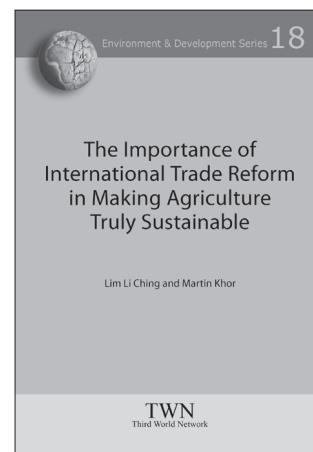
Martin Khor is Executive Director of the South Centre, an intergovernmental policy think-tank of developing countries, and former Director of the Third World Network.

The Importance of International Trade Reform in Making Agriculture Truly Sustainable

Lim Li Ching and Martin Khor

Reforms of the international trade regime require a significant reduction or removal of harmful subsidies currently provided mainly by developed countries, while at the same time allowing special treatment and safeguard mechanisms for developing countries in order to promote their smallholder farmers' livelihoods. Such reforms, coupled with policies in support of sustainable small-scale agriculture in developing countries, would improve local production for enhancing food security.

There is also a need for regulatory measures aimed at reorganizing the prevailing market structure of the agricultural value chain, which is dominated by a few multinational corporations and marginalizes smallholder farmers and sustainable production systems. Policies that increase the choices of smallholders to sell their products on local or global markets at a decent price would complement efforts to rectify the imbalances. In addition, a shift to more sustainable and ecological agricultural practices would benefit smallholder farmers by increasing productivity while strengthening their



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resilience to shocks, such as climate change, and reducing the adverse impacts of conventional agricultural practices on the environment and health. The trade policy framework should therefore support such a shift.

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