

THIRD WORLD *Economics*

TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 628 1 – 15 November 2016

E-commerce gets push at WTO, development issues sidelined

Proponents of the issue of electronic commerce in the WTO, led by major developed countries, are moving to push their agenda through, even as longstanding subjects of interest to developing countries make little headway in negotiations at the trade body. Reflecting the differing priorities involved, the chair of the WTO General Council has been holding sustained consultations with trade envoys from developing countries opposed to WTO rule-making on e-commerce, in a bid to unlock progress in this area.

- WTO GC chair ignores core development issues, pushes e-commerce – p2

Also in this issue:

Strong support for UN panel's recommendations on access to medicines p6

Privatization the problem, rarely the solution

p13

CETA a corporate-driven, "flawed" treaty, charges UN expert p10

People-powered cities: From the UN climate talks to energy democracy p15

Contents

CURRENT REPORTS

- 2 WTO GC chair ignores core development issues, pushes e-commerce
- 4 US, allies try another NAMA pluri, cloaked as ICT-NTBs
- 5 DG selection (reappointment) process off to preemptive start
- 6 Strong support for UN panel's recommendations on access to medicines
- 10 CETA a corporate-driven, "flawed" treaty, charges UN expert
- 11 Options lacking to help developing countries tackle debt crises

OPINION

- 13 Privatization the problem, rarely the solution
- 14 Are public enterprises necessarily inefficient?

ANALYSIS

- 15 People-powered cities: From the UN climate talks to energy democracy

THIRD WORLD ECONOMICS is published fortnightly by the Third World Network, a grouping of organisations and individuals involved in Third World and development issues.

Publisher: S.M. Mohamed Idris; **Editor:** Chakravarthi Raghavan; **Editorial Assistants:** Lean Ka-Min, T. Rajamorthy; **Contributing Editors:** Roberto Bissio, Charles Abugre; **Staff:** Linda Ooi (Administration), Susila Vangar (Design), Evelyne Hong & Lim Jee Yuan (Advisors).

● **Annual subscription rates:** Third World countries US\$75 (airmail) or US\$55 (surface mail); India Rs900 (airmail) or Rs500 (surface mail); Malaysia RM110; Others US\$95 (airmail) or US\$75 (surface mail).

● **Subscribers in India:** Payments and enquiries can be sent to: The Other India Bookstore, Above Mapusa Clinic, Mapusa 403 507, Goa, India.

● **Subscribers in Malaysia:** Please pay by credit card/crossed cheque/postal order.

● **Orders from Australia, Brunei, Indonesia, Philippines, Singapore, Thailand, UK, USA:** Please pay by credit card/cheque/bank draft/international money order in own currency, US\$ or euro. If paying in own currency or euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

● **Rest of the world:** Please pay by credit card/cheque/bank draft/international money order in US\$ or euro. If paying in euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

Visit our web site at <http://www.twn.my>.

Printed by Jutaprint, No. 2, Solok Sungei Pinang 3, Sungai Pinang, 11600 Penang, Malaysia.

© Third World Network

WTO GC chair ignores core development issues, pushes e-commerce

The chair of the WTO General Council is seeking to press forward the contentious agenda on electronic commerce at the trade body in the face of developing-country opposition.

by D. Ravi Kanth

GENEVA: While remaining silent on the core developmental outcomes demanded by least-developed and developing countries in the Doha work programme, the WTO General Council (GC) chair, Ambassador Harald Neple of Norway, has mounted an extraordinary effort on e-commerce.

He has been holding sustained consultations with African and other countries in an attempt to find a way forward before the final GC meeting of the year in December, several trade envoys told the *South-North Development Monitor (SUNS)*.

In the first 10 days of November, the GC chair, along with Ambassador Alfredo Suescum of Panama – who was appointed by Neple as Friend of the Chair to oversee the dedicated sessions on e-commerce – held one-on-one meetings with key trade envoys from Africa and Asia ostensibly to elicit their opinions on how to move forward on e-commerce despite their opposition, said a trade envoy who asked not to be quoted.

The GC chair is expected to prepare a report based on his consultations for the consideration of members before they adjourn for the winter holiday. Consequently, the scheduled meetings on e-commerce have been cancelled.

Significantly, the GC chair has not made a similar effort, as he is currently making on e-commerce, to resolve/convince major industrialized countries to give up their opposition on core developmental issues such as the permanent solution for public food stockholding programmes, the Special Safeguard Mechanism for developing countries to curb unforeseen surges in imports of agricultural products, elimination of trade-distorting cotton subsidies, harmonization of non-preferential rules of origin and also harmonization of preferential rules of origin for the least-developed countries, said an African trade envoy.

"Clearly, the double standards, when it comes to issues concerning the developing and poorest countries, are on

full display – as demands raised by major developed countries in e-commerce and other areas are accorded priority," said a South American trade envoy who asked not to be quoted.

Opposition on e-commerce

During the dedicated session on e-commerce on 18 October, it became clear that there is no consensus for moving forward on e-commerce. That session was eventually suspended after a volley of protests from members from the African Group, India, Venezuela, Bolivia and Cuba, among others.

At the session, Morocco, which is the coordinator for the African Group, had said categorically that its members want to "prioritize work on the outstanding Doha issues, such as Agriculture Trade Distorting Domestic Support, SSM [Special Safeguard Mechanism], Public Stockholding for Food Security, Cotton, LDC [least-developed country] priorities, TRIPS, and, last but not least, Development and S&DT [special and differential treatment]", before addressing issues on e-commerce.

Subsequently, at an informal ministerial meeting in Oslo, Norway, on 21-22 October, several trade ministers from developing countries, including South Africa and India, expressed strong protests on engaging on multilateral rule-making on e-commerce.

South Africa's trade minister Rob Davies said his country is not prepared to negotiate multilateral rules for e-commerce, while India said new issues, including e-commerce, cannot run ahead of the Doha issues, according to participants familiar with the Oslo meeting.

In the report submitted to WTO members on the Oslo ministerial meeting, Norway said that "among so-called new issues, many ministers mentioned e-commerce as a potential candidate for harvesting results in one form or another in Buenos Aires [where the WTO's eleventh Ministerial Conference, or MC11,

will be held next year], while others seemed more skeptical.”

In fact, except for one or two developing countries, most of the ministers from developing countries had opposed e-commerce at the Oslo meeting, said a participant who took part in the proceedings.

Nonetheless, Norway maintained in its informal report that “further focused, but open-minded, discussions and scoping on e-commerce are needed before any conclusions can be drawn.”

Pressure

Several trade envoys said that major industrialized countries are exerting pressure on African Group coordinator Morocco; Rwanda, which is the coordinator for the African, Caribbean and Pacific (ACP) Group; and Benin, which is the coordinator for the LDCs, to change their position, said an African trade envoy who asked not to be quoted.

A former US trade official who is now advising the LDC Group, Alicia Greenidge, wants the poorest countries to accept the e-commerce work programme, or else major players will proceed to address e-commerce in a plurilateral agreement in the WTO by the eleventh Ministerial Conference, an LDC source told *SUNS*.

In what seems to be a misguided interpretation of paragraph 34 of the Nairobi Ministerial Decision, the LDC Group has been advised to submit a formal proposal whereby they effectively acquiesce to proceeding outside the mandate of the existing WTO work programme on e-commerce on the assurance that they will not take on commitments or binding obligations in this area.

The Group is being advised in a confidential technical note that the proponents want to know what the “substantive elements on development and capacity building to include in their pitches for an outcome at MC11” will be, and the LDCs are urged to jump on board early before the proponents concede to a plurilateral initiative.

This comes at a time when the proponents of e-commerce, the GC chair and the Friend of the Chair, together with the WTO secretariat, are desperately trying to find a way to move forward the e-commerce “discussions” in the WTO.

The African Group, India, Bolivia and Cuba have maintained that any

discussion on e-commerce must follow the prescripts of the existing e-commerce work programme adopted by the General Council in 1998 and reaffirmed in subsequent Ministerial Decisions and Declarations. The work programme is specific and sets out the broad framework for discussions in the relevant WTO bodies.

However, with eight submissions now on the table, all proponents, with the exception of China, refuse to address their submissions in the relevant bodies mandated to deal with them, thereby delaying any chance of meaningful engagement this year.

The pressure now being placed on the poorest and most vulnerable economies of the LDC Group to agree to an outcome on e-commerce is at a tipping point, even as their attempts to seek outcomes in areas that are most pressing to their needs to help them integrate into the global economy are being ignored.

In all likelihood, the GC chair and Ambassador Suescum could present a report on their consultations on e-commerce at the GC meeting in December based on what the LDCs have suggested, said an industrialized-country trade envoy.

Chinese position

Meanwhile, China has cautioned against pushing members to opposing ends in the e-commerce-related work at the WTO, saying efforts to force countries to adopt a work programme despite their opposition can bring harm to the multilateral trading system.

In what appears to be counter to an ambitious e-commerce work programme that would include eliminating localization requirements and permitting cloud computing without restrictions, China has maintained that work on e-commerce must be based on the existing mandate of 1998, “focusing on areas of common interest to members with the aim of realizing pragmatic progress at the 11th ministerial conference” in Buenos Aires next year.

China said the e-commerce work programme must focus on “promotion and facilitation of cross-border trade in goods enabled by internet, together with services directly supporting such trade in goods, such as payment and logistics services.”

“The discussions are to clarify and

improve the application of existing multilateral trading rules, with a view to enabling developing members, SVEs [small, vulnerable economies] and LDCs [small, and their SMEs [small and medium-sized enterprises] and disadvantaged groups to better participate in and benefit from international trade and global value chains and to achieve leap-forward development,” China has argued.

Significantly, it wants to extend the existing moratorium on the imposition of customs duties on e-commerce, but “the discussions at this stage should not lead to new market access commitments including tariff reductions.”

Several industrialized and some developing countries, including the US, have called for a permanent prohibition on imposing customs duties instead of the current practice of extending the moratorium after every two years.

China has underscored the need for creating “a sound trade policy environment facilitating cross-border e-commerce” involving business-to-consumer (B2C) and business-to-business (B2B) transactions and applying “simplified measures for import, export and transit of goods traded under B2C mode.”

Beijing also wants members to focus on “paperless trade, and facilitate access to, use of, and data exchange with the single window of a Member’s authorities for international trade by cross-border e-commerce transaction platforms and traders, and also services providers of trade facilitation, payment, logistics, and courier services.”

It has also emphasized addressing other issues such as “transparency on policy framework of cross-border e-commerce”, improving “infrastructure and technical conditions for cross-border e-commerce”, and exchanging information on issues relevant to e-commerce such as consumer protection, privacy protection and intellectual property rights.

China has suggested that the WTO General Council must provide political guidance by involving all the relevant bodies.

In short, the powerful members, including the GC chair from Norway, along with the WTO Director-General Roberto Azevedo are moving heaven and earth to force the African and other developing countries to give up their opposition on e-commerce, said a South American trade envoy. (*SUNS8354*) □

US, allies try another NAMA pluri, cloaked as ICT-NTBs

Developed-country WTO members are spearheading a move – outside the multilateral framework of the Doha work programme – to lower non-tariff barriers to trade in information and communication technology products.

by D. Ravi Kanth

GENEVA: Major developed and some developing countries on 1 November signalled their intention to pursue yet another plurilateral initiative at the WTO, ostensibly for removing/reducing non-tariff barriers (NTBs) in global trade in information and communication technology (ICT) products, trade negotiators told the *South-North Development Monitor (SUNS)*.

Instead of addressing the NTBs in the Doha work programme on non-agricultural market access (NAMA), these major industrialized and some developing countries – Switzerland, the European Union, Japan, Hong Kong-China, the United States, Singapore, Chinese Taipei, Korea and China, among others – indicated their intention to secure an agreement for tackling NTBs in the ICT sector at the WTO's eleventh Ministerial Conference, to be held next year in Buenos Aires.

At a meeting of the WTO Committee on the Information Technology Agreement on 1 November, India and Egypt severely questioned the move to pursue a sectoral approach for tackling NTBs outside the NAMA negotiations.

The two developing countries said they will not accept such an approach which further undermines the NAMA negotiations as set out in the Doha work programme, according to negotiators who took part in the meeting.

The former chair of the Doha NAMA negotiations, Ambassador Remigi Winzap of Switzerland, in his last report delivered on 11 April, had said unambiguously that “many Members also flagged an interest in NTBs.”

He said “some members would see merit in continuing discussions on NTB proposals on which most work has been done in the past (e.g. Horizontal Mechanism, Transparency, Textile labelling)” while some others “see potential in new areas (e.g. on foodstuff).”

“I also heard that if a sectoral approach were to be pursued for NAMA tariff reductions, one could also seek to address the NTB part of such sector,” the

former chair said, giving an indication that a sectoral approach to NTBs is being considered by some members.

“I further heard that work on NTBs undertaken in some RTA [regional trade agreement] negotiations, such as on regulatory coherence could be looked into and might inspire discussions in the WTO, either in the NAMA negotiating group or in the Committee on Market Access.”

Nevertheless, despite opposition from key developing countries, the trade majors at the WTO seem hell-bent on making use of the supposedly member-driven and multilateral WTO to address their specific concerns in accordance with the interests of their powerful industrial lobbies, said an African negotiator.

“Otherwise, how do we explain an unofficial document prepared by the ICT lobbies of the US, the EU and Japan being circulated at the meeting to reinforce their specific demands on reducing/removing NTBs?” the negotiator asked.

ICT lobby proposals

In the two-page unofficial room document titled “Furthering Global Trade in ICT Products by Streamlining the Application of Technical Rules”, the sponsors (the US, the EU and Japan on behalf of their ICT lobbies) proposed: “Following the agreement for an expanded Information and Technology Agreement (ITA), the ICT global industry would like to suggest to start with the following areas within the framework of the WTO-ITA Committee's Non-Tariff Measures Work Programme, with the aim of removing or reducing these [technical] barriers to trade.”

“We encourage ITA Committee participants to achieve outcomes in these areas for the next WTO Ministerial Conference (MC11) in Argentina at the end of 2017,” the unofficial document demanded.

It identified three major areas: “alignment of conformity assessment procedures and increased transparency”; “adoption of e-labelling”; and “avoiding

forced localization” measures, in which it mentioned the importance of crafting obligations on forced localization measures as set out in “regional trade agreements, such as the Trans-Pacific Partnership (TPP)”.

Under “alignment of conformity assessment procedures and increased transparency”, the document suggested that “there is a proliferation of unique and unnecessarily burdensome regulatory obligations at the national level in the areas of testing and certification requirements.”

“Redundant testing and certification increase customer costs, limit choice, and delay market entry in many cases by weeks or months, which is especially significant for ICT, given the rapid development and marketing/sales cycle of ICT products. WTO members should reduce these NTBs in accordance with the WTO Agreement on Technical Barriers to Trade (TBT Agreement).”

The document maintained that “work in the WTO ITA Committee to highlight these obstacles to trade with a view to their reduction could deliver a tangible, positive result by MC11.”

As a first step, the ITA Committee's “Guidelines for EMC/EMI [Electromagnetic Compatibility/Electromagnetic Interference] Conformity Assessment Procedures from 2005” can simplify and align rules related to conformity assessment to enhance global trade in ICT products, according to the document.

Further, as part of this effort, the sponsors said “we propose that the ITA Committee send a survey to Members requesting specific information about their technical and administrative requirements for EMC/EMI, as well as other common regulated areas such as safety and radio aspects (where relevant).”

“In addition to asking which specific standards and what corresponding conformity assessments are required (e.g. in-country testing, third party, or SDoC), the survey could address Members' approaches to the adoption of global standards,” according to the document.

On “adoption of e-labelling”, the industry lobbies said: “E-labelling is the option for the manufacturer to display required regulatory information and markings (e.g. CE mark in Europe, FCC in the US) via the product's integral screen or other electronic method instead of physically affixing them on the product itself.”

They claimed that e-labelling will

bring “many benefits for market surveillance, manufacturers and consumers alike, such as better access to regulatory information, removal of design restrictions, better traceability and a more environmental-friendly option.”

At WTO level, according to the ICT lobbies, “we propose the negotiators discuss the opportunity of adopting a global framework for e-labelling for ICT products.”

This framework would feature members’ adoption of the same legal requirements (based on common guidelines and standards), to ensure that manufacturers placing products on all markets can equally benefit from this option, it suggested.

On the last issue of avoiding forced localization barriers, the global ICT industry “would like to draw the Committee’s attention to forced localization measures impacting trade in ICT

equipment and highlight how these measures raise prices, distort supply and demand, and increase costs for customers seeking to purchase ICT equipment, particularly SMEs [small and medium-sized enterprises].”

“This work could include discussion of how Members’ existing obligations under the WTO Agreement address forced localization measures and how regional trade agreements such as the Trans-Pacific Partnership also address these measures,” it maintained.

In a nutshell, industry lobbies are able to reach a supposedly member-driven and rules-based WTO directly and press for sectoral agreements regardless of opposition from members. The lobbies and their governments seem determined to press ahead with plurilateral initiatives if developing countries raise any opposition, the African negotiator argued. (SUNS8347) □

from 1 to 31 December 2016.

“In order to ensure that they are properly received and distributed, nominations and supporting information should be submitted to me either by hand or sent to the above address only by express mail, registered mail or courier service (Swiss Post, DHL, FedEx, UPS, TNT, DPD, etc.) ... In line with the official and confidential nature of the nomination process, please note that nominations and supporting information received by e-mail or fax will NOT be accepted,” the GC chair maintained.

Since the WTO starts its yearend closure on 23 December inclusive, “nominations during the period of 23-31 December should be sent only by express mail, registered mail or courier service (Swiss Post, DHL, FedEx, UPS, TNT, DPD, etc.)”, he said.

Subsequently, the chair along with the chairs of the Dispute Settlement Body and the Trade Policy Review Body will consult with the candidates, including making presentations at the General Council.

Finally, the appointment process will conclude with a General Council meeting convened not later than three months prior to the expiry of the incumbent’s term, i.e., not later than 31 May 2017, at which a decision to appoint the Director-General must be taken.

Director-General’s letter

The GC chair’s Job document also includes a one-page letter by Azevedo in which he informed members as to how the WTO achieved a “great deal” during his term starting from 1 September 2013. “We have demonstrated we can deliver major negotiated outcomes, with the successful conclusion of the ministerial conferences in Bali in 2013 and Nairobi in 2015,” Azevedo said.

(Azevedo often claimed credit that the Bali Ministerial Conference delivered the \$1.0 trillion Trade Facilitation Agreement and the Nairobi Ministerial Conference delivered the \$1.3 trillion expansion of the Information Technology Agreement. Both these agreements were at the heart of the US trade agenda.)

Azevedo claimed that significant improvements were made in the dispute settlement system and other bodies of the WTO. He said more needs to be done in the global trading system in the coming years for all members, “particularly for developing and least-developed coun-

DG selection (reappointment) process off to preemptive start

The selection of the next Director-General of the WTO will officially get underway on 1 December with the nomination process, and incumbent Roberto Azevedo has announced his decision to seek reappointment.

by D. Ravi Kanth

GENEVA: In what seems to be a coordinated development, the WTO General Council chair, Ambassador Harald Neple of Norway, on 3 November issued a “Job” (informal) document laying out the selection process for the next Director-General, in which he has included a letter written by the current Director-General Roberto Azevedo stating that he wants to serve for a second term, according to the document reviewed by the *South-North Development Monitor* (SUNS).

The three-page Job document issued by the GC chair (Job/GC/109) includes two parts. Part I says, “Since the term of office of the Director-General, Mr Roberto Azevedo, comes to an end on 31 August 2017, the process for the appointment of a Director-General must begin on 1 December 2016.”

“Accordingly, with the present letter I wish to formally notify Members of the opening of the appointment process as from 1 December,” the GC chair said.

“The Procedures also provide that where a serving Director-General decides to seek reappointment, he should so no-

tify the General Council Chair before the start of the process, and shall thereby be considered to be a candidate,” Neple said. “The Chair should inform Members of the candidature of the incumbent Director-General, in order that they may take this into consideration in submitting their nominations.”

“Accordingly, I wish to inform Members that I have received a communication from the Director-General (copy attached) notifying me of his decision to seek reappointment for a further term,” the GC chair said.

The chair informed members about how he will be assisted in the appointment process by the chairs of the Dispute Settlement Body and the Trade Policy Review Body acting as facilitators: “They will be, during the remainder of my term until February next year, Ambassador Xavier Carim (South Africa) and Ms Irene B. K. Young (Hong Kong, China), respectively.”

Neple has indicated that the appointment process will begin with nominations, where members will have one month to nominate their candidates, i.e.,

tries.”

On the negotiating front, said Azevedo, “members have committed to advancing the remaining Doha issues, while many have raised other issues for discussion.”

Against this backdrop, he said, he is ready to serve as Director-General for a second term.

The GC chair’s Job document and the one-page statement from Azevedo seem pretty well-coordinated to preempt any likely challenge from other developing countries which feel that the current Director-General singularly and single-handedly worked to promote the priorities of a major industrialized country, said a trade envoy who asked not to be quoted.

Recently, the US Trade Representa-

tive Michael Froman showered praise on Azevedo’s role, along with the chair of the Nairobi Ministerial Conference Amina Mohamed, in shaping the outcome of that conference. He praised Mohamed and Azevedo for “shepherding” the process at Nairobi, which he said “represented a critical turning point in the history of the WTO”.

[With the US recently having set a ‘remarkable’ precedent in vetoing a second term for a retiring member of the WTO’s Appellate Body, and subsequently insisting on this right (to say “no” to a second term) for itself, it remains to be seen how the Director-General selection process will turn out, adds Chakravarthi Raghavan, Editor Emeritus of *SUNS*, in a comment.] (*SUNS8348*) □

Strong support for UN panel’s recommendations on access to medicines

Developing-country WTO members have welcomed a recent report by a UN panel which called on governments to make full use of flexibilities allowed by the WTO’s intellectual property rules to promote access to medicines.

by Kanaga Raja

GENEVA: A meeting of the WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) on 8-9 November discussed a recent report of the UN Secretary-General’s High-Level Panel on Access to Medicines, with many developing countries expressing strong support for the panel’s recommendations, which advocate, among others, the full use of flexibilities in the TRIPS Agreement.

The item on the UN panel report had been placed on the agenda of the TRIPS Council meeting by Brazil, China, India and South Africa.

The high-level panel was convened in November 2015 by UN Secretary-General Ban Ki-moon and its final report was released on 14 September 2016. Among its recommendations are that WTO members must make full use of the TRIPS Agreement flexibilities as confirmed by the WTO Doha Declaration on the TRIPS Agreement and Public Health to promote access to health technologies when necessary. Governments are also called upon to adopt and implement legislation that facilitates the issuance of

compulsory licences for legitimate public health needs and particularly with regard to essential medicines. The panel also recommended that public-funded research in the pharmaceutical sector must ensure that knowledge generated from such research be made freely available (see *TWE* No. 625 for details of the panel’s recommendations).

At the TRIPS Council meeting, many developing countries, including Egypt, Indonesia, Bangladesh and Bolivia, welcomed the discussions on the report in the Council and voiced their support for the panel’s recommendations.

The US, the EU, Japan and Switzerland, supported by Korea, differed from developing countries, while some other developed countries said they needed more time to study the panel’s recommendations.

Policy incoherence

In its statement, India, one of the co-sponsors of the agenda item, noted that the UN Secretary-General had convened the panel “to review and assess propos-

als and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.”

The panel was co-chaired by Ruth Dreifuss, former President of Switzerland, and Festus Gontebanye Mogae, former President of Botswana, and was comprised of 15 eminent individuals with an understanding of a broad range of legal, commercial, trade, public health and human rights issues central to promoting innovation and access to technologies. Their work was supported by a 25-member Expert Advisory Group constituted from academia, the private sector, civil society and relevant UN and international organizations, such as the WTO.

According to India, the panel, inter alia, made recommendations on intellectual property (IP) laws and access to health technologies, especially on: (i) TRIPS flexibilities and TRIPS-plus provisions, and (ii) publicly funded research.

India underlined that the TRIPS Agreement established minimum standards of protection that each government has to give to the intellectual property of fellow WTO members. The TRIPS Agreement tried to strike an appropriate balance between the interests of intellectual property rights (IPRs) holders and users.

Article 7 of the TRIPS Agreement, entitled “Objectives”, recognizes that the protection of intellectual property should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of users and producers of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations.

The search for a balance between the need to protect IPRs to provide incentives for research and development (R&D) on the one hand and, on the other hand, to address concerns about the potential impact of such protection on the health sector – in particular its effect on prices – has been an important consideration in the WTO’s work, said India.

According to India, the TRIPS Agreement also recognizes that the principles of IP protection are based on underlying public policy objectives.

Article 8 of the TRIPS Agreement, entitled “Principles”, states that WTO

members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socioeconomic and technological development, provided that such measures are consistent with the provisions of the Agreement.

Article 8(2) further states that appropriate measures may be needed to prevent the abuse of IPRs by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

India pointed out that in furtherance of the objectives and principles of the TRIPS Agreement enshrined in Articles 7 and 8, a number of safeguards or flexibilities have become an integral part of the framework of the Agreement.

“These flexibilities can be used to pursue public health objectives. However, to implement these flexibilities, action is needed at the domestic level by incorporating them into national IP regimes keeping in mind each country’s individual needs and policy objectives.”

Key TRIPS flexibilities include transition periods for least-developed countries (extended by the WTO last year until 1 January 2033); differing IP exhaustion regimes (international exhaustion allows parallel importation of patented products from other countries where they are the cheapest); refining the criteria for grant of a patent; pre-grant and post-grant opposition procedures; as well as exceptions and limitations to patent rights once granted, including regulatory review exception (“Bolar” exception) to facilitate market entry of generics and compulsory licences, including through the paragraph 6 mechanism and government use.

For pharmaceutical patents, these flexibilities have been clarified and enhanced by the 2001 Doha Declaration on the TRIPS Agreement and Public Health, which states that WTO members have the flexibility to interpret and implement the TRIPS provisions in a manner supportive of their right to protect public health.

Although the TRIPS Agreement provides a substantial degree of flexibility, the full utilization of these flexibilities is in the hands of member states.

However, many developing countries are constrained by limited technical capacity to make full use of the TRIPS

flexibilities and therefore need appropriate technical assistance from relevant multilateral organizations in order to fully utilize the flexibilities from the perspective of specific sectors of their economies such as agriculture, manufacturing, public health, environment, etc.

Moreover, even where some developing countries have used the flexibilities available to them under the TRIPS Agreement to address public interest objectives through measures which are fully consistent with the Agreement, these attempts have been challenged legally as well as politically.

“A slew of regional trade agreements containing TRIPS-plus standards of IP protection and enforcement have the potential to significantly undermine the effective and full use of the TRIPS flexibilities. Investor-State disputes under regional or bilateral investment protection agreements are also emerging as a major challenge to the use of TRIPS flexibilities in the public interest,” said India.

Panel recommendations

Against this background, said India, the recommendations of the UN high-level panel, especially on TRIPS flexibilities and TRIPS-plus provisions and publicly funded research, are very important with regard to access to health technologies. The panel’s recommendations in these areas are as follows:

TRIPS flexibilities and TRIPS-plus provisions

World Trade Organization (WTO) Members should commit themselves, at the highest political levels, to respect the letter and the spirit of the Doha Declaration on TRIPS and Public Health, refraining from any action that will limit their implementation and use in order to promote access to health technologies. More specifically:

(a) WTO Members must make full use of the policy space available in Article 27 of the TRIPS Agreement by adopting and applying rigorous definitions of invention and patentability that curtail the evergreening [of patents] to ensure that patents are only awarded when genuine innovation has occurred.

(i) The United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), the World Health Organization (WHO), the World Intellectual Property Organization (WIPO) and the World Trade

Organization (WTO) should cooperate with one another and with other relevant bodies with the requisite expertise to support governments to apply public health-sensitive patentability criteria.

(ii) These multilateral organizations should strengthen the capacity of patent examiners at both national and regional levels to apply rigorous public health-sensitive standards of patentability taking into account public health needs.

(b) Governments should adopt and implement legislation that facilitates the issuance of compulsory licences. Such legislation must be designed to effectuate quick, fair, predictable and implementable compulsory licences for legitimate public health needs, and particularly with regards to essential medicines. The use of compulsory licensing must be based on the provisions found in the Doha Declaration and the grounds for the issuance of compulsory licences left to the discretion of governments.

(c) WTO Members should revise the paragraph 6 decision in order to find a solution that enables a swift and expedient export of pharmaceutical products produced under compulsory licence. WTO Members should, as necessary, adopt a waiver and permanent revision of the TRIPS Agreement to enable this reform.

(d) Governments and the private sector must refrain from explicit or implicit threats, tactics or strategies that undermine the right of WTO Members to use TRIPS flexibilities. Instances of undue political and commercial pressure should be formally reported to the WTO Secretariat during the Trade Policy Review of Members. WTO Members must register complaints against undue political and economic pressure, and take punitive measures against offending Members.

(e) Governments engaged in bilateral and regional trade and investment treaties should ensure that these agreements do not include provisions that interfere with their obligations to fulfil the right to health. As a first step, they must undertake public health impact assessments. These impact assessments should verify that the increased trade and economic benefits are not endangering or impeding the human rights and public health obligations of the nation and its people before entering into commitments. Such assessments should inform negotiations, be conducted transparently and made publicly available.

Publicly-funded research

(a) Public funders of research must require that knowledge generated from such research be made freely and widely available

through publication in peer-reviewed literature and seek broad, online public access to such research.

(b) Universities and research institutions that receive public funding must prioritize public health objectives over financial returns in their patenting and licensing practices. Such practices may include publication, non-exclusive licensing, donations of intellectual property and participation in public sector patent pools, among others. Sufficient incentives must be in place in these practices to make it attractive for developers to underwrite the cost of bringing a product to market at affordable prices that ensure broad availability.

(c) Universities and research institutions that receive public funding should adopt policies and approaches that catalyse innovation and create flexible models of collaboration that advance biomedical research and generate knowledge for the benefit of the public.

India encouraged WTO members to share their views on the recommendations of the panel at the TRIPS Council session. It encouraged members in subsequent sessions to share their experiences in using the TRIPS flexibilities to address public policy priorities, in particular those related to public health.

Public health commitment

In its statement, Brazil noted that among the panel's recommendations, some are directly related to the TRIPS Agreement. One of these calls for WTO members to commit, at the highest political levels, to respect the letter and the spirit of the Doha Declaration on the TRIPS Agreement and Public Health, refraining from any action that will limit their implementation and use in order to promote access to health technologies.

Brazil said it has "a strong commitment to the improvement of public health in our country and in our region."

To increase the bargaining power of governments in the acquisition of essential medicines, Brazil and other countries established, in 2015, a regional system of procurement for these life-saving goods. This arrangement, with the participation of most South American countries, is one sort of innovative mechanism aimed at helping countries to cope with high prices of pharmaceuticals.

According to Brazil, engaging in the discussion of the recommendations by the high-level panel might allow WTO

members to consider different aspects of the relationship between access to medicines and the patent system.

Brazil said it is convinced that a balanced and effective IP system would go a long way towards facilitating access to essential medicines without in any way infringing on market principles.

"We all know access to medicines is a challenge for most countries, whether least developed, developing or developed. We present these views in a spirit of dialogue, convinced that they are in the interest of everyone, without exception, and encourage the whole Membership to work constructively towards achieving the goal of universal access to medicines," said Brazil.

According to trade officials, South Africa said that the panel report calls upon WTO members to commit to and respect the Doha Declaration on the TRIPS Agreement and Public Health, and that countries should make full use of the TRIPS flexibilities.

China said that it was pleased to be a co-sponsor of the agenda item, adding that the high-level panel gave various recommendations and provided valuable information to members.

Public health is one of the most important issues on the agenda, it said, noting that leaders at the Hangzhou G20 summit also made a commitment in this regard.

Disappointed

According to trade officials, the United States said that although it is strongly committed to creating effective and affordable life-saving medicines around the world, it was disappointed by the panel report, which it claimed "distracts from rather than benefits" the objective of achieving universal health.

It maintained that intellectual property protections need to be in place to support new research and innovation. "There can be no access to drugs that have not been developed; support in innovation is essential," said the US.

The European Union maintained that the work conducted by the panel started from an assumption that there was a "policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health".

"As the European Commission already indicated in its written contribu-

tion to the Panel, it does not share this assumption," it said.

The Commission shared the panel report's acknowledgement that there are many reasons "why people do not get the healthcare they need, ranging from: under-resourced health systems, a lack of sufficiently qualified and skilled healthcare workers, inequalities between and within countries, exclusion, stigma, discrimination and exclusive marketing rights". Another important problem is the global medicine shortages and stock-outs.

The EU said this is why the Commission, in its written contribution to the panel, encouraged it to adopt a holistic approach to the problem of access to medicines that could result in a valuable contribution to the wider debate.

"However, due to its limited mandate, the High-Level Panel has focused its proposals exclusively on addressing an alleged conflict between a research and development model that (partially) relies on intellectual property rights and the possibility of providing affordable medicines."

The EU said it is committed to increasing access to affordable medicines and finding solutions to the world's pressing public health challenges and inequities, adding that it pursues a rights-based approach to health.

Strengthening all areas of a health system, including the availability of qualified health workers, the provision of affordable medicines and the adequate financing of the sector, is central to moving towards universal health coverage with quality health services accessible and affordable for all. The quality and integrity of the pharmaceutical distribution chain is also essential to improving public health, added the EU.

"The challenge is to strike the right balance between the need to promote and finance the research of new and better medicines for all, ensuring that medicines are accessible and affordable to those in need, while guaranteeing the sustainability of health systems. We believe that these goals are not contradictory and must be pursued jointly," it said.

The EU claimed that the current innovation model, including the role of trade related to IP, has delivered consistent progress in global public health, leading to key new and improved treatments as well as much-extended life ex-

pectancy.

It also said that the panel report underplays the fact that the development of new drugs requires significant investment and long-term research, coupled with clinical trials and regulatory approval procedures.

The EU said that the exclusive right conferred by a patent is an important incentive for innovator pharmaceutical companies to make the necessary investments into that research and development. Without incentivizing the innovator pharmaceutical companies to invest in research, the Sustainable Development Goal of ensuring healthy lives and promoting well-being for all, including achieving universal health coverage, would be severely undermined, it said.

According to trade officials, Switzerland, Japan and Korea expressed similar concerns on the “narrow scope” of the panel report. They argued that the use of compulsory licences must not discourage innovation.

A few countries, including Canada, Chile, Australia and Norway, said that they needed more time to consider the wide array of recommendations highlighted in the report.

The Holy See, an observer, echoed the concerns on access to medicines, highlighting that health is a fundamental human right and “millions are left behind”. Ensuring success of the Sustainable Development Goals includes an end to epidemics and requires global solidarity and initiatives, it said.

Work of UN bodies

According to trade officials, WHO, UNCTAD and the Joint UN Programme on HIV/AIDS (UNAIDS) also highlighted the work that they have undertaken in this area.

The UNCTAD secretariat said that it recently recommended to the UN Secretary-General to consider endorsement of the panel report. As a member of the Expert Advisory Group to the panel, UNCTAD was involved in the expert discussions that fed into the panel report, and it also provided comments on the first draft of the report.

The report makes recommendations in three separate but inter-related areas: (i) intellectual property laws and access to health technologies; (ii) new incentives for research and development of health technologies; and (iii) governance, ac-

countability and transparency.

Within the context of its mandate, UNCTAD said, its technical expertise resides mainly within the first of these areas. The bulk of UNCTAD’s contributions during the technical discussions with the Expert Advisory Group and the panel related to IP laws and access issues.

On IP laws and access to health technologies, the panel report recommends the full use of flexibilities inherent in the TRIPS Agreement as reiterated in the Doha Declaration on the TRIPS Agreement and Public Health.

UNCTAD said its advisory and capacity-building work over the past 10 years shows that these flexibilities, such as the recourse to strict patenting requirements, certain exceptions to patent rights and the availability of compulsory licences, play an important role in promoting generic competition and thus decreasing drug prices.

“According to our research many of those countries that now enjoy a fully developed pharmaceutical sector in the past relied on many of those flexibilities that the High Level Panel Report recommends in order to strike a balance between inventors’ rights and the realization of certain development objectives.”

According to UNCTAD, the panel’s recommendations underline the UN’s commitment to the realization of Sustainable Development Goal 3 (“Ensure healthy lives and promote well-being for all at all ages”), which in its targets expressly refers to the goal of providing “access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use to the full the provisions in the Agreement on Trade Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all”.

On the new incentives for research and development of health technologies, the panel report recommends increased investment by governments in health technology innovation to address unmet needs, such as neglected tropical diseases and antimicrobial resistance.

The report refers to various ongoing initiatives in this regard and underlines the need to develop new and innovative sources of financing public R&D, in line with the Addis Ababa Action Agenda on

Financing for Development, said UNCTAD.

The report is not limited to public funding but underlines the untapped opportunities for increasing private sector funding. The recommendations provide important support to efforts that seek to identify innovative opportunities for both public and private sector funding of health R&D.

UNCTAD said it is willing to contribute its vast experience in investment policymaking and technology issues in this regard.

Finally, on governance, accountability and transparency, the panel report calls for increased collaboration among UN agencies to improve coherence in technical cooperation activities related to public health as well as to monitor the implementation of the panel’s recommendations.

UNCTAD said that, in the delivery of its technical cooperation activities on investment and intellectual property rights as it relates to trade and development, it already cooperates to a large extent with other agencies such as UNAIDS, UNDP, WIPO, WHO and WTO.

In its statement, WHO said that the panel report’s conclusions are sobering. “Millions of people continue to suffer and die from treatable conditions,” the report observes, “because of a lack of access to health technologies.”

Pharmaceutical research still focuses disproportionately on the treatment of diseases that are common in the developed world, neglecting those that primarily afflict the world’s poor.

“The report thus echoes conclusions of previous reports done under the auspices of the WHO, which draw attention to disparities in the R&D system and lack of access to essential medicines,” said WHO.

WHO then went through the different recommendations in the panel report, in particular those that are directly addressed to WHO, and highlighted its relevant activities and future plans in this area.

According to trade officials, members agreed to revert to the matter at the next meeting of the TRIPS Council in February 2017. (SUNS8354) □

The full texts of some statements made during the discussion in the TRIPS Council can be found on the website of Knowledge Ecology International: www.keionline.org.

CETA a corporate-driven, “flawed” treaty, charges UN expert

The newly signed free trade accord between the EU and Canada gives undue power to corporations at the expense of national governments and human rights, says a UN rights expert.

by Kanaga Raja

GENEVA: The Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada is a corporate-driven, fundamentally flawed treaty which should not be signed or ratified without a referendum in each of the countries concerned, a United Nations human rights expert has said.

The UN Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas (United States), made this recommendation on 28 October, ahead of the signing of the trade agreement by both parties.

The agreement was signed by Canadian Prime Minister Justin Trudeau and top EU officials in Brussels on 30 October. However, in order for it to come into force, the deal will need to be approved by some 38 national and regional parliaments, according to a *Guardian* news report.

In a 28 October UN news release, de Zayas denounced the pressures that were brought to bear on the Belgian regional parliament of Wallonia, which initially said that it would not approve the treaty but later said its concerns had been met.

“A culture of bullying and intimidation becomes apparent when it comes to trade agreements that currently get priority over human rights,” the rights expert said.

De Zayas, in his previous reports to both the UN Human Rights Council and the UN General Assembly, had warned that CETA is incompatible with the rule of law, democracy and human rights. He had substantiated how and why this was the case before the Parliamentary Assembly of the Council of Europe.

The rights expert expressed the belief that both CETA and the Transatlantic Trade and Investment Partnership (TTIP) agreement currently being negotiated by the EU and the US give undue power to corporations at the expense of national governments and human rights.

“The danger of CETA and TTIP being signed and one day entering into force is so serious that every stakeholder,

especially parliamentarians from EU Member States, should now be given the opportunity to articulate the pros and cons,” he said.

The corporate-driven agenda

gravely endangers labour, health and other social legislation, and there is no justification to fast-track it, de Zayas warned.

“Civil society should demand referendums on the approval of CETA or any other such mega-treaty that has been negotiated behind closed doors,” the rights expert recommended.

He also said the EU should have heeded expert warnings and strong civil society opposition to CETA.

Specific concerns expressed by de Zayas over CETA cover, among others, provisions which he said could hamper states’ regulatory powers and could allow investor companies to sue over legislation affecting profits, even in cases

Talks on TNC-human rights treaty welcomed

GENEVA: Friends of the Earth International (FoEI) has commended what it said was the rapidly increasing support, interest and mobilization evident during talks here in the week of 24-28 October aimed at establishing a new and unprecedented treaty on transnational corporations (TNCs) and human rights.

In a press release following the end of the week-long second session of the intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, FoEI said that the creation of a set of international binding rules will have profound implications for the world’s largest companies, obliging them to respect human rights in a way they have never had to before.

The intergovernmental working group was established by the UN Human Rights Council with the mandate to “elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”

“This Treaty was always meant to be about binding rules to finally rein in the behaviour of transnational companies and their supply chains. The fact that so many countries – led by South Africa and Ecuador – voiced their unequivocal support for legally binding rules, sets exactly the right tone for an ambitious and far-reaching negotiation,” said Lucia Ortiz, from Friends of the Earth Brazil and co-coordinator of FoEI’s Economic Justice-Resisting

Neoliberalism programme.

FoEI said that it was pleased to see an increasing number of countries – including the EU and member states – participating in a positive and constructive exchange of views together with civil society organizations, lawyers and others.

“We are content to see the EU and some member states finally in the room – in response to the demands of 90,000 European citizens who called on them to step up to the task of creating a Treaty that puts human rights before corporate interests,” said Anne van Schaik from Friends of the Earth Europe.

“However, we were hoping that they would participate more actively in the debate, and would be more prepared, but at least they came. Now they need to focus on collaborating with civil society and affected people around the world, to start crafting the concrete elements needed for a strong and effective Treaty,” she added.

“More than a hundred activists from 29 countries were present at this session in Geneva – the movement for a binding treaty that puts human rights above corporate profits is snowballing,” Ortiz said, adding that civil society strength was felt outside in public activities, and inside where strong interventions and proposals on content were made.

FoEI said it looks forward to the next stage in this pivotal process, when Ecuador, the chair of the intergovernmental working group, will begin a process for formal negotiations. (Kanaga Raja/SUNS8345) □

where the laws were designed to protect workers' rights, public health or the environment.

States should not sign the agreement unless their powers to regulate and legislate in the public interest are fully safeguarded and the so-called "investment protection" chapter is removed, he underlined. "This chapter creates privileges for investors at the expense of the public," said de Zayas.

He noted that the new text may slightly amend this chapter. However, he emphasized that the Investment Court System (ICS) is similarly incompatible with the International Covenant on Civil and Political Rights (ICCPR), which requires legal cases to be heard by transparent, accountable and independent public tribunals.

"The associations of German and Spanish judges have already decried this kind of investor-State dispute settlement, which is a one-way street, and also discriminates against domestic enterprises."

Moreover, he said, the ICS is not necessary when all participating states are parties to the ICCPR and already have public courts that are independent, transparent and accountable.

"CETA – along with most trade and investment agreements – is fundamentally flawed unless specific provision stipulates that the regulatory power of States is paramount and must not be impacted by a regulatory chill."

"It must also be clear that in case of conflict between commercial treaties and human rights treaties, it is the latter that must prevail," said the rights expert.

Treaty on transnational corporations

He pointed out that there was now a strengthened case for a legally binding instrument on corporate social responsibility which obliges transnational corporations not to interfere in the internal affairs of states and imposes sanctions when they pollute the environment or shift their profits into tax havens.

In this context, the rights expert drew attention to the intergovernmental working group on transnational corporations which was established by the UN Human Rights Council and which held its second session here in October (see box on previous page).

De Zayas, who has participated in this working group, urged the prompt adoption of a treaty that makes the UN Guiding Principles on Business and Human Rights legally binding and enforce-

able.

The rights expert also said it was time to discuss the secrecy surrounding the drawing up of CETA, in violation of state obligations to ensure open access to information, and the anomaly that much of the information about the treaty became available only through whistleblowers.

"The constitutionality of the CETA and TTIP agreements should be tested before the European Court of Justice in Luxembourg, and the human rights aspects before the European Court of Human Rights, which could be called upon to issue interim measures of protection," de Zayas said. "National courts should also test the compatibility of the agreements with national constitutions."

"There is a legitimate fear that CETA will dilute environmental standards,

food security, and health and labour protection," he said.

"A treaty that strengthens the position of investors, transnational corporations and monopolies at the expense of public interest conflicts with the duty of States to protect all people under their jurisdiction from internal and external threats."

The rights expert also said that the EU should have paid greater attention to a warning from a committee of Members of Parliament from the Parliamentary Assembly of the Council of Europe. The Committee on Social Affairs, Health and Sustainable Development had said earlier in October that CETA imposed unacceptable restrictions on the legislative powers of national parliaments, and had called for the signing to be postponed. (SUNS8345) □

Options lacking to help developing countries tackle debt crises

Participants at a recent seminar at the UN lamented the absence of a sovereign debt restructuring mechanism amid the growing threat of debt crisis facing many developing countries.

by *Tharanga Yakupitiyage and Lyndal Rowlands*

NEW YORK: Despite many developing countries facing a very real risk of falling into debt crisis, the current options available to assist countries to manage their debts are surprisingly lacking.

This scenario formed the basis of discussions on 31 October at a Group of 77 (G77) seminar on "Sovereign Debt Vulnerabilities and the Opportunity for a New Debt Workout Mechanism building on the UN General Assembly process."

The G77 is the largest intergovernmental organization of developing countries in the UN and is concerned with economic issues.

"The challenging fact is that many countries ... remain vulnerable to debt crises," said Thai Ambassador and G77 Chair Virachai Plasai in his opening address at the seminar.

Other speakers at the event echoed Plasai's sentiments, during discussions moderated by Ambassador Ruben Zamora, Permanent Representative of El Salvador to the UN.

"The dramatic fall in commodity export prices and historically low interest rates have been key ingredients for a scenario which shows disturbing simi-

larities to the buildup phase of the Third World debt crisis of the 1980s which cost in many countries a 'lost decade of development'," said Ambassador Sacha Llorenti, Permanent Representative of Bolivia to the UN.

Llorenti was also the chair of a UN General Assembly ad hoc committee that formulated nine principles for sovereign debt restructuring processes. These principles were subsequently adopted by the General Assembly in 2015.

Speakers at the G77 seminar also noted that underlying issues which contributed to previous debt crises have not been adequately addressed.

"The root of the debt problem has not been tackled or solved, therefore the debt crisis should be on the top of the policy agenda," said Bettina Luise Rurup, Executive Director of the Friedrich-Ebert-Stiftung's New York Office.

The Executive Director of Jubilee USA, Eric LeCompte, echoed these sentiments, noting the importance of preventive measures. "Financial crisis is a recurring problem. Unless we have something in place that actually is a preventive measure for crises, we are going

to see crises become worse and we're going to see no particular ways to protect vulnerable populations," he said.

Dessima Williams, Special Advisor for Implementation of the Sustainable Development Goals in the Office of the President of the General Assembly, noted that despite debt forgiveness efforts for the world's poorest countries in the 1980s and 1990s, debt has again begun to increase since the global economic crisis.

Williams also noted that debt is not only owed to other governments and development banks, but that "a large share of debt is owed to the private sector."

Marilou Uy, Director of the Secretariat of the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development (G-24), said that increasing private sector debt could be a potential cause for concern. "A particular worry expressed in the recent International Monetary Fund fiscal monitor ... is that while government debt has remained moderate, the debt of the corporate sector across major emerging markets has risen sharply in the past few years."

Absence of debt workout system

However, despite the serious threats debt crises pose to sustainable development, currently the international mechanisms that exist to address the problem are remarkably lacking.

In his keynote address, US economist Joseph Stiglitz told delegates at the G77 event that these issues stem from the lack of a sound financial structure. "The current non-system is flawed and doesn't work," he stated as he called for a new debt restructuring process.

Existing "gaps" in the international financial and legal systems have created opportunities for entities such as vulture funds to take advantage of distressed developing nations, undermining any progress towards a new debt structure, Stiglitz noted.

Meanwhile, as LeCompte pointed out, governments which fall into debt crisis are unable to declare bankruptcy, since bankruptcy is a measure which is available only at the domestic level.

Previous rounds of debt forgiveness have also proved to be only temporary fixes.

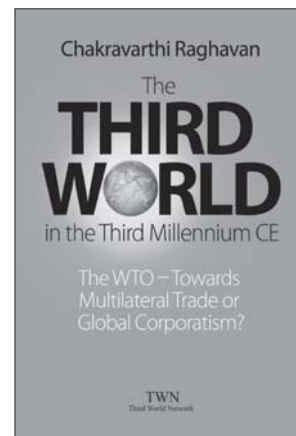
(continued on page

The Third World in the Third Millennium CE
The WTO – Towards Multilateral Trade or Global Corporatism?

By Chakravarthi Raghavan

THE second volume of *The Third World in the Third Millennium CE* looks at how the countries of the South have fared amidst the evolution of the multilateral trading system over the years. Even at the General Agreement on Tariffs and Trade (GATT) gave way to the World Trade Organization (WTO) as the institution governing international trade, this book reveals, the Third World nations have continued to see their developmental concerns sidelined in favour of the commercial interests of the industrial countries.

From the landmark Uruguay Round of talks which resulted in the WTO's establishment to the ongoing Doha Round and its tortuous progress, the scenario facing the developing countries on the multilateral trade front has been one of broken promises, onerous obligations and manipulative manoeuvres. In such a context, the need is for the countries of the Third World to push back by working together to bring about a more equitable trade order. All this is painstakingly documented by *Chakravarthi Raghavan* in the articles collected in this volume, which capture the complex and contentious dynamics of the trading system as seen through the eyes of a leading international affairs commentator.



ISBN: 978-967-0747-00-2 448 pages
 14 cm x 21.5 cm Year: 2014

	Price	Postage
Malaysia	RM45.00	RM2.00
Developing countries	US\$18.00	US\$9.00 (air)
Others	US\$25.00	US\$12.50 (air)

Orders from Malaysia – please pay by credit card/crossed cheque or postal order.

Orders from Australia, Brunei, Indonesia, Philippines, Singapore, Thailand, UK, USA – please pay by credit card/cheque/bank draft/international money order in own currency, US\$ or Euro. If paying in own currency or Euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

Rest of the world – please pay by credit card/cheque/bank draft/international money order in US\$ or Euro. If paying in Euro, please calculate equivalent of US\$ rate. If paying in US\$, please ensure that the agent bank is located in the USA.

All payments should be made in favour of: **THIRD WORLD NETWORK BHD.**, 131 Jalan Macalister, 10400 Penang, Malaysia. Tel: 60-4-2266728/2266159; Fax: 60-4-2264505; Email: twn@twnetwork.org; Website: www.twn.my

I would like to order copy/copies of ***The THIRD WORLD in the Third Millennium CE: The WTO – Towards Multilateral Trade or Global Corporatism?***

I enclose the amount of by cheque/bank draft/IMO.

Please charge the amount of US\$/Euro/RM to my credit card:

American Express Visa Mastercard

A/c No.: _____ Expiry date: _____

Signature: _____

Name: _____

Address: _____

Privatization the problem, rarely the solution

In the next two articles, *Jomo Kwame Sundaram* takes issue with unqualified advocacy of privatization of public enterprises. The first article points to adverse effects of privatization, while the article which follows contends that state-owned enterprises can be run efficiently.

Privatization has been one of the pillars of the counter-revolution against development economics and government activism from the 1980s.

Many developing countries were forced to accept privatization as a condition for support from the World Bank while many other countries have embraced privatization, often on the pretext of fiscal and debt constraints.

Privatization generally refers to changing the status of a business, service or industry from state, government or public ownership to private control. It sometimes also refers to the use of private contractors to provide services previously delivered by the public sector.

Privatization can be strictly defined to include only cases of the sale of 100%, or at least a majority share, of a public or state-owned enterprise (SOE), or its assets, to private shareholders.

The definition of privatization in some contexts is so broad that it includes cases where private enterprises are awarded licences to participate in activities previously the exclusive preserve of the public sector.

Why the turn to privatization?

The balance-of-payments problems arising from oil shocks in the 1970s and the US Federal Reserve's raising of the interest rate to well over 20% precipitated sovereign debt crises in Latin America and elsewhere from the early 1980s, forcing many developing countries to seek credit support from the International Monetary Fund (IMF) and the World Bank.

The World Bank and IMF's "neoliberal" policy prescriptions involved liberalization, deregulation and privatization. Collectively, these later came to be known as the Washington Consensus to refer to the common position of three Washington DC-based institutions – the US Treasury, the IMF and the World Bank.

Privatization was advocated as an

easy means to:

(1) reduce the "financial and administrative burden of the government", particularly in undertaking and maintaining services and infrastructure;

(2) "promote competition, improve efficiency and increase productivity" in the delivery of public services;

(3) "stimulate private entrepreneurship and investment", and thus accelerate economic growth;

(4) help reduce "the presence and size of the public sector, with its monopolistic tendencies and bureaucratic support".

Adverse consequences

Since a significant portion of state-run activities is undertaken by public monopolies, privatization will hand over such monopoly powers to private interests likely to use them to maximize profits.

The privatization of public services tends to burden the public, especially if charges are raised for privatized services which may not improve with privatization.

Private interests are only interested in profitable or potentially profitable activities and enterprises. Thus, the government will be saddled with unprofitable and less profitable activities, reinforcing the impression of SOE inefficiencies.

Consequently, privatization may worsen overall enterprise performance. "Value for money" may go down, despite improvements used to justify higher user charges.

Privatization in many developing and transition economies has primarily enriched a few with strong political connections who 'captured' lucrative opportunities associated with privatization, while the public interest has been increasingly sacrificed to such powerful private business interests. This has, in turn, exacerbated problems of corruption, patronage and other related prob-

lems.

Some other adverse consequences of privatization include:

- The social and political implications of having two types of services, i.e., one for those who can afford more costly, private – including privatized – services, and the other for those who cannot and hence have to continue to rely on subsidized public services, such as medical services and education.

- The effects of minimal long-term investments by private owners narrowly focused on maximizing short-term profits.

- Increased living costs as well as poorer services and utilities – especially in remote and rural areas – due to "economic costing" of services, e.g., telecommunications, water supply and electricity.

- Reduced jobs, overtime work and real wages for employees of privatized concerns.

Flawed arguments

Arguments for privatization can be refuted on the following grounds:

- The public sector can be more efficiently run, as demonstrated in Singapore, Taiwan and South Korea.

- Greater public accountability and a more transparent public sector can ensure greater efficiency in achieving the public and national interest while limiting public-sector waste and borrowing.

- Privatization may postpone a fiscal crisis by temporarily reducing fiscal deficits, but the public sector would lose income from profitable public sector activities and be stuck with financing and subsidizing unprofitable ones. As experience shows, the fiscal crisis may even deepen if the new owners of profitable SOEs avoid paying taxes with creative accounting or due to the typically generous terms of privatization.

- Privatization gives priority to profit maximization, typically at the expense of social welfare, equity and the public interest. It tends to adversely affect the interests of public sector employees and the public, especially poorer consumers.

- Public pressure to ensure the equitable distribution of share ownership (e.g., "voucher privatization") may inadvertently undermine pressures to improve corporate performance since each shareholder would then only have small

equity stakes and would therefore be unlikely to incur the high costs of monitoring management and corporate performance.

- With private capital diverted from productive new investments to buying over public sector assets, economic growth would be retarded rather than enhanced. (IPS) □

Jomo Kwame Sundaram was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

Are public enterprises necessarily inefficient?

by Jomo Kwame Sundaram

From the 1980s, various studies purported to portray the public sector as a cesspool of abuse, inefficiency, incompetence and corruption. Books and articles with pejorative titles such as “vampire state”, “bureaucrats in business” and so on thus provided the justification for privatization policies.

Despite the caricature and exaggeration, there were always undoubted horror stories which could be cited as supposedly representative examples. But similarly, by way of contrast, other experiences show that state-owned enterprises (SOEs) can be run quite efficiently, even on commercial bases, confounding the dire predictions of the prophets of public sector doom.

To be sure, unclear and contradictory objectives – e.g., to simultaneously maximize sales revenue, address disparities, generate employment, etc. – often meant ambiguous performance criteria, many open to abuse. Often, SOE failure on one criterion (e.g., cost efficiency) was justified on the grounds of fulfilling other objectives (e.g., employment generation). However, the ambiguity of objectives is not necessarily due to public or state ownership per se.

Problems of coordination among various government agencies and inter-departmental rivalries also played a role.

Some consequences included ineffective monitoring, inadequate accountability or, alternatively, over-regulation.

“Moral hazard” has also been a problem as SOE managements expected sustained financial support from the government, come what may, attributed to weak fiscal discipline or “soft budget constraints”.

Often, SOE managements lacked adequate or relevant skills but were constrained from addressing them expeditiously. But privatization does not automatically solve the problem of lack of

managerial skills.

Similarly, privatization of SOEs which are natural monopolies (e.g., public utilities) will not solve problems of inefficiency due to the monopolistic or monopsonistic nature of the industry or market.

Can SOE inefficiency be redressed?

Improvements in SOE management must be required by the national political leadership and can be enabled by increased enterprise and administrative autonomy as well as new incentive systems. Such changes do not require privatization as a prerequisite, but can be achieved by greater decentralization or devolution of administrative authority.

Many SOEs enjoyed monopoly or monopsony powers de jure or de facto, often providing cover for inefficiencies and other abuses. Hence, competition and enterprise reorganization – rather than mere changes in ownership status – are more likely to induce greater enterprise efficiency.

Instead of presuming that privatization is the only solution, reformers should consider the variety of modes of enterprise reform, privatization, marketization and other measures as options for improving the public sector.

With such an approach, privatization becomes one among several options available to the government for dealing with the undoubted malaise of many public sectors.

After all, there may well be instances where privatization offers the superior option (e.g., the Hungarian privatization of retail shops), but this should be the policy conclusion after serious consideration of all options available rather than the default option it has become in recent decades.

Remember that many SOEs were set up precisely because the private sector was believed to be unable or unwilling to provide certain services or goods. Such arguments may still be relevant in some cases but no longer relevant in other cases, and perhaps never even true or relevant in yet other cases.

Many SOEs have undoubtedly proven to be problematic, often inefficient. However, privatization has not proved to be the universal panacea for the myriad problems of the public sector it was touted to be.

In many instances, the problem with an SOE is not due to ownership per se, but rather to the absence of explicit, feasible or achievable objectives, or even to the existence of too many, often contradictory goals.

In other cases, the absence of managerial and organizational systems (e.g., flexibility, autonomy) and cultures supportive of such goals and objectives may be the key problem.

Privatization may facilitate the achievement of such organizational goals or objectives with the changes it may bring about in train, but this does not necessarily mean that privatization per se is responsible for the improvements.

In such cases, managerial and organizational reforms may well achieve the same objectives and goals, or even do better, at a reduced cost, and thus prove to be the superior option.

However, the superior option cannot be presumed a priori, but should instead be the outcome of careful consideration of the roots of an organization’s malaise. (IPS) □

Third World Economics is also available in Spanish.

Tercer Mundo Economico is the Spanish edition of *Third World Economics*, edited and published in cooperation with Red del Tercer Mundo, Uruguay.

For subscription details, please contact:

Third World Network/
Red del Tercer Mundo,
Av 18 De Julio 2095/301
Montevideo 11200, Uruguay
Fax (5982) 419222
Email: redtm@chasque.apc.org

People-powered cities

From the UN climate talks to energy democracy

A just and sustainable approach to tackling the climate change crisis demands democratization of energy production, distribution and supply, *Lavinia Steinfort* stresses in this article written as the annual UN climate conference was taking place in Marrakesh.

This year's edition of the UN climate change conference (COP 22) has kicked off in Marrakesh, Morocco. This "action COP" will focus on implementing the Paris Agreement, which came into effect on 4 November.

Countries that signed and ratified the agreement must report increasingly stronger carbon-cutting plans every five years. Unfortunately, "stronger" does not go far enough when drastic changes are required. Energy production, consumption and access needs to be transformed. Carbon emission levels demand urgent action. "Stronger" means little, particularly when the Paris Agreement demands only voluntary reductions. The agreement aims to limit global warming to 2°C but lacks the hard rules required to ensure real action by national governments. Without a sincere transformation of the energy sector, we could easily see a temperature rise of 2.7°C or higher.

Leaving governments to determine how far they will cut carbon emissions poses another problem. Governments will want to keep their national economies strong and will be tempted by ideas put forward by big business, many of which are half-measures or false solutions. Replacing high-carbon energy with low-carbon energy, for instance, does not pave the way for sustainable and socially just societies. Switched On London (SOL), the campaign for energy democracy in London, has demonstrated that energy production, distribution and supply must be democratized if the energy transition is to be fair and effective.

SOL calls for a new municipally owned energy company with a democratically elected board, with energy company employees, local authorities and ordinary residents making up a third of its membership each. On top of that advisory board, neighbourhood assemblies and local community generation schemes would ensure every citizen, whether a customer or not, has the chance to participate. The proposal aims to tackle energy poverty and guarantee sufficient clean energy for all Londoners. SOL is currently pressuring the mayor of London Sadiq Khan, who publicly endorsed the proposal for a new municipal energy company, to make sure the public company will truly embody SOL's vision of energy democracy.

London is not alone in these efforts. The new website energy-democracy.net lays out a vision of energy democracy as imagined in many other places around the world.

Since 2011 the people of Boulder, Colorado, in the US have actively supported the set-up of a new municipal energy company. Their efforts have intensified since private coal utility Xcel Energy began work to block the city's plans. Co-developed by citizens, the plan aims to incentivize all sectors of society to take part in producing renewable energy, for example through shared solar gardens; tackle energy poverty by providing extra support to vulnerable communities; and create

local green jobs.

Many cities are fighting for a just and equitable energy transition, but the concept of energy democracy is not limited to the municipal scale.

Costa Rica is an impressive example of a country with effective democratic renewable energy delivery. Its four large electricity cooperatives supply energy to 392,071 people, most of whom live in rural settlements where neither state-owned nor for-profit companies were interested or able to operate. These cooperatives are wholly owned by energy users and community members.

Uruguay's public energy company, UTE, has taken energy democracy to the national level. With its 2005-2015 Energy Plan, the country set out to reduce costs and dependency on imported oil and achieve energy sovereignty. Some 57% of Uruguay's total energy supply and at least 94% of domestically generated electricity is based on renewables. The expansion of the renewable energy sector created thousands of green jobs – greater than the number of jobs in the fossil fuel sector – and led to a significant drop in costs.

The threat from trade agreements and corporate 'solutions'

These examples are promising but there is no silver bullet. Energy democracy could prove to be a long and difficult pursuit, especially when confronted with trade agreements like the Trade in Services Agreement (TiSA). These agreements jeopardize the freedom of countries, cities and communities to choose renewable, locally produced energy, by restricting government choices and protecting and privileging big businesses. In 2015 the government of Uruguay withdrew from the ongoing TiSA negotiations following warnings from unions and civil society about the social and environmental risks the agreement would pose.

TiSA's leaked energy annex confirms these concerns. It shows that the agreement will probably prohibit governments from differentiating between fossil fuel and renewable energy companies and prevent them from deprivatizing and democratizing the energy sector. Similar concerns have been raised about European Union trade deals with the US and Canada (TTIP and CETA respectively) and the Trans-Pacific Partnership (TPP). A real response to the climate crisis, including successful implementation of the Paris Agreement and COP 22, depends on serious reform of our approach to trade deals.

Trade is just one half of the problem with business interference in the climate response. The climate crisis and energy poverty – compounded by corporate extractivism – will not be overcome by 'solutions' proposed by the profit-driven private sector. Often these so-called solutions are precisely the

problem. Morocco, the host of COP 22, exemplifies this. "The Struggle for Energy Democracy in the Maghreb", a study by the Rosa Luxemburg Foundation, shows that residents of Tangier, Rabat and other Moroccan cities are protesting water and energy privatizations and price hikes. Promoted under the banner of public-private partnerships (PPPs), these deals disguise an outright sell-off to the private sector. Meanwhile, the Moroccan government continues to take out loans from international financial institutions to pay the private sector for producing renewable energy. The local population will not benefit, particularly considering a significant part of the energy created is exported to the EU.

In contrast to the false solutions that put private interests first, energy democracy serves local, sustainable and socially just development by prioritizing people. People-powered cities and countries, from London, Boulder, Berlin and Bristol to Costa Rica and Uruguay, are delivered by collective power,

which requires cooperation on every level. Energy democracy is about connecting families, workers, communities and cities, and forging alliances with fossil-free campaigns, anti-fracking groups, climate justice activists and many other social movements.

Collaborating to build democratic, sustainable and equitable energy economies demonstrates that systemic, people-based solutions to the fossil-fuelled climate crisis are not only possible but within reach. □

Lavinia Steinfort is a researcher with the Transnational Institute (TNI) focusing on public (service) alternatives, the potential of public finance, and the negotiations of the Trade in Services Agreement (TiSA). This article, which is reproduced from www.tni.org, was written on the occasion of the launch of the energy-democracy.net website and a 10-minute video on energy democracy (available on the website). Both are produced by a network of civil society organizations, unions, academics and campaigners researching and advocating collectively owned, socially just, renewable energy.

(continued from page 12)

Raphael Otieno, Director of the Debt Management Programme at the Macroeconomic and Financial Management Institute of Eastern and Southern Africa, said that many African countries "started accumulating debt very aggressively" after previous rounds of debt forgiveness. Debt increases in countries like Angola and Ethiopia are "very worrying", he said.

Meanwhile, the measures imposed on countries to manage their debts can also be financially crippling, as Isidro Lopez Hernandez, Deputy and Spokesman on the Audit of Public Debt, Assembly of Madrid, Spain, explained. "We are tied in a sort of metal cage," he said, noting that when the government in Spain has even a minor surplus, this must be directed back into debt repayment rather than investing in Spain's future.

Plasai called for the creation of a "fair, speedy and efficient debt workout" that involves close collaboration between debtors and creditors to resolve unsustainable debt levels.

In order to restore debt sustainability, Stiglitz called for the implementation of a "soft law regime" based on the UN General Assembly's principles on debt restructuring adopted in 2015. These international principles of law will help encourage cooperation and a "healthier environment" for debtors and creditors, said Stiglitz.

LeCompte voiced similar sentiments, highlighting the importance of laws around responsible and sustainable lending and borrowing.

"We need to figure out, at the United

Nations, how do we start to move [debt restructuring] into soft law, how do we start to create a framework and structure that allows ... for problems to be worked out in a more responsible way," he told Inter Press Service (IPS).

Beneficial debt

While debt crises can have significant negative impacts on development, speakers at the event also acknowledged that sustainably managed debt levels can be beneficial for governments seeking to achieve the Sustainable Development Goals.

"Borrowing is an important tool to finance sustainable development investments. Debt financing can support growth and smoothen the business cycle," said Nabeel Munir, Deputy Permanent Representative of Pakistan to the UN and Vice-President of the UN Economic and Social Council. "At the same time, debt needs to be managed prudently."

These sentiments were echoed by

Dian Triansyah Djani, Permanent Representative of Indonesia to the UN and Chair of the Second Committee at the 71st session of the UN General Assembly.

"I think most people in this room agree that sovereign borrowing is crucial in supporting government to finance investment, particularly in this time, to achieve sustainable development."

"At the same time, however, it is also equally important to manage the sovereign debts," said Djani. "We have witnessed one too many instances in which the debt default of one country could put the growth of the global economy into a halt, and hamper efforts to attain its development course."

However, as Llorenti noted in his closing remarks: "[Although] the current scenario makes the effort of working towards a statutory framework for debt crisis resolution very relevant, [it is] not feasible in the short term."

Nevertheless, he said, the current General Assembly process is a "step in the right direction." (IPS) □

Connect to Third World Network's World Wide Website for the latest on

International Relations • Environment •
Agriculture • Science • Economics • Trade •
Health • Education • Communications •
Development • Indigenous Peoples •
Medicine • Forestry

www.twn.my