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Proposed investment, e-commerce talks in WTO face opposition

A number of developed and developing countries are pushing for the WTO to launch discussions on investment facilitation and electronic commerce, which could eventually lead to binding rules in these areas. This drive has come up against opposition from many developing states concerned that such talks would not only yield restrictive outcomes but also divert WTO members' focus from longstanding development-oriented issues.

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US opposed to investment facilitation discussions at G20

The US has come out against moves in the G20 major economies forum to draw up guidelines on "investment facilitation" – guidelines which could then presage discussions on the subject at the WTO.

by D. Ravi Kanth

GENEVA: Attempts to finalize a non-binding outcome on investment facilitation at a meeting of G20 officials in Berlin in May suffered a major setback after the United States vehemently opposed any discussion on investment at this juncture, trade envoys told the *South-North Development Monitor (SUNS)*.

The US decision on the G20's efforts to finalize the outcome is expected to severely undermine the ongoing attempts of eight G20 countries – Russia, Mexico, Indonesia, Turkey, Korea, Australia, China and Brazil – to start immediate discussion on investment facilitation at the World Trade Organization (WTO).

The eight countries, supported by major industrialized and some developing countries as well as the WTO secretariat, remain determined to launch negotiations on investment facilitation at the WTO's eleventh Ministerial Conference, which will be held in Buenos Aires this December, several trade envoys told *SUNS*.

But, in an unexpected and sudden development, the US has dealt a blow to the G20's efforts by issuing a terse communication to Germany on 11 April saying categorically that Germany must avoid discussing investment or any issue concerning investment at the meeting of the G20's Trade and Investment Working Group (TIWG) in Berlin beginning on 4 May.

Germany, which will host the G20 leaders' summit in early July, is currently preparing the draft deliverables, in which investment facilitation is a major issue along with digital trade.

In March, when the G20 sherpas discussed digital trade, India and South Africa opposed attempts by Canada and Australia to direct the WTO to discuss rules concerning electronic commerce.

Draft package

Ahead of the TIWG meeting on investment facilitation, Germany has issued a "draft investment facilitation

package – G20 Investment Priorities." The draft package, circulated on 29 March, says: "We reaffirm the Principles for Global Investment Policymaking endorsed in the Hangzhou communique and encourage policymakers to use them as reference and guidance."

It maintains that "investment plays a central role in promoting inclusive economic growth and sustainable development through the creation of jobs and the dissemination of skills and technology.

"However, FDI [foreign direct investment] flows are volatile and not as strong as necessary to induce sufficient growth and achieve the United Nations Sustainable Development Goals by 2030.

"Therefore, we underline our continued determination to facilitate investment. We agree that investment policies should be transparent, efficient, predictable and consistent – also with international obligations.

"To maximize the beneficial impact of investment, we are committed to encouraging investment that is sustainable from an economic, social and environmental perspective and to promoting good corporate governance as well as responsible business conduct."

In the German draft, endorsement of the "non-binding G20 Investment Facilitation Package" is sought as part of efforts "to complement the G20 Guiding Principles for Global Investment Policymaking and facilitate their implementation." The package would include the following objectives:

(i) reaffirming and complementing the G20 Guiding Principles for Global Investment Policymaking;

(ii) fostering open and transparent business climates that are conducive to investment;

(iii) promoting inclusive economic growth, sustainable development and a level playing field for all investors, including small and medium-sized enterprises (SMEs).

To achieve these objectives, the draft has listed four actions for investment facilitation: (a) transparency; (b) predict-

ability and consistency; (c) efficiency; and (d) stakeholder relations.

As part of transparency, the draft has suggested the need to promote accessibility and transparency of policies, regulations and procedures relevant to investors. Other elements of transparency include making “publicly available clear and up-to-date information on the investment regime including timely and relevant notice of changes in applicable standards, procedures, technical regulations and conformance requirements.”

It also calls for establishing enquiry or contact points for enquiries concerning investment policies and applications to invest and publishing outcomes of periodic reviews of the investment regime where they are undertaken.

As regards predictability and consistency, the German draft suggested elements as to how governments must “enhance predictability and consistency in the application of investment policies and other policies that have an impact on investment.”

Other elements include systematizing and institutionalizing common application of investment laws and regulations and bringing consistency of national policies with international obligations. It has also suggested harmonization of investment policies for providing “equal treatment in the application of laws and regulations on investment, and avoid[ing] discriminatory use of bureaucratic discretion.”

The draft raises the need for establishing clear and transparent procedures for administrative decisions affecting investments and also ensuring “access to effective, fair, open and transparent mechanisms for prevention and settlement of disputes.”

In relation to efficiency, the German draft has called for improving the efficiency and effectiveness of administrative procedures such as streamlining the process and shortening the processing time for application, registration, licensing and other investment-related administrative procedures, including, where appropriate, through the promotion of time-bound approval processes or no objections processes within defined time limits.

It has suggested the need to keep “costs to the investor relating to administrative procedures to a minimum” and also to simplify the process for connecting to essential services infrastructure.

Finally, it suggested building “constructive stakeholder relationships and

engag[ing] the private sector in assessing de jure and de facto barriers to investment.”

The draft has also asked for establishing and maintaining “mechanisms for regular consultation and effective dialogue with investment stakeholders throughout the life-cycle of investments, including approval, impact assessment, operation and expansion stages, to identify and address issues encountered by investors and affected stakeholders.”

Germany maintained that “this investment facilitation package can serve as a reference for investment policymaking, in accordance with respective international commitments.”

More important, “it should also be considered in the context of the G20 development agenda and is without prejudice to government’s right to regulate for legitimate public policy purposes. It can serve as an inspiration for future – even more far-reaching – work on investment facilitation on a multi-, pluri- and bilateral level,” Germany argued.

US opposition

The broad coverage of objectives in the German draft went beyond the failed Multilateral Agreement on Investment in several aspects, said a trade envoy after reviewing the objectives. Perhaps in response to these wide-ranging and across-the-board objectives, the US issued its stern communication to Germany, the trade envoy said.

The US told Germany: “Regarding investment, the United States does not support moving forward with the draft deliverable or any alternative package on investment facilitation.”

Further, said the US, it “does not believe that G20 TIWG negotiation of detailed policy prescriptions in this area is necessary or helpful at this time, nor that the TIWG should seek to prioritize policy actions in certain areas of investment over others, including with respect to which issues should be on the agenda of separate bilateral, plurilateral, and multilateral negotiations.”

G20 guidelines, which remain non-binding on members, have often been sought to be used as a launching board for negotiations at the WTO.

Prior to the German draft, the WTO secretariat had made a “contribution” on investment facilitation at a TIWG meeting in February. The secretariat’s contribution included such points as “improving regulatory transparency,” “streamlin-

ing and speeding up administrative procedures,” and “encouraging international information sharing and cooperation.”

The secretariat had urged the G20 to identify “core investment facilitation principles” based on the G20 leaders’ communique from the Hangzhou summit last year on Guiding Principles for Global Investment Policymaking.

“Encourage a dialogue on trade and investment policy coherence among WTO Members – with a particular focus on how the multilateral trading system can contribute to facilitating investment flows,” the WTO secretariat emphasized.

The Hangzhou leaders’ communique includes the following non-binding principles for investment policymaking:

(i) Recognizing the critical role of investment as an engine of economic growth in the global economy, governments should avoid protectionism in relation to cross-border investment.

(ii) Investment policies should establish open, non-discriminatory, transparent and predictable conditions for investment.

(iii) Investment policies should provide legal certainty and strong protection to investors and investments, tangible and intangible, including access to effective mechanisms for the prevention and settlement of disputes, as well as to enforcement procedures.

(iv) Dispute settlement procedures should be fair, open and transparent, with appropriate safeguards to prevent abuse.

(v) Regulation relating to investment should be developed in a transparent manner with the opportunity for all stakeholders to participate, and embedded in an institutional framework based on the rule of law.

(vi) Investment policies and other policies that impact on investment should be coherent at both the national and international levels and aimed at fostering investment, consistent with the objectives of sustainable development and inclusive growth.

(vii) Governments reaffirm the right to regulate investment for legitimate public policy purposes.

(viii) Policies for investment promotion should, to maximize economic benefit, be effective and efficient, aimed at attracting and retaining investment.

(ix) Investment policies should promote and facilitate the observance by investors of international best practices and applicable instruments of respon-

sible business conduct and corporate governance.

(x) The international community should continue to cooperate and engage in dialogue with a view to maintaining an open and conducive policy environment for investment, and to address shared investment policy challenges.

Against this backdrop, Russia and a group of five G20 countries – Mexico, Indonesia, Korea, Turkey and Australia (MIKTA) – circulated their respective proposals for discussing investment facilitation at the WTO without further

delay. China and Brazil also shared their separate proposals on investment facilitation with selected countries. All four proposals include the elements outlined by the WTO secretariat.

Now, with the US having stated its position against discussing investment facilitation at the TIWG meeting in Berlin, it remains to be seen how Washington will respond to the Russian and MIKTA proposals when they come up for discussion at the WTO's General Council in May. (SUNS8444) □

bers came into the open by tabling their proposals in April, China and Brazil have shared their submissions informally. All the four proposals, reviewed by SUNS, are modelled on the lines of India's proposal on trade facilitation in services and include language as proposed by India.

The four papers on investment facilitation carry nearly identical features as well as language – with the underlying intention of launching negotiations on investment facilitation at the Buenos Aires meeting.

The hand of the WTO secretariat is visible for all to see in the four proposals and it is unprecedented that the effort on investment is an aggressive drive to rope in as many developing countries as possible, said a trade envoy who asked not to be quoted.

"We are witnessing a concerted attempt to ratchet up pressure on developing and least-developed countries to agree to a comprehensive discussion on investment at the WTO on grounds that it is good for them," the envoy said.

Close on the heels of the Russian proposal for starting discussions on multilateral investment facilitation (MIF) rules (see TWE No. 636), the five MIKTA members circulated their own proposal, which was based on a seminar they held in March.

Azevedo congratulated the MIKTA group for "taking the initiative to organize this workshop. Indeed, I think that MIKTA itself is a testament to how much can be accomplished when developing and developed members find common ground and decide to work together."

Without offering concrete evidence, Azevedo said "trade and investment are now important development issues – and their expansion is of growing interest to all WTO members, not just advanced ones."

It is somewhat disingenuous for the Director-General to say trade and investment is a developmental issue when a large majority of developing and poorest countries had shot it down at Cancun in 2003, a trade envoy pointed out.

At the Cancun meeting, Brazil's then foreign minister Celso Amorim, who led the G20 developing-country coalition, described agriculture and issues such as harmonization of rules of origin – a major bottleneck for exporters from the least-developed and developing countries – as the real "developmental" issues, unlike "fake developmental issues such as trade and investment" as now promoted by Azevedo, said a trade en-

Large majority of South nations opposed to investment facilitation

Proposals for launching investment facilitation talks in the WTO have met with strong resistance from many developing countries.

by D. Ravi Kanth

GENEVA: A large majority of developing and least-developed countries, including India and South Africa, remain firmly opposed to attempts by Russia, China, Brazil and five members of the MIKTA – Mexico, Indonesia, Korea, Turkey and Australia – group to start discussions on investment facilitation at the WTO, trade envoys told the *South-North Development Monitor* (SUNS).

Russia, China, Brazil and the MIKTA coalition, along with the traditional supporters of investment such as the European Union, Japan, Switzerland, Norway, Canada, Singapore, New Zealand and Hong Kong-China, want to target investment and electronic commerce as two major deliverables for the WTO's Ministerial Conference in Buenos Aires later this year, according to several trade envoys who asked not to be quoted.

Significantly, the push for investment – which follows failed efforts in previous years to craft a Multilateral Agreement on Investment (MAI) and to include investment in the ambit of the WTO's Doha Work Programme – is not spearheaded by the traditional proponents such as the EU, Japan, South Korea, Switzerland and Canada.

Instead, ironically, the latest move for investment facilitation – which is a softer version of the MAI that was sought to be finalized at the Paris-based Organization for Economic Cooperation and Development (OECD) in 1995-98 – is coming from countries such as China and Brazil.

These two major developing coun-

tries had aligned with other developing countries at the WTO's fifth Ministerial Conference in Cancun in 2003 to call for a developmental negotiating agenda in which agriculture was at the core of the outcomes as opposed to investment and the other so-called Singapore issues – competition policy, government procurement and trade facilitation.

Almost 14 years after the failed Cancun meeting that pronounced the death knell for investment and the other Singapore issues, China and Brazil have now become demandeurs for investment even though a large majority of developing and poorest countries remain as opposed now as they were at Cancun, according to trade envoys who asked not to be quoted.

Director-General's backing

To complement the sustained pressure from China, Brazil, Russia and the MIKTA group on investment facilitation, WTO Director-General Roberto Azevedo has joined the bandwagon of cheerleaders for investment.

Azevedo said on 20 March that the "MIKTA initiative" is "a testament to how much can be accomplished when developing and developed members find common ground and decide to work together."

In effect, the WTO Director-General and the eight countries are working jointly to produce almost identical proposals on investment facilitation.

While Russia and the MIKTA mem-

voy who asked not to be quoted.

Azevedo has also pointed to “the way trade and investment are increasingly interlinked in the real economy.” He went on to extol how trade and investment will strengthen global value chains as was the case with the WTO’s Trade Facilitation Agreement.

“The Director-General’s statements on trade and investment are misleading and false as there is no evidence to show that a multilateral/bilateral investment agreement will enhance the flow of foreign direct investment, as an investor will always go to a country with a large market and purchasing power and low wages,” the trade envoy said.

Instead of focusing on areas where developing and least-developed countries will benefit most, like the harmonization of non-preferential rules of origin, which is also critical for global value chains, the Director-General wants WTO members to enter into negotiations on trade and investment that will not only impose extraordinary conditions but also impede economic development in developing and the poorest countries, the trade envoy said.

MIKTA proposal

The MIKTA proposal says “the WTO has an important role to play in discussions on investment given its broad membership and as the only global international organization dealing with the rules of trade.”

Like the Russian proposal, the MIKTA paper argues that “investment is covered in a piecemeal way across the WTO agreements,” specifically referring to Mode 3 in the General Agreement on Trade in Services (GATS).

The MIKTA group says that the recent trends in foreign direct investment (FDI) flows to developing countries would make investment a strong candidate for further discussions at the WTO.

It emphasizes that discussions in the WTO could contribute to: (i) strengthening trade and investment policy coherence; (ii) facilitating trade and investment flows; (iii) mobilizing trade and investment for development; and (iv) exploring where multilateral rules could be usefully strengthened or expanded to support these objectives.

Without credible evidence, the group says that “there is a high level of interest and willingness among some WTO Members to engage in open and inclusive discussions on investment”

provided the proponents avoid known sensitivities, particularly around investor dispute settlement and investment protections.

To bolster its case for investment facilitation, the group says that it is “a good starting point for discussions to complement the recently concluded Trade Facilitation Agreement and current discussions on trade facilitation for services.”

Elements involving investment facilitation, according to the MIKTA countries, would include transparency, predictability and non-discrimination in investment policies; efficiency and streamlining of administrative procedures to minimize investment barriers; and international cooperation, capacity-building and technical assistance.

Chinese proposal

Much of the language and elements in the MIKTA proposal was repeated in the Chinese proposal called “Possible elements of investment facilitation” that was recently shared with selected countries.

The two-page proposal from China contained almost the same elements as in the MIKTA proposal, such as “enhancing transparency of investment policy framework,” “improving the efficiency of administrative procedures relating to investment,” and “responding to the actual needs of developing members and least developed members.”

With regard to “enhancing transparency of investment policy framework”, China has proposed the following elements:

(i) Make publicly available all laws and regulations relating to investment to stakeholders, including through electronic means.

(ii) Establish one or more points for enquiry to respond to reasonable enquiries regarding investment policies and applications to invest.

(iii) Provide regular notification of any new laws and regulations relating to investment, or any substantial changes to existing ones.

(iv) Formulate generally applicable screening guidelines and clearly defined criteria for investment assessment.

(v) To the extent practicable and in a manner consistent with members’ respective domestic laws and regulations, provide stakeholders with proper opportunities to comment on the drafts or amendments of any laws and regulations relating to investment.

For “improving the efficiency of administrative procedures relating to investment”, China has listed the following elements:

(i) Encourage establishing clear and consistent criteria and procedures for investment screening, appraisal and approval, specify the materials to be submitted.

(ii) Streamline licensing and qualification requirements and procedures relating to investment, specify the reasonable timeframe for screening and decision of investment applications by the relevant regulatory authorities, and provide timely notice of the screening decisions to the applicants.

(iii) Specify, according to members’ respective domestic laws and regulations in the case of incomplete applications, additional information needed to complete the application and provide the opportunity to make up.

(iv) Encourage and foster institutional cooperation and coordination among members’ domestic regulatory authorities, establish “one-stop” approval institution where possible. Clarify roles and accountabilities of different levels of government, and of various agencies, where more than one agency is involved in the investment screening process.

(v) To the extent possible, keep costs for the investor in the investment approval process to a minimum, and make fees charged commensurate with the administrative cost of processing an application.

(vi) Facilitate the entry and sojourn of personnel relating to investment.

(vii) Endeavour to accord investors with easy access to basic public infrastructure.

Finally, for “responding to the actual needs of developing members and least developed members”, China has suggested the following elements:

(i) Safeguard the special and differential treatment for developing members, and enable developing members flexibility commensurate with their development circumstances as regards investment facilitation.

(ii) Provide more technical assistance and capacity building to strengthen developing members’ domestic services capability, efficiency and competitiveness, including technical support and assistance in organizing investment promotion fora, commercial activities and business-government networking events.

(iii) Encourage improving the efficiency of outward investment screening and approval, provide policy support in proper ways to outward investment, including investment insurance and guarantee, political risk coverage and investment promotion services.

(iv) Encourage investors to perform corporate social responsibilities.

(v) Give priority consideration to the special economic situation and development needs of least developed members.

Brazilian proposal

Finally, Brazil, which abandoned the G20 developing-country coalition long ago, has now taken the mantle of championing investment facilitation.

Unlike the MIKTA group and China, Brazil has delivered a comprehensive proposal calling for a "WTO instrument on investment facilitation."

"From a public policy perspective," says Brazil, "there seems to be no reason for Members to adopt or adjust institutional and regulatory measures to facilitate investment in services and not investments in general." Therefore, serious consideration should be given to the establishment of a common framework encompassing facilitation of investment in general, that is, in both services and goods, it argues.

Without credible headcount and evidence, Brazil says that "there seems to be a very solid majority of Members, including Brazil, that firmly believe that any WTO discussion or negotiation on investment will only succeed if it avoids well known contentious issues, such as protection rules (rights to establishment/market access, compensation for expropriation, etc) and dispute settlement clauses, in particular Investor-State Dispute Settlement – ISDS. In other words, if any multilateral effort in this area is to succeed, it must be strictly circumscribed to facilitation."

In effect, the Brazilian proposal is a repeat of the Russian, MIKTA and Chinese proposals but with different sentences; the underlying elements and structure are almost the same.

The Brazilian proposal says that a "WTO instrument on investment facilitation" must include the following elements:

1. Scope: A WTO instrument on investment facilitation would apply to measures taken by members to facilitate investment. It would cover FDI and, as

indicated above, would not include investment protection rules and dispute settlement disciplines. Government procurement and public concessions would not be covered by the instrument.

2. Transparency: Members shall notify to the WTO all laws relating to investment policy issues of general application and regulatory issues of a cross-cutting nature. Members could also be called to provide, whenever possible, opportunities for investors and stakeholders to comment on existing or proposed investment-related measures.

3. Formalities and documentation requirements: Members would periodically review formalities and documentation requirements applicable to foreign investors and their investments and ensure, as appropriate, that such formalities and documentation requirements are, for example: (i) not in themselves a barrier to admission and establishment as per domestic legislation (the instrument would not rule on admission and establishment; rather, it would seek to ensure that formalities are not misused); (ii) adopted or applied so as to ensure that the time and cost of establishing an investment are as low as possible; and (iii) not maintained, including parts thereof, if no longer required.

4. Acceptance of copies: Members would commit to make their best efforts to facilitate documentation requirements, such as accepting paper or electronic copies of supporting documentation required for the expansion, management, conduct, operation, and sale or other disposition of investments in their respective territories.

5. Processing of applications: Establishing a common set of principles regarding processing of applications for investment screening and licensing would significantly contribute to creating a stable framework for investors.

6. Single electronic window: There would be a single electronic entry point to competent authorities (single electronic window). The single window would unify electronic procedures for the admission of investments, establishment of an enterprise, licensing and qualification procedures for an investment. Documents submitted to the single window would be accepted by all national agencies or regulatory bodies.

7. National institutional arrangements: A National Focal Point/Ombudsperson (nomenclature to be decided by each member) would be established and given practical responsibilities

such as providing information/clarifying doubts on investment policies and other regulatory issues of a cross-cutting nature; to the extent possible and without prejudice to specific competencies of pertinent national agencies, assisting investors in resolving specific government-related difficulties. The Focal Point/Ombudsperson would seek to prevent disputes between members.

8. Cooperation among National Focal Points/Ombudspersons: Cooperation among competent authorities of members is quite important in facilitating investment. The areas for cooperation under this provision could include exchange of information on procedural requirements and associated formalities and documentation. Other areas of cooperation could address the sharing of experiences regarding implementation, best practices for collection and compilation of data relating to investment, exchange of statistics as well as technical guidance or assistance and support for capacity building for small and medium enterprises.

9. Multilateral institutional arrangements: A Committee for Investment Facilitation would be set up and be given basic mandates: a. follow the implementation of a WTO instrument on investment facilitation; b. discuss issues related to investment facilitation of general interest; c. propose new cooperation and facilitation agendas; d. exchange experiences in investment facilitation; and e. compile and disseminate international best practices.

10. Corporate social responsibility: Members could be called to advocate for the voluntary adoption by investors of principles and standards for responsible business conduct.

11. Implementation: Following the example of the Trade Facilitation Agreement, obligations under a WTO instrument on investment facilitation could be divided into three categories, one for immediate implementation (Category A) and two others (B and C Categories) with different schedules of implementation.

12. Special and differential treatment: The WTO instrument would contain special provisions for developing countries and least-developed countries (LDCs) pertaining to the entry into force of this agreement due to their special economic and developmental situation as well as trade and financial needs. While LDCs would not be required to implement any obligations, they would be encouraged to do so.

13. Technical assistance: Technical assistance would be provided to developing countries and LDCs in order to advance and strengthen their institutional and regulatory capacities in investment facilitation. The provision would entail obligations that help build the supply capacity of developing countries and LDCs.

Until now, there has been no formal or informal discussion on these proposals at the WTO. The first test will come when the Russian proposal on multilateral investment facilitation rules comes up for discussion at the WTO General Council. China and Brazil are yet to submit their proposals formally to the WTO.

In reality, the proposals on investment facilitation will garner support from the traditional investment proponents, which are largely major industrialized and some developing countries, as well as from the new evangelical spreaders of the investment gospel such as Russia, China, Brazil, Indonesia and Turkey.

During an informal discussion among selected trade envoys outside the

WTO in the week of 3 April, India and South Africa questioned the need for investment facilitation. They told Japan, Canada and the European Union that "rules that you are proposing here will reduce our policy space and that policy space is what we need to develop what you had done in the past and today you want to tie our hands."

India said there is no evidence that multilateral investment facilitation rules will contribute to enhanced investment flows. Without any bilateral/multilateral investment facilitation agreements, India is easily able to secure investments from the US.

"If anything, investment agreements will only become millstones of commitments for poor countries," India argued.

In a nutshell, the Buenos Aires WTO meeting could represent the watershed moment for the developing and poorest countries as not only might their developmental agenda be drowned forever but they could also be forced to deal with investment facilitation, electronic commerce and disciplines for micro, small and medium enterprises, several trade envoys said. (SUNS8442) □

in the world about globalization, about free and fair trade."

"So beyond the normal track that our ambassadors here are pursuing with commitment and strength, I think we have a bigger discussion before us, which is does the WTO have a future or do we prepare the WTO of the future?"

"I really believe that we have to ensure the future of the WTO by preparing the WTO for the future. And nothing is more critical for that than precisely the questions around e-commerce which so far have a limited mandate within the WTO which is already 20 years old.

"And we believe that one of the issues that should come out of our work in Buenos Aires is a new mandate that allows [us] to engage and embrace the issue with an understanding of what are the demands of this day and age."

Bypassed

Also at the media briefing, Pakistan's Commerce Minister Khurram Dastgir Khan said that e-commerce has "simply passed us by" while negotiations were ongoing in the WTO on agriculture market access, non-agriculture market access and services for the last 20 years.

He said that e-commerce has now grown at triple the rate of global economic growth. That is the reason, he added, that the FED want to bring e-commerce eventually onto the agenda of the WTO, but with a specific angle of development and inclusiveness. "The framework we are launching today is a very initial foray into having a global idea of where we would like the WTO to go ..."

He highlighted issues such as e-commerce readiness and strategy, ICT (information and communications technology) infrastructure and services, trade logistics, payment solutions, legal and regulatory frameworks, e-commerce skills development and technical assistance, and access to financing. These, he said, are all issues that developing countries lack – some more, some less.

Okechukwu Enelamah, Nigerian Minister of Industry, Trade and Investment, said that "we must engage, we must be part of the engagement, we must think in terms of solutions."

"Yes, there is a digital divide, yes, there is an e-commerce divide, but there is also no question whatsoever that the best way to respond is to be proactive in trying to solve the problems and trying to bring about solutions," he said. "That is why I am so excited that this initiative

Friends of E-Commerce lay out roadmap for WTO talks

A group of WTO member states calling themselves the Friends of E-Commerce for Development are pushing for discussions on electronic commerce at the trade body.

by Kanaga Raja

GENEVA: The Group of Friends of E-Commerce for Development (FED) at the WTO has put forward a roadmap of seven key issues relating to electronic commerce aimed at paving the way for conversations to be held on this issue in Geneva as well as at the WTO's eleventh Ministerial Conference (MC11), to be held in Buenos Aires this December.

The roadmap was presented at the first ministerial meeting of the FED, which was held here on 25 April on the sidelines of the UN Conference on Trade and Development (UNCTAD)'s E-Commerce Week.

The FED group currently comprises Argentina, Chile, Colombia, Costa Rica, Kenya, Mexico, Nigeria, Pakistan, Sri Lanka and Uruguay.

At a media briefing here on 25 April, Susana Malcorra, Foreign Affairs Minister of Argentina, the host of MC11, said that it was a pleasure to join her col-

leagues to discuss what she thought were topical matters of trade, e-commerce and, for Argentina in particular, the organization of MC11.

"I am sure my colleagues [at the media briefing] will go deep into the questions of e-commerce, e-trade that are at the centre of the discussions this week. I can only say it is clear that if we do not find a way to embrace these issues at the centre of what we are discussing as part of the WTO, we are going to miss the boat on what is without any doubt one of the biggest opportunities we have to bridge the gap between the ones who have and the ones who have not."

Referring to the upcoming MC11, she expressed hope that "we can deliver something that is up to the task."

On the substance, she said that "we have already a lot of work in progress, but let's be honest, we are hosting this meeting in the middle of the discussion

is taking place at a time like this.”

Asked what would be the role of a WTO agreement on e-commerce in making sure that developing countries get a fair deal, Pakistani Minister Khan said that the issue is the ability to participate.

“We are told that by the end of the year, half the world’s population will be online. In the developed world 80% are now online. The figure in the developing world is 40%, in LDCs [least-developed countries] it is 15%. In many African countries, only one in 10 persons is on the Internet.”

The offline population in the developing countries are mostly poor, female, elderly, less educated and living in rural areas, he pointed out.

“[W]hat is now clear to us is that not only [do] we want to talk about e-commerce [in terms of] facilitat[ing] or provid[ing] access to the poor and rural populations, it [can] in a very real sense ... act as a bulwark or as a resisting wall against the negative effects of globalization,” he said.

The idea is that the developing countries should have a voice in how the cyberspace of commerce and trade is going to be governed. As of today, e-commerce is not on the agenda of the WTO. “We don’t discuss it there. There is great resistance at the WTO to discuss[ing] e-commerce,” he said.

The participants in the media briefing were asked about the credibility of the FED initiative that they were launching, in view of there being a large group of WTO members which can also be called the “Fed Up with e-commerce” group that thinks that the FED are essentially abdicating the real issues such as rules of origin (which has awaited resolution in the WTO since 1998) and the digital divide being faced in Africa.

The LDCs, for example, want the bread-and-butter issues, such as rules of origin, agriculture and other areas that have been the core part of the Doha agenda, to be addressed. What would be the credibility that the FED would have when the large majority of WTO members still want the existing issues to be resolved, the participants were asked.

Nigerian Minister Enelamah said that the first principle of negotiations is that when you want to get things done you have to put more issues on the table, rather than less, so that you create an atmosphere where agreement can be reached.

Closely related to that principle, he said, is that if you are trying a method

and it is not working, and you keep doing it, you can reasonably expect that it will still not work.

He further said that not to embrace some of the imagined trends that are important for the 21st century would be insufficient. As important as agriculture is, as important as electricity is, and as important as all those things are, technology and the digital economy now have to be added.

“You just have to treat it with the same respect, because if you don’t, you will suffer a second loss,” he said.

Khan said that this is “absolutely not a zero-sum game. It doesn’t mean at all that if you are talking about e-commerce we’re in any way lessening our commitment to a multilateral forum where we negotiate trade issues.”

“But I would submit very humbly a speculation that we can no longer now say, sitting in the 18th year of the new century, that digital is one part of the economy. It is going to become the economy.

“The challenge in front of us is that eventually all member countries will not only have to look upon their trade policy, they will also look at their customs policy, their taxation policy, how they tax their own citizens, how they tax their companies, and of course the issue of the very real possibility, which in some form is already happening today, of very large-scale [trade] transactions happening electronically.

“The reason we are gathered is, let’s not wait for that moment when it overwhelms us. And let’s not wait for the moment when there is again a real possibility that these large [e-commerce] companies that exist now lock in rules, lock in certain procedures – not by any nefarious design, but just step by step how they move across the world, how they invest in different countries.

“So our view is that ... as [a] global rule-making body, [we] should begin to discuss this now, today,” said Khan.

The FED roadmap

The roadmap put forward by the FED highlights seven issues, namely, e-commerce readiness and strategy, ICT infrastructure and services, trade logistics, payment solutions, legal and regulatory frameworks, e-commerce skills development and technical assistance, and access to financing.

On e-commerce readiness and strategy, in addition to national assessments

to identify strengths and weaknesses in e-commerce readiness, the FED will identify actions that countries can take in their own interest and at their own initiative in the context of international trade rules to improve the overarching legal and regulatory framework for e-commerce.

“We support expansion of UNCTAD’s e-T.READY programme, currently available only to LDCs, to all developing countries so they may benefit from it. We call upon the partners in eTrade for All to ensure they allocate adequate resources to programmes that support the priorities herein so that developing countries can maximize their ability to benefit from the potential of e-commerce and, where necessary, to allocate additional resources as relevant.”

On ICT infrastructure and services, the FED said bridging the digital divide is an objective of the Sustainable Development Goals and affirmed that trade policy must support reaching Goals 9(c) and 17.11 in this regard.

The FED will explore how the multilateral trading system can provide a framework to achieve these objectives through, inter alia, effective competition and regulation, especially in services central to e-commerce like basic and value-added telecommunications, computer and related services, and relevant distribution services.

The FED also support investigation into trade policy-related barriers that may exist to the flow of goods integral to bridging the digital divide, inter alia, ICT hardware and software in relevant classifications.

On trade logistics, the FED said since effective and competitive movement of goods in national and international trade is vital for reducing e-commerce friction and enhancing competitiveness, especially for developing-country micro, small and medium-sized enterprises (MSMEs), the FED will promote identifying a framework of trade rules and commitments to promote effective transportation and logistics and cross-border trade facilitation measures in order to advance goods-related e-commerce for development.

“The Trade Facilitation Agreement’s implementation is a key foundational element that trade policy has for delivering improvements in this area. Ensuring rapid, widespread implementation of it, especially for and by developing countries, is a shared priority.”

On payment solutions, the FED said that because e-payment systems are crucial to taking advantage of new possibilities for consumers and corporate buyers and sellers, and are central to meeting national targets for financial inclusion, the FED will identify trade policies and commitments that help transition away from a reliance on cash and facilitate access to e-commerce and financial services for all citizens of developing and least developed countries.

On legal and regulatory frameworks, in order for e-commerce to be fully supportive of economic development, the FED will promote security, trust and certainty for consumers and businesses alike, both within their countries and across borders.

"We will help identify key legal and regulatory steps to promote this underlying environment for consumer protection, data protection, secure cross-border data transfers, open platforms to facilitate trade, the prevention of cybercrime,

and other relevant issues."

The FED will work towards the reduction of artificial and burdensome regulatory barriers to e-commerce.

On e-commerce skills development and technical assistance, the FED will promote efforts to expand capacities and technical skills of enterprises, individuals and policymakers to harness e-commerce, with a particular focus on removing barriers that inhibit SMEs from engaging in and benefiting from e-commerce.

On access to financing, the FED called on all international development partners, including the relevant institutions engaged in eTrade for All, to develop reliable financing solutions for early-stage start-ups and growth-oriented businesses in the e-commerce ecosystem in order to facilitate the growth of e-commerce and entrepreneurship at all points across the e-commerce value chain in developing countries. (SUNS8451) □

Concerns of developing countries on the issue of e-commerce negotiations

WTO disciplines on e-commerce could hurt the domestic industry and consumers in developing countries, cautions *Abhijit Das*.

WTO members have agreed not to impose customs duties on electronic transmissions since 1998, and the temporary moratorium has been extended at some of the WTO Ministerial Conferences held every two years. In parallel, there is a work programme with an exploratory non-negotiating mandate under which WTO members are discussing different aspects of e-commerce.

There is a push by some countries to shift from discussions to negotiating binding rules on e-commerce. This is premature in the absence of any adequate understanding of key issues related to scope, definitions, implications etc., in the absence of any meaningful technical discussions in the appropriate WTO forums like the Council for Trade in Services, Council for Trade in Goods, TRIPS Council etc. There are areas of immense concern for developing countries inherent in this issue. Some of these are discussed below.

- *Prohibiting customs duties on digital trade and mandating duty-free imports of goods ordered online but physically delivered*

An ill-informed rush forward runs the risk of the present decision on zero duty on electronic transmissions being prematurely, without full understanding of the implications, extended indefinitely and made a permanent prohibition. The scope of the decision could also be expanded to prohibit imposition of customs duty on e-commerce in general (as against the present decision on electronic transmissions). Thus, even goods sold on e-commerce websites but delivered physically (and not electronically) could become eligible for zero customs duty. Given the proliferation of sales through e-commerce portals, this would amount to market access with binding customs duty at zero. If this outcome were to arise, it would pose a serious threat to the manufacturing sector in developing countries.

- *Securing access to the raw material of the digital economy for free*

One of the main motivations for the rush to initiate negotiations on e-commerce is the quest of global e-commerce giants for free access to data – the raw material of the digital/information

economy. In most developing countries there is little if any appreciation of the fact that the continued survival of the global giants in the digital arena hinges on their ability to secure data from the developing countries for free. This data is used to provide digital products and services to the developing countries – a process that will only intensify in the future. This will make developing countries structurally dependent on imports of digital products and services from the global giants, resulting in adverse implications for employment, income generation and the balance of payments in developing countries.

- *Light-touch approach to regulations: Curtailing the policy space of government to regulate against unfair trade practices and prevent market failure*

E-commerce is based on disruptive technologies and is rapidly evolving. Thus, governments have a crucial role in regulating this sector to prevent market failures and protect the consumer. Unless this is suitably and thoughtfully addressed, rushed, premature actions may result in severely curtailing the ability of governments to regulate e-commerce. Consequently, governments will not be able to control unfair trade practices, such as predatory pricing, and regulate market failure. It has been alleged by some domestic players that some of the key foreign players in e-commerce in developing countries such as India are indulging in predatory pricing by cross-subsidizing their gains in other markets. Currently the government in countries like India retains the policy space to restrict anti-competitive practices. However, negotiations on e-commerce will potentially eliminate the possibility of the government controlling such unfair trade practices.

- *Stifling competition and eliminating domestic players in e-commerce markets*

The global market structures in different areas of e-commerce – retail, mobile commerce, digital payments etc. – are highly concentrated. A very high share of the market is accounted for by the players with first-mover advantage. Negotiations on e-commerce would mainly be aimed at facilitating the big global players to penetrate emerging markets. This will curb the prospects and growth of domestic players in developing markets.

- *Undermining local technology by mandating adoption of global standards*

As countries are at different stages

of technological development, at times they have to implement standards that are more aligned to their needs and not use the most advanced standards. One of the potential key outcomes of negotiations on e-commerce would force countries to adopt standards mandated by the developed countries, thereby hampering the growth of domestic products related to e-commerce in developing countries.

- *Compromising national security and privacy*

The outcome of any rushed actions in this area is likely to curtail the ability of governments to implement measures aimed at safeguarding national security and privacy.

- *Under the garb of enhancing connectivity, forcing domestic suppliers to share their infrastructure with foreign players*

Under the garb of enhancing connectivity, a likely outcome of negotiations on e-commerce could be that a domestic supplier would be mandatorily required to offer to foreign players access to telecommunications network infrastructure on an unbundled basis and on non-discriminatory terms. Effectively, this obligation would result in foreign telecom service providers getting access to infrastructure created by governments and domestic players in developing countries without being required to pay more than nominal amounts in the name of facilitation.

- *Under the garb of consumer protection, preventing consumers from accessing courts*

Under the garb of ensuring consumer protection in the online environment, the outcome of negotiations on e-commerce is likely to prevent governments from prohibiting one-sided contracts between online retailers and consumers for resolving disputes arising from their e-commerce transactions. Under these one-sided contracts, consumers are effectively prevented any access to the courts and, in particular, to class action mechanisms for adjudication of small claims in aggregate. Some countries have prohibited such one-sided provisions in dispute resolution clauses in consumer contracts. The outcome of negotiations on this issue would actually harm consumer interests instead of protecting them.

- *Using SMEs as an excuse for seeking negotiations on e-commerce, but*

paying only lip service to their needs

Big foreign players in the e-commerce domain are projecting small and medium-sized enterprises (SMEs) as the main beneficiaries of negotiations on e-commerce. It is true that e-commerce has opened up new opportunities for SMEs. However, it is also true that SMEs are hobbled by multiple challenges that prevent them from participating in e-commerce. If SMEs do not have the capacity to participate in e-commerce, then the outcome of negotiations on e-commerce will bring almost no gains for them. Thus, the focus should shift from negotiating rules on e-commerce to implementing initiatives that can enable SMEs to participate in e-commerce. If this is not done, the outcome of negotiations will be tilted against the SMEs.

- *Protecting incomes of global giants under the garb of expanding e-commerce*

The global e-commerce market, including cross-border e-commerce, has shown impressive growth. It is poised to grow at a faster pace in the coming few years. However, there is little in the proposals on e-commerce at the WTO which could impart further momentum to the already dynamic market. Instead, these proposals are more about lowering the cost of operations of global e-commerce giants (through free access to data, prohibiting localization of data and servers, mandatory sharing of telecom infrastructure, non-discriminatory sale of spec-

trum etc.) and boosting their incomes.

Conclusion

E-commerce is an emerging area in the developing world. However, negotiations on e-commerce should be distinguished from e-commerce per se. The obligations that might emerge from WTO negotiations on this issue could require developing countries to go against their own development priorities, thereby compromising the establishment of a vibrant domestic industry. Gains, if any, on this issue are likely to be extremely limited. Domestic players in developing countries are likely to be severely adversely affected by the outcome of any such negotiations.

Instead of pushing for negotiations on new issues such as e-commerce, WTO members should make best efforts to get the Doha Round back on track and prevail upon recalcitrant countries to address the outstanding issues, particularly in agriculture. Further, the WTO should work out modalities for bridging digital inequity before pushing for negotiations on e-commerce.

For these reasons most developing countries strongly oppose any movement in the direction of WTO negotiations on e-commerce. □

Abhijit Das is Head of the Centre for WTO Studies at the Indian Institute of Foreign Trade in New Delhi. The views expressed above are in his personal capacity.

China calls for “balanced” agreement in all rules areas

China has put forward a proposal for reforming the WTO disciplines on anti-dumping and subsidies, placing the issue back on the radar of the WTO’s rules negotiations, which have of late mainly focused on the question of fisheries subsidies instead.

by D. Ravi Kanth

GENEVA: China has called for a “balanced” agreement to improve several core provisions in the anti-dumping, and subsidies and countervailing measures agreements in the Doha rules negotiations that are currently preoccupied largely with the disciplines for fisheries subsidies, trade envoys told the *South-North Development Monitor (SUNS)*.

Over the past many months, a group of major industrialized countries such as

the United States, the European Union, Australia, New Zealand on behalf of the Friends of Fish coalition, as well as developing countries like Peru, Argentina and several key members of the African, Caribbean and Pacific (ACP) group have upped the ante for negotiating new provisions on prohibiting fisheries subsidies while remaining silent on the much-needed improvements in trade remedies, said an Asian trade envoy who asked not

to be quoted.

The US had also remained reluctant to address other outstanding issues in the Doha rules dossier in the run-up to the WTO's tenth Ministerial Conference in Nairobi in December 2015. It sought agreement only on fisheries subsidies in the rules dossier.

Later, the EU and Japan, which is the coordinator of the Friends of Anti-Dumping group, nearly gave up their demands for considerable improvements in both anti-dumping and horizontal subsidies because of opposition from the US, the envoy suggested.

Against this backdrop, China's comprehensive proposal on trade remedies based on the Doha Work Programme of 2001 assumes considerable importance.

The Work Programme calls for clarifying and improving several provisions in the WTO Agreement on Anti-Dumping (ADA) and Agreement on Subsidies and Countervailing Measures (ASCM).

Chinese proposal

In its submission on "Trade Remedies" on 24 April, China has emphasized that the best option open to WTO members for countering the endemic "economic slowdown" and "protectionism" in "the rapidly changing international market place" is to "seek balanced results of the Rules Negotiations to the furtherance of the rules-based multilateral trading system."

Given the "desperate" application of anti-dumping (AD) and countervailing duty (CVD) measures by many WTO members which has resulted in trade disputes, China has sought "doable" outcomes on issues that were already discussed in the Doha Rules Negotiating Group.

The list of issues pertaining to anti-dumping includes "determinations of injury/causation, the lesser duty rule, public interest, transparency and due process, interim reviews, sunset, duty assessment, circumvention, the use of facts available, limited examination and all others rates, dispute settlement, the definition of dumped imports, affiliated parties, product under consideration, and the initiation and completion of investigations."

As regards improvements in the area of subsidies and countervailing measures, China has listed issues such as the definition of a subsidy, specificity, pro-

hibited subsidies, serious prejudice, export credits and guarantees, and the allocation of benefit.

The list of "doable" issues in both AD and CVD areas at this juncture for immediate discussions in the rules negotiations, according to China, must cover tentatively the following five issues:

(i) enhancing transparency and strengthening due process;

(ii) preventing AD measures from becoming "permanent";

(iii) preventing AD measures from "overreaching";

(iv) special consideration and treatment of small and medium-sized enterprises (SMEs); and

(v) transplanting similar provisions from the ADA to the ASCM.

China has maintained that "transparency and due process in AD and CVD investigation proceedings are vital for interested parties on both sides to effectively defend their rights and interests, and for investigation authorities to make fair and impartial determinations."

Based on the convergence on "transparency and due process" in the negotiations up until now, China has demanded specific improvements in the following provisions:

(i) the petitioner's standing (in Article 5.4 of the ADA), notice before initiation (ADA Article 5.5);

(ii) access to information (ADA Article 6.4, Article 6.5.1);

(iii) disclosure (ADA Article 6.9), evidentiary standards for subsidy allegations [ASCM Article 11.2(iii), Article 11.3];

(iv) preventing AD measures from becoming "permanent" (ADA Article 11.2, Article 11.3, including provisions concerning the sunset reviews); and

(v) preventing AD measures from "overreaching" (members shall refrain from initiating anti-circumvention investigations where the initiation of a new AD investigation would be a more appropriate approach).

Significantly, the improvements sought by China in both the ADA and ASCM are issues that the US had opposed during the rules negotiations on grounds that they would impinge on their existing rules.

China, however, did not seek the elimination of the "zeroing" AD methodology which has given rise to the maximum number of trade disputes at

the WTO till now.

Although a large majority of developing and industrialized countries have demanded the elimination of the zeroing methodology during the rules negotiations, the US remained the only member to press for its continuation. Consequently, the issue remains unaddressed.

(The zeroing methodology, which the WTO Appellate Body has repeatedly ruled against, involves an investigating authority taking account of all imports below normal value but ignoring those equal to or above the export value – calculating the dumping margin as zero in such cases. This is akin to a judicial proceeding where the court takes account only of the evidence against a suspect and ignores all contrary evidence. – *SUNS*)

Nonetheless, China also proposed that "certain provisions be transplanted from ADA to ASCM, such as those relating to due process, transparency, and the annex II on best information available."

China's proposal on trade remedies also covers, somewhat controversially, "special consideration and treatment of SMEs" in the rules negotiations.

It maintained that despite provisions concerning assistance for small companies in ADA Article 6.13 and ASCM Article 12.11, members must add an independent article "Small and Medium-sized Enterprises" with several elements.

China argued that assistance to SMEs may include the following elements:

(i) The authorities shall take due account of difficulties of SMEs in getting access to information and take appropriate measures to ensure easier access to relevant information including initiation, questionnaire, submission, disclosure and notices etc.

(ii) The authorities shall give full consideration to comments and opinions of SMEs when making selection under Article 6.10. If SMEs have genuine difficulties in providing full cooperation and present justifiable explanation, the authorities may decide not to select them for limited examination.

(iii) If SMEs are unable to submit replies to questionnaires on time with good cause, the authorities shall grant them reasonable extension upon request unless such extension will significantly impede the investigation.

(iv) The authorities shall provide any assistance practicable to SMEs by

supplying information requested by the latter, including responding in a timely manner to requests for clarification of questionnaires and permitting SMEs to submit replies to questionnaires in less burdensome ways.

(v) The authorities shall take due account of price undertakings offered by SMEs where appropriate.

(vi) Article 2 and Article 5 of Appendix II shall be strictly observed even when information provided by SMEs may not be ideal in all respects, and this situation shall not lead to a result which is less favourable to SMEs if they provided cooperation to the best of their abilities.

In short, China's proposal on trade remedies could prove to be a major challenge for the US to consider at a time when the Trump administration is actually considering tightening provisions concerning trade remedies.

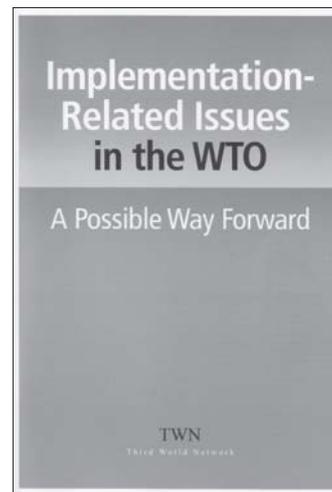
Further, it would make things difficult for countries seeking a standalone agreement on fisheries subsidies without reforming the ambiguous provisions in the current ADA and ASCM, trade envoys said. (SUNS8450) □

Implementation-Related Issues in the WTO: A Possible Way Forward

The set of multilateral agreements under the jurisdiction of the World Trade Organization (WTO) governs the conduct of international trade. Implementation of the commitments imposed by these agreements has, however, given rise to a host of problems for the WTO's developing-country members, ranging from non-realization of anticipated benefits to imbalances in the rules.

These implementation-related issues have been on the WTO agenda for over a decade, yet meaningful resolution is still proving elusive. This paper documents the progress – or, more appropriately, lack thereof – in the treatment of the implementation issues over the years. It looks at the various decisions adopted, to little effect thus far, by the WTO in this area, including the 2001 Doha Declaration which incorporates the implementation issues into the remit of the ongoing Doha round trade talks.

The paper exhorts the developing countries to draw upon the Doha mandate to bring the implementation issues back to the centre stage of negotiations. As a practical measure given the resource constraints developing-country negotiators face in the WTO, it is proposed that the implementation issues be taken up according to a suggested order of priority. Prioritization notwithstanding, the paper stresses that developing countries have every right to seek solutions to each of these longstanding, long-neglected issues.



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Humanity and social justice a must for the future of work – ILO chief

The International Labour Organization (ILO) recently convened a “global dialogue” to discuss the profound changes sweeping the world of work. *Baher Kamal* reports.

ROME: “The future of work must be inspired by considerations of humanity, of social justice and peace. If it is not, we are going to a dark place, we are going to a dangerous place,” said the head of the leading world body specializing in labour issues.

With a forceful call to make social dialogue between governments and the social partners a key instrument for building a world of work that leaves no one behind, Guy Ryder, Director-General of the International Labour Organization (ILO), summed up a landmark event on the future of work.

“We now need to transform our thinking into results, into concrete outcomes,” Ryder added at the conclusion of the 6-7 April Global Dialogue: The Future of Work We Want. “We need to address the concerns of that young person wondering if there is a future of work for them.”

The event, which took place at the ILO’s headquarters in Geneva, brought together leading economists, academics and representatives of governments and the social partners (employers’ and workers’ organizations) to discuss the profound changes sweeping the world of work.

More than 700 participants attended, with several hundreds joining and participating via the Internet and social media.

Among the participants was Lord Robert Skidelsky, from the University of Warwick in the UK, who as the keynote speaker at the event said that international solutions are needed to harmonize the process of adaptation to the future of work: “We can’t leave it all to the market. We can’t stop innovation but we can manage it.”

The Geneva meeting also featured a special session on how to shape the future of work for youth, with a particular focus on the transition from school to work, the organization of the world of work and its regulation.

Ryder emphasized the need to promote innovation and development, at the same time as maintaining the Organization’s social objectives.

The Global Dialogue was part of the ILO’s Centenary Initiative to investigate the future of work and better understand the drivers of unprecedented change, including technological innovation, the organization of work and production, globalization, climate change, migration and demography. The initiative seeks to broadly canvass the views of key actors in the world of work on all of these issues, says the ILO.

More than 167 countries have taken part in the ILO initiative so far, with 107 of them participating in national and regional dialogues that have been or are being held all around the world.

Their conclusions will help inform a High Level Global Commission on the Future of Work, to be established by the ILO later this year. The report of the Commission will feed into discussions on a Centenary Declaration at the 2019 International Labour Conference.

Work transformations

Around the world, profound changes in the nature of work are underway, the ILO said, adding that the ongoing transformations in the world of labour are disrupting the connection between work, personal development and community participation.

The future of work gains special relevance now that it is estimated that over 600 million new jobs need to be created by 2030 just to keep pace with the growth of the global working age population. That’s around 40 million per year.

Meanwhile, there is a pressing need to improve conditions for the some 780 million women and men who are working but not earning enough to lift themselves and their families out of \$2-a-day poverty.

On these major issues, which mainly

affect the present and future of the youth and in particular the most vulnerable groups such as women, migrants, rural communities and indigenous peoples, the ILO had, ahead of the meeting, posed the following key questions:

- How will societies manage these changes?

- Will they bring together or pull apart developed, emerging and developing economies?

- Where will the jobs of tomorrow come from and what will they look like?

- What are the challenges and opportunities young people are facing as they make the transition into the world of work?

- What do they see as the path forward to achieve sustainable inclusive growth for future generations?

- What are the new forms of the employment relationship and will and to what extent that relationship continue to be the locus for many of the protections now afforded to workers?

- What initiatives can revitalize existing norms and institutions and/or create new forms of regulation that may help to meet present and future governance challenges?

Around the world, in economies at all stages of development, profound changes in the nature of work are underway, the ILO explained, adding that numerous and diverse drivers account for these: demographic shifts, climate change, technological innovation, shifting contours of poverty and prosperity, growing inequality, economic stagnation and the changing character of production and employment.

“We are facing the twin challenge of repairing the damage caused by the global economic and social crisis and creating quality jobs for the tens of millions of new labour market entrants every year,” said Ryder ahead of the meeting.

Economic growth continues to disappoint and underperform in terms of both its level and the degree of inclusion, he explained, adding, “This paints a worrisome picture for the global economy and its ability to generate enough jobs. Let alone quality jobs.”

According to the ILO chief, persistent high levels of vulnerable forms of employment combined with clear lack of progress in job quality – even in countries where aggregate figures are improving – are “alarming.”

In fact, the ILO's *World Employment and Social Outlook – Trends 2017* report shows that vulnerable forms of employment – i.e., contributing family workers and own-account workers – are expected to stay above 42% of total employment, accounting for 1.4 billion people worldwide in 2017.

Almost one in two workers in emerging countries are in vulnerable forms of employment, rising to more than four in five workers in developing countries, said Steven Tobin, ILO Senior Economist and lead author of the report.

As a result, the number of workers

in vulnerable employment is projected to grow by 11 million per year, with Southern Asia and sub-Saharan Africa being the most affected.

Meanwhile, the global unemployment rate is expected to rise modestly from 5.7% to 5.8% in 2017, representing an increase of 3.4 million in the number of jobless people, according to the ILO.

The number of unemployed persons globally in 2017 is forecast to stand at just over 201 million – with an additional rise of 2.7 million expected in 2018 – as the pace of labour force growth outstrips job creation. (IPS) □

agreements on trade and investment liberalization, by noting that “offshoring – or the threat thereof – lowers labour’s bargaining power.”

The report also notes the contribution of domestic policy decisions regarding product and labour market rules to the decline: “Changes in policies (such as declining corporate income tax rates) may have strengthened incentives to substitute capital for labour, while changes in institutional arrangements (such as unionization rates) may have contributed to the decline in labour’s share of income by lowering labour’s bargaining power.”

Additionally, it states that policy changes allowing for “increased [corporate] concentration across a number of industries” have contributed to increased profit and reduced labour shares in national income.

The section on policy implications is short and disappointing. It can be summarized as proposing “training, training and more training” to facilitate the reallocation of displaced workers, although it concedes that “longer-term redistributive measures might be required as well.”

Although the report notes that policy decisions, both domestic and international, have played an important role in weakening labour’s bargaining power relative to capital’s and contributing to the decline of labour’s income share, it proposes nothing to change those policy directions. □

Peter Bakvis directs the Washington, DC office of the International Trade Union Confederation, which represents 180 million workers in 162 countries. This article is reproduced from Inequality.org under a Creative Commons licence.

Workers’ shrinking piece of global pie

Labour’s share of national income in many countries has declined, due in large part to policy decisions that weakened its bargaining power, new IMF research reveals.

by Peter Bakvis

An International Monetary Fund (IMF) paper warns policymakers about the risks of ignoring labour’s shrinking share of national incomes in many countries around the world.

“The decline in labour share has been concomitant with increases in income inequality,” the report notes, a trend which “can fuel social tension and ... harm economic growth.”

The paper, “Understanding the Downward Trend in Labour Income Shares,” was subsequently published as a chapter in the IMF’s flagship *World Economic Outlook* report released on 18 April.

The report documents a decline in the share of national income going to labour (wages) versus capital (profits) in advanced economies starting in the 1980s and emerging and developing economies a decade later. While some countries have not followed the general trend, the IMF finds that for a sample of 89 economies for which it has sufficient data, those representing 78% of advanced-economy GDP and 70% of emerging-developing-economy GDP experienced declines in labour share between 1991 and 2014.

Among emerging and developing economies, the IMF report attributes most of the decline in labour share to “global integration,” notably participation in global value chains. For the advanced-economy group, the paper at-

tributes one-half of the decline to the impact of technology, and a quarter to global integration, comprising financial integration and participation in global value chains.

Interlinked

The report also acknowledges that these factors are all strongly interlinked. Trade, financial integration and the application of new technologies have all been expedited by the removal of restrictions on trade and capital mobility.

The IMF paper explains the role of trade and financial integration, which intensified as a result of international

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Investor-state dispute settlement becomes speculative financial asset

Financing lawsuits brought by investors against host-state governments in international tribunals has become a lucrative venture, notes *Jomo Kwame Sundaram*.

Investor-state dispute settlement (ISDS) provisions in bilateral investment treaties (BITs) and free trade agreements (FTAs) have effectively created a powerful and privileged system of protections for foreign investors that undermines national law and institutions.

ISDS allows foreign corporations to sue host governments for supposedly causing them losses due to policy or regulatory changes that reduce the expected profitability of their investments. Very significantly, ISDS provisions can be and have been invoked even when rules are non-discriminatory or when profits come from causing public harm.

ISDS will thus strengthen perverse incentives for foreign investors at the expense of local businesses and the public interest.

New opportunity for speculation

In recent years, ISDS provisions of investment treaties and free trade and other agreements have increasingly provided an investment opportunity to make money by speculating on lawsuits, winning huge awards and forcing foreign governments, and taxpayers, to pay.

Financial speculators have increasingly purchased corporations deemed capable of profitably bringing winnable ISDS claims, sometimes using shell companies.

Some hedge funds and private equity firms even finance ISDS cases as third parties, with ISDS itself the *raison d'être* for such investments.

Such "third-party funding" of ISDS claims has been expanding quickly as financing such claims has proven to be very lucrative. Third-party financing reduces litigation costs to the corporations themselves, making it easier and thus encouraging them to sue. Foreign corporations typically do not have to declare receiving third-party funding for an ISDS case.

Not surprisingly then, the ISDS claims-financing industry is booming as different types of investors have been attracted by and drawn into financing lawsuits, treating ISDS claims as specu-

lative assets.

The International Council for Commercial Arbitration estimates that at least three-fifths of those considering ISDS claims have inquired about possible third-party financing before pursuing them. Financing firms provide clients with litigation packages from the outset, advising on what treaties to exploit and which law firms to hire, even recommending arbitrators.

While bondholders do not actually develop productive capacities or sell services in a host country, they too can resort to ISDS arbitration to maximize returns to their debt purchases. Thus, bondholders who have lost value can use the ISDS backdoor to sue countries for compensation, thereby encouraging a new speculative investment option for "vultures".

Hence, ISDS allows investors with little connection to the "aggrieved" initial investment to benefit financially as well.

Ripe for the picking

ISDS advocates claim that case out-

comes remain uncertain, with foreign corporations only winning about a quarter of the cases they initiate. But this proportion does not include settlements agreed to before arbitration proceedings are concluded.

ISDS arbitration is very attractive, even tempting to foreign investors who would otherwise not pursue claims in national courts against host governments.

Recent ISDS arbitrations have seen much greater delegation of authority to arbitrators in interpreting and applying agreements, without any option to appeal or otherwise challenge the arbitrators' decisions. There is no way to ensure that arbitration tribunals will interpret and apply treaty provisions in ways consistent with governments' understandings of what treaty obligations imply.

Those investing in ISDS cases recognize that the most vulnerable governments for investors to sue are typically those already in some trouble. For example, when a country resorts to emergency economic measures to protect its citizens, investors can easily claim that these undermine earlier understandings of international agreements. Ensuing lawsuits typically hurt the country's credit rating, raising capital costs and undermining its ability to attract investment. (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.

Reclaiming the Bandung spirit for shared prosperity

The Bandung Conference of African and Asian states in April 1955 sowed the seeds of closer developing-country cooperation for more balanced global development. Sixty-two years on, the time has come for the South to collectively address the unfinished business of securing an equitable international economic order.

by Noeleen Heyzer and Anis Chowdhury

"The despised, the insulted, the hurt, the dispossessed – in short, the underdogs of the human race were meeting ... Who had thought of organizing such a meeting? And what had these nations in common? Nothing, it seemed to me, but what their past relationship to the Western world had made them feel. This meeting of the rejected was in itself a kind of judgment upon the Western world!" – Richard Wright, The Color Cur-

tain (University Press of Mississippi, 1956)

This is how novelist Richard Wright saw the gathering of leaders from 29 African and Asian nations in Bandung (Indonesia) on 18-25 April 1955.

The leaders, prominent among them Jawaharlal Nehru (India), Kwame Nkrumah (Ghana), Gamal Abdel Nasser

(Egypt), Zhou Enlai (China), Ho Chi Minh (Vietnam) and Adam Clayton Powell (Congressman from Harlem, USA), considered how they could help one another in achieving social and economic well-being for their large and impoverished populations. Their agenda addressed race, religion, colonialism, national sovereignty and the promotion of world peace.

In opening the conference, the President of Indonesia, Ahmed Sukarno, asked: "What can we do? We can do much! We can inject the voice of reason into world affairs. We can mobilize all the spiritual, all the moral, all the political strength of Asia and Africa on the side of peace. Yes, we! We, the peoples of Asia and Africa, ... we can mobilize what I have called the Moral Violence of Nations in favour of peace."

The final communique expressed "general desire for economic co-operation among the participating countries on the basis of mutual interest and respect for national sovereignty"; "agreed to provide technical assistance to one another"; "recognized the vital need for stabilizing commodity trade"; recommended that "Asian-African countries should diversify their export trade by processing their raw material, wherever economically feasible, before export"; and recommended the promotion of "intra-regional trade" and the provision of facilities for "transit trade of land-locked countries".

It was the beginning of what came to be known as the "non-aligned" movement and the "Third World" and, within the United Nations, the Group of 77 plus China. With this confidence, they called for the establishment of a New International Economic Order (NIEO) – which was the basis of a declaration adopted by the United Nations General Assembly in 1974 – based on equity, sovereign equality, interdependence, common interest and cooperation among all states, to correct inequalities and redress existing injustices; to eliminate the widening gap between the developed and the developing countries; and to ensure steadily accelerating economic and social development and peace and justice for present and future generations.

The NIEO declaration was, in effect, a call for shared and differentiated responsibility for equitable development.

Unfortunately, many aspects of the NIEO were never implemented. While the developing countries sought strategic integration with the global economy

using trade and industrial policies, they were advised to accept unfettered liberalization and privatization, which saw increased volatility and financial crises often disproportionately disadvantaging them. The aid conditionality of the International Monetary Fund (IMF) and the World Bank included a straitjacketed package of so-called "sound policies" that emphasized deregulation and a diminished role for the state. This drastically reduced state capability and developing countries' policy space to deal with crises, pursue their developmental aspirations and achieve structural transformation.

Through the experience of the Latin American debt crisis in the 1980s and the Asian financial crisis of 1997-98, the countries of the South have realized that they have to create their own policy space and craft out policies based on their own circumstances. Thus, they managed to grow steadily over the last two decades and were able to weather the 2008-09 Great Recession remarkably well to anchor the global economic recovery.

The Global South is no longer a collection of "despised, the insulted, the hurt, the dispossessed – in short, the underdogs"; they are the drivers of the global economy.

Challenges

However, the issues facing developing countries are more complex now. They are faced with issues of inequalities and insecurities which affect social cohesion; climate change and uneven competition in global markets when key global negotiations on trade and climate change have broken down. They also face the potential danger of weakening of solidarity as the members of the Global South seek different interests.

It does not help when governance failure occurs in a number of developing countries; when some are ripped apart by violent internal or regional conflicts, or manipulated because of rising extremisms of many sorts. Corruption, lack of accountability and trampling of human rights are an affront to the aspirations of independence and hinder the fulfilment of development and dignity for all. The governance failures and divided societies within have also weakened the developing South's ability to deal with issues of international governance in the globalizing world, and our common future even with "Rising Asia".

The time has come for the rising Glo-

bal South to collectively work for the unfinished business of a new international economic order that today has to take a more integrated and universal approach for people, planet and prosperity as highlighted in the 2030 Agenda for Sustainable Development; to stabilize commodity prices; to improve export incomes; to ensure food security; to demand improved access to markets in developed countries; to put a stop to the siphoning of capital through dubious transfer pricing arrangements of multinational corporations and international tax havens; to eliminate the instability of the international monetary system; to ensure full and effective participation in all decision-making in all global bodies, including the IMF and the World Bank, and in formulating an equitable and durable monetary system.

However, the developing South must lead by putting its own house in order; improve democratic governance, respect human rights especially women's human rights, and ensure wider freedom of its own citizens to re-establish legitimacy and trust through a new social contract that responds to the needs and hopes of all citizens, not just in form but in substance.

In the spirit of Bandung, they have to work together for the prosperity of their people and to protect humanity's common good, especially our planet. They should recall the message, "All of us ... are united by more important things than those which superficially divide us ... And we are united by a common determination to preserve and stabilize peace in the world..."

It is time to come together and advance together to address the risks and challenges that confront our world and harness the opportunities to build a more inclusive and sustainable future of shared prosperity. Only then can we sing:

A cry of defiance, and not of fear,

A voice in the darkness, a knock at the door,

And a word that shall echo for evermore!

(Longfellow; from President Sukarno's opening speech) (IPS) □

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