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Outlook for developmental outcomes at MC11 dims

The WTO's eleventh Ministerial Conference (MC11) this December may not be able to yield pro-development outcomes on such issues as public food stocks and a Special Safeguard Mechanism for agricultural trade. The long-elusive consensus in these areas is now seen as even more difficult to attain in light of a perceived lack of US engagement in multilateral processes as evinced by its decision to withdraw from the Paris climate accord.

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Trump's climate "no" makes MC11 developmental outcomes unlikely

Prospects of development-friendly outcomes at the WTO Ministerial Conference this December seem to be receding in light of the US' apparent indisposition towards multilateral engagement as reflected in its intended pullout from the Paris climate change pact.

by D. Ravi Kanth

GENEVA: The developing and least-developed countries are unlikely to secure developmental outcomes as mandated in the Doha Work Programme at the World Trade Organization's eleventh Ministerial Conference (MC11) in Buenos Aires in December, after the Trump administration withdrew from the Paris climate accord and continued to remain non-committal on multilateral trade initiatives, sources told the *South-North Development Monitor (SUNS).*

On 1 June, US President Donald Trump announced his administration's decision to withdraw from the Paris Agreement on climate change on the grounds that the previous administration led by Barack Obama had agreed to onerous and burdensome conditions, including a commitment under the accord to contribute up to about $3 billion to the Green Climate Fund, to provide aid to developing countries to cope with climate change mitigation, and to take measures to reduce greenhouse gas emissions.

Coincidentally, on the same day as the Trump announcement, the WTO Director-General Roberto Azevedo held a one-on-one meeting with the new US Trade Representative (USTR) Robert Lighthizer to seek clarity on whether the WTO could address the specific concerns raised by the Trump administration.

Azevedo would have briefed the new USTR about the ongoing work at the WTO, particularly the "deliverables" that are being planned for the Buenos Aires meeting, as well as the US concerns on trade remedies. In the run-up to the meeting with the USTR, the Director-General had indicated that he was willing to sit down with Lighthizer to understand the specific concerns expressed by the Trump administration on the WTO Dispute Settlement Body rulings.

After the meeting, the USTR issued a bland, non-committal statement saying that the USTR "welcomed World Trade Organization Director-General Roberto Azevedo for a meeting to discuss the important role of the WTO in the global economy."

"Ambassador Lighthizer reaffirmed his support for improving the WTO and his commitment to working closely with US trading partners to increase the WTO's ability to promote free and fair trade," according to the statement.

Further, "Ambassador Lighthizer communicated his goal of building a strong working relationship with Director-General Azevedo and the WTO member economies, and he looks forward to engaging them in further discussion next week in the margins of the Organization for Economic Co-operation and Development (OECD) Ministerial Council Meeting in Paris."

But, this did not disclose whether Azevedo and Lighthizer discussed the possible deliverables for the Ministerial Conference.

It is also not clear whether the US remains committed to addressing the outstanding Doha Work Programme issues, particularly the mandated issues like the permanent solution for public stockholding programmes for food security purposes and the Special Safeguard Mechanism for developing countries.

Further, there is no indication yet whether the US will pursue issues of its own interest such as fisheries subsidies and electronic commerce that are being accorded the highest priority by several industrialized and some developing countries.

Against this backdrop, the developing and least-developed countries must remain cautious and reassess whether they will secure any outcomes on their developmental issues at the Buenos Aires meeting starting on 10 December, and / or what strategies and tactics they must adopt in the run-up to and at Buenos Aires to get results, including on public stockholding programmes for food security and the Special Safeguard Mechanism.

The outstanding Doha issues ought to be resolved as per the WTO's Nairobi Ministerial Declaration and decisions, but the Trump administration appears in no mood to stick to the commitments made by the previous administration in multilateral accords like the Paris Agreement or the Nairobi Ministerial Declaration. *(SUNS8475)* ❐

South stress food security and SSM outcomes at MC11

The latest round of agriculture negotiations at the WTO saw many developing countries reiterate the need for WTO mechanisms to enable the holding of public food stocks and to protect farmers from excessive market volatility.

by Kanaga Raja

GENEVA: A number of developing countries, at dedicated sessions of the WTO agriculture negotiations held in the first week of June, stressed on the importance of a permanent solution for public stockholding programmes for food security as well as an effective Special Safeguard Mechanism (SSM), and called for meaningful outcomes on these issues at the eleventh WTO Ministerial Conference in Buenos Aires this December.

The Committee on Agriculture in Special Session held dedicated sessions on 2 June on both the issues of public stockholding programmes for food security purposes and the SSM.

These were preceded by an informal meeting of the Committee on 1 June to discuss the state of play in the overall negotiations on agriculture.

No common ground

At the dedicated session on public stockholding for food security purposes, the Chair of the Special Session of the Agriculture Committee, Ambassador Stephen Karau of Kenya, said that all members recognize that they have a firm deadline and very clear mandates, from both the Bali and Nairobi Ministerial Conferences, to find a permanent solution.

"I can confirm that none of the members contested the mandates or the deadline for reaching a permanent solution," said the chair.

According to trade officials, he however acknowledged that members are still some distance away from finding common ground. "One of the key questions that remain open is the starting point for the discussions. The G33 [group of developing countries] maintain that their proposal should be the basis, while many others prefer the Bali Decision," the chair said.

Karau said that he had detected some flexibility in the talks. "As compared to previous reports, what has been new to me is the increasing number of members indicating that they see the permanent solution somewhere in between."

"My conclusion from this meeting is that members need to engage pragmatically with each other," the chair said. "I am convinced that there are practical solutions that could help to narrow the gaps between your positions," he told the members.

[The first operational paragraph of the Ministerial Decision on Public Stockholding for Food Security Purposes adopted at the ninth Ministerial Conference held in Bali in December 2013 states: "Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution, for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference."

[The second paragraph states: "In the interim, until a permanent solution is found, and provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision."

[Subsequently, in November 2014, it was agreed at the WTO General Council to have an accelerated phase of negotiations and to finalize a solution by end-2015. But this did not materialize at the Nairobi Ministerial Conference held in December 2015.

[The Nairobi Ministerial Decision on public stockholding for food security purposes states: "1. Members note the Ministerial Decision of 7 December 2013 (WT/MIN(13)/38 and WT/L/913) and reaffirm the General Council Decision of 27 November 2014 (WT/L/939).

["2. Members shall engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes. In order to achieve such permanent solution, the negotiations on this subject shall be held in the Committee on Agriculture in Special Session ('CoA SS'), in dedicated sessions and in an accelerated time-frame, distinct from the agriculture negotiations under the Doha Development Agenda ('DDA').

["3. The General Council shall regularly review the progress."]

Call for engagement

According to trade officials, the G33 recently made a submission that recalls the various existing mandates as well as the G33's previous submissions on this issue. In its submission, the G33 urged members to immediately engage in a constructive manner.

At the 2 June session, Indonesia, on behalf of the G33, said that it supports the chair's approach to continue to use the dedicated session as a platform for members to discuss the issue of public stockholding for food security purposes.

Indonesia underlined that the negotiation of this issue shall not be linked to other issues, as it is distinct from the agriculture negotiations under the Doha Development Agenda.

The G33 believes that it is now in the interest of members to faithfully follow the mandate of the negotiations as stipulated in the Bali and Nairobi ministerial decisions as well as the General Council decision (of 2014) to intensify the discussion with a view to delivering a concrete outcome of a permanent solution for food security purposes no later than MC11.

"We are only months away and members are yet to discuss the outstanding elements of public stockholding," said Indonesia, which encouraged members to engage immediately.

The G33 said it is aware that in the course of negotiations a number of outstanding issues were raised and discussed by members.

The G33 said that it shares the view on the importance of transparency elements in the permanent solution for public stockholding. However, it firmly believes that such elements should not be made so onerous that many developing countries are unable to use the mechanism.

The G33 said it has heard some members expressing their concerns relating to the export of public stocks and to members' public stockholding programmes adversely affecting the food security of other members. However, it has not seen a written proposal expressing such concerns.

The Philippines, also a member of the G33, said that it did not consider the interim solution (agreed at Bali) a good basis for discussion, as it "renders the instrument inaccessible for developing countries".

According to trade officials, Botswana, on behalf of the African, Caribbean and Pacific (ACP) Group, said that public stockholding programmes are of critical importance to address food security and rural development needs. It pointed out that the current interim solution does not provide a satisfactory response, "not the least because it excludes programmes that are not currently in place".

According to trade officials, Egypt, China, Korea, Kenya, Nigeria, Dominican Republic, El Salvador, Turkey, Uganda and Zimbabwe expressed similar views, with many highlighting that a permanent solution should be applicable to all developing-country members and to both existing and future programmes.

According to trade officials, India expressed support for the G33 statement. The ministerial decisions must be implemented in all seriousness, it said. It expressed disappointment that some members are trying to link public stockholding with the discussions on domestic support in agriculture. It quoted the General Council decision that states that public stockholding is distinct from the Doha agenda.

Uganda said that the outcome of a permanent solution for public stockholding is important. It said that millions of people are undernourished and it remains an issue of importance for the majority of people.

Uganda underlined that the permanent solution should cover both existing and future public stockholding programmes. The current Bali decision does not cover future programmes, it noted. "We should not negotiate an instrument that is too difficult to use," it said. Hungry people are usually angry people, it added, noting that it is a political issue and the government has a duty to feed the hungry.

China also agreed with the position of the G33 that members should arrive at a permanent solution for public stockholding and that it should be applicable to all developing members. The process of trade liberalization should not infringe on the right of developing members to ensure food security, which is more than an economic or trade issue, said China.

The ACP Group went on to propose two options for a permanent solution: (1) to replace the 1986-88 reference price with a moving average, or allow members to report the amount of subsidies in US dollars in order to accommodate exchange rate fluctuations; (2) to allow payments to be counted as Green Box subsidies, provided that administered prices are set in a transparent manner and address price volatility.

Trade distortion

According to trade officials, Pakistan said that public stockholding programmes could lead to trade distortion if the stocks end up on world markets. It said that other policy measures, such as cash transfers, could be a more efficient way to address food security concerns.

Thailand said that price support measures could not be placed in the Green Box with no limitation. It maintained that the release of procured stock into the global market could be damaging to other developing countries, especially since the members of the G33 are some of the world's largest agriculture exporters. It proposed that a permanent solution should include a prohibition of exports of stocks procured by these programmes.

Australia said to ensure food security is not to provide unchecked, unlimited market support. There are already millions of tons of wheat flooded in the market, to the detriment of neighbouring countries. Any permanent solution should include a requirement on transparency and safeguards for exports, it said.

According to trade officials, Argentina, Paraguay, the European Union and Mexico voiced similar views, saying that placing these programmes in the Green Box is against the spirit of agriculture reform.

Colombia, Brazil, Costa Rica, Canada and Japan said more information is needed to better understand the nature of public stockholding programmes.

Uruguay and Peru highlighted a communication from the agriculture ministers of eight Latin American countries in which they committed themselves to working together in search of a permanent solution to public stockholding.

Divergent views

At the dedicated session on the SSM, also on 2 June, the chair Karau reported that divergent views persist among members on this issue.

"Members who are proponents of the SSM emphasize that they see these discussions as entirely separate from market access negotiations. They view the SSM as an essential tool to protect domestic producers from import surges, to fight against poverty, and to promote rural development," said the chair.

"Other Members consider that it would be difficult to achieve an outcome on the SSM in MC11 in the absence of outcomes on market access more generally. Some also restated their concerns that the SSM would disrupt normal trade and had lingering doubts about the rationale for the SSM in the absence of market liberalization."

According to trade officials, Indonesia introduced a G33 submission on short-term price volatility in agriculture and another paper on the SSM. According to members of the G33, the first paper diagnoses the problem, and the second paper offers the remedy.

The proponents of the SSM include Indonesia, the Philippines, China, India, South Africa, Korea, Ecuador, Bolivia, Turkey and the ACP Group.

According to trade officials, Botswana, on behalf of the ACP Group, said that the SSM "is of critical importance to developing countries in order to safeguard our resource-poor farmers from import surges and price declines."

It noted that almost all ACP countries with the right to use the existing special agricultural safeguard had never been able to invoke it, on account of stringent procedural requirements and conditions associated with its application.

The ACP Group supports the establishment by MC11 of an effective and easy-to-implement SSM for developing countries that would be able to limit, on a temporary basis, imports in cases of volume surges or sudden price declines.

Indonesia, on behalf of the G33, said that over the years members have been discussing the issue with a view to arriving at an agreed solution. As a demandeur of the SSM, the G33 has been actively and constructively engaged in the discussions. There have been various proposals and technical papers submitted by the G33 to the Committee on Agriculture in Special Session with the objective of having more focused discussions, it pointed out.

The Nairobi ministerial decision on SSM is indeed a key milestone and reinforces the need to establish price-based and volume-based SSM, this time through negotiations in dedicated sessions under the Committee on Agriculture in Special Session. The G33 expressed hope that members will engage more constructively with a view to finding a pro-development and balanced SSM that ensures its accessibility and effectiveness in addressing import surges and price depressions.

Referring to its two submissions, the G33 said that the majority of producers in developing countries are small-scale farmers who are highly dependent on seasonal outcomes. The small and resource-poor farmers are highly vulnerable to short-term price volatility. It is vital for developing-country members to protect resource-poor and small farmers from excessive price volatilty of agriculture commodities, it said.

It noted that developing-country members have limited policy options due to financial, technical and social development constraints. The implementation of an effective and operational SSM has become an urgent need for developing countries, Indonesia emphasized.

According to trade officials, India voiced agreement with the G33 statement. The G33 has demonstrated a great deal of flexibility, it said.

India asked members which have concerns to table text-based proposals. It said it sees members trying to link the SSM with market access, but such a linkage never existed.

South Africa voiced agreement with the ACP Group statement. The SSM aims at adjusting distortions in trade, it said.

The Philippines said that the G33 has put forth constructive submissions and it called on the negotiating partners to come forward with evidence-based counter-proposals.

On the other hand, Argentina said that while it agreed that excessive price volatility can affect small farmers, what it could not agree on is to impose protectionist measures to combat price volatility. It said that while the SSM is justified to counteract subsidies, it should not affect countries such as Argentina that do not give subsidies.

Costa Rica said if the objective of the SSM is to deal with import surges, then it should contain disciplines to exclude products that are not produced domestically.

According to trade officials, Brazil, Japan, Mexico, Uruguay and Australia said that they could not support a standalone decision on the SSM without substantial cuts in customs duties. Australia also questioned the validity of an SSM in free trade agreements.

"I would encourage you to engage pragmatically and to talk to each other, and focus on identifying practical solutions to address the remaining obstacles in our negotiations," the chair said. "My hope is that through these types of exchanges members can collectively generate new ideas to help bridge the divergent positions."

Domestic support outcome

At the informal meeting of the Committee on Agriculture in Special Session on 1 June, the chair Karau concluded that the "discussions confirmed a certain number of key findings, in particular the near universal support among the membership for an outcome on domestic support."

Meanwhile, he said, "several delegations stressed again that market access must not be absent from an outcome at MC11".

On domestic support, Karau said that most of the members he consulted with considered curbing domestic support as the priority for MC11. However, members were "clearly aware of the contextual difficulties surrounding this issue". Therefore, they have "revised their expectations about what could be achievable by MC11."

Acknowledging the obstacles to achieving a substantial outcome in Buenos Aires, several members raised the issue of how to ensure that work will continue on domestic support after MC11. "There is an emerging consensus that whatever the outcome at MC11, it should not be considered as a final outcome on domestic support," the chair said.

He also reported that an overwhelming majority of members support a meaningful and specific outcome on addressing subsidies in cotton, and that an outcome on cotton should go "one step further than for domestic support in general".

On market access, the chair reported that in his consultations, "many members expressed the view that an outcome in agriculture market access was a lower priority."

He noted that some members consider that an outcome to address higher trade barriers in agriculture would be difficult this year in the absence of outcomes in other areas. Nonetheless, other members continue to stress the importance of achieving commercially meaningful results.

"Members acknowledged the difficulty of achieving outcome in this pillar [of market access] given the current negotiating context, but several members insisted on the need to ensure the work continues after MC11," the chair said.

On other issues such as export restrictions and food safety standards, the chair said: "The issue of export restrictions emerged as being of particular interest to a number of members which have been seeking to strengthen disciplines in this area."

As for the way forward, Karau said that the situation today is still characterized by a wide range of expectations amongst members on the prospects for MC11.

He urged members that have not yet tabled a submission to do so before the summer break.

"Although many positions on the negotiating issues remain entrenched, let me remind you that (in Swahili) *palipo na nia pana njia* – where there is a will, there is a way," the chair concluded. *(SUNS8476)* ❐

US rejects Chinese proposal on trade remedy measures

A Chinese proposal to negotiate WTO disciplines governing the use of countermeasures against dumping and subsidization in trade has been rebuffed by the US.

by Kanaga Raja

GENEVA: A proposal by China for advancing the WTO negotiations aimed at further clarifying and strengthening the rules on anti-dumping (AD) and countervailing (CV) measures was rejected outright by the United States at an informal meeting of the WTO Negotiating Group on Rules on 31 May.

According to trade officials, the US argued at the meeting that there was no basis for re-engaging on the rules negotiations, and said that it would not take part in any further discussions on the items highlighted in China's proposal.

(The improvements, sought by China in the WTO Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures, are elements that the US had opposed in the rules negotiations. Significantly, however, China has not sought the elimination of the "zeroing" methodology which is employed by the US in anti-dumping investigations and which has been repeatedly struck down by the WTO Appellate Body in disputes involving the US use of this approach.)

Chinese proposal

According to the Chinese proposal, rules are the foundation for upholding and safeguarding the open and non-discriminatory multilateral trading system. "Recognizing the lingering and serious challenges the multilateral trading system is faced with, such as the global economic slowdown, rising protectionism and the rapidly changing international marketplace, China sees the merit of continuing to seek balanced results of the Rules Negotiations to the furtherance of the rules-based multilateral trading system."

According to China, anti-dumping and subsidies and countervailing measures are key subjects in the rules negotiations and one of the essential components of the Doha Development Agenda.

As mandated by the Ministerial Declaration of the Doha Ministerial Conference, the rules negotiations on anti-dumping and subsidies and countervailing measures are aimed at clarifying and improving disciplines under the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants.

China said in reviewing the increased application of AD and CV instruments by WTO members, it is concerned that "it is even more important now than ever" to further clarify and strengthen the AD and CV rules.

According to the Chinese proposal, over the last two decades, the application of AD and CV measures has no longer been limited to the traditional users. While a number of rules remain unclear or ambiguous, AD and CV are often misused in many cases.

"Disparate application of the same rules has given rise to increased trade disputes under the WTO Dispute Settlement Mechanism in recent years. Moreover, overused AD and [CV] measures for policy considerations and their distortionary effects on international trade as well as the internal markets of the investigating Members to the harm of all Members involved and their downstream industries / consumers has no longer been an exceptional phenomenon."

It recalled that in the negotiations on anti-dumping, the Negotiating Group on Rules has been discussing in detail proposals on such issues as 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 other rates, dispute settlement, the definition of dumped imports, affiliated parties, product under consideration, and the initiation and completion of investigations.

In respect of subsidies and countervailing measures, proposals for amendments to the Agreement on Subsidies and Countervailing Measures have been submitted on a number of issues, including the definition of a subsidy, specificity, prohibited subsidies, serious prejudice, export credits and guarantees, and the allocation of benefit.

The Chinese proposal also noted that based on the consolidated text of 2011, "there is a growing convergence among Members regarding the unbracketed issues." Meanwhile, there are also a number of bracketed issues on which members have divergent views, it said.

It further noticed that the Appellate Body and dispute settlement panels have clarified important issues in quite a few cases, which would give clear guidance and reference to the rules negotiations.

Given the present state of play in the negotiations, it would be feasible to promote the rules negotiations by seeking to identify and prioritize important and "doable" issues as the starting points for further discussions, and putting them forward in a balanced and efficient way, said China.

China proposed the following aspects for further discussion and negotiation: (1) enhancing transparency and strengthening due process; (2) preventing AD measures from becoming "permanent"; (3) preventing AD measures from "overreaching"; (4) special consideration and treatment of small and medium-sized enterprises (SMEs); and (5) transplanting similar provisions from the Anti-Dumping Agreement to the Agreement on Subsidies and Countervailing Measures.

Speaking at the informal meeting, China said it recognized the difficulties encountered in the rules negotiations in the past but that great efforts were made to advance the talks as reflected in the consolidated text issued by the then chair of the negotiations in April 2011. This past effort can serve as the basis for future negotiations. China said that many of the ideas for discussion in its own proposal "stand on the shoulders" of the consolidated text.

In reference to its proposed aspects for further discussion and negotiation, China suggested that members could start with these easier issues and then progressively expand the scope of the discussions to the more difficult issues. It was open to any comments and suggestions.

No common basis

According to trade officials, the US spoke first, maintaining that there is no common basis from which the Negotiating Group on Rules can constructively engage on trade remedies.

The US said that it will not engage in talks on any of the items China has proposed as starting points for further discussion.

The US also said that the consolidated text of April 2011 did not represent any convergence or consensus among the membership at the time and even less so now. It maintained that in the intervening years the divergences have grown even greater, with WTO dispute rulings on trade remedy actions moving members even farther apart. The increasing use of trade remedy measures was the result of increasing "injurious" trade taking place worldwide, it said.

The US argued that the Chinese proposal ignores the root cause of the problem, which in the US view is increased dumping and subsidization of trade. The proposal also seeks to restrain legitimate remedial tools. At a time when dumped and subsidized trade has reached new levels of intensity, now is precisely the wrong moment for members to consider new limits on the use of legitimate remedies, the US said.

As for the Doha mandate, the US argued that members could not agree to reaffirm the Doha mandates at their last Ministerial Conference (in Nairobi) in 2015. Doha was totally obsolete and disconnected from the current reality, the US claimed.

Realistic approach

According to trade officials, Japan, Russia, Hong Kong-China, Turkey, Norway, Singapore, Switzerland, Chinese Taipei, Peru, Thailand and Indonesia expressed support for some or most aspects of China's proposal.

Japan, speaking on behalf of most members of the Friends of Anti-Dumping Negotiations (FANs) group, said that new and clear disciplines for trade remedy measures are needed now more than before.

(The members of the FANs group include Brazil, Chile, Colombia, Costa Rica, Hong Kong-China, Israel, Japan, Korea, Mexico, Norway, Singapore, Switzerland, Chinese Taipei, Thailand and Turkey.)

According to Japan, members need to take a realistic approach built on past experiences. Japan and the FANs underlined that no linkages should be made between trade remedies and other issues being negotiated in the Rules Group (notably fisheries subsidies).

Other members of the FANs group including Norway, Turkey, Switzerland, Singapore and Thailand said that there were elements of the Chinese proposal where consensus was more likely to be reached, such as transparency and due process. These issues should be the focus of discussions in the run-up to the WTO Ministerial Conference in Buenos Aires this December, they said.

Korea, another member of the group, expressed concern about the increasingly arbitrary application of trade remedy measures and said that disciplines needed to be strengthened. It however recognized the post-Nairobi reality, namely that negotiations can only take place if the counter-party is prepared to negotiate.

While welcoming the initiative by China, Korea pointed out that members failed to reach an agreement on transparency and due process in Nairobi even though these issues were also recognized at the time as being the closest to reaching consensus. The situation today is the same, if not worse, Korea said, adding that differences on the other issues, such as disciplines on sunset reviews for existing AD measures, are even greater than in the past.

Subsidy disciplines

According to trade officials, the European Union voiced agreement with China that the issues of transparency and due process are important areas. At least as important, it said, is considering improving existing disciplines on the granting of subsidies. Despite existing obligations under the Agreement on Subsidies and Countervailing Measures to notify subsidies to the WTO, the level of compliance is low and has deteriorated in recent years, the EU maintained. In this context, the EU informed the informal meeting that it has submitted a new proposal to the Rules Group on improving subsidy notification disciplines.

With respect to the specific aspects in China's proposal, the EU voiced concerns over the proposal to limit the duration of all AD measures to a maximum of 10 years and for members to refrain from initiating anti-circumvention investigations in cases where exporters are suspected of skirting AD orders. According to the EU, circumvention is a growing phenomenon undermining legitimate trade remedy measures.

According to trade officials, Australia said that what is causing trade distortions is subsidies and not the countervailing measures. It also said that the issues of transparency and due process are already being addressed in the various WTO trade remedy committees (AD, CV and safeguards). Addressing the problems of compliance with existing transparency obligations would enhance what China is seeking in its proposal, Australia argued.

Canada pointed out that there was little time and little willingness among members to agree on disciplines by Buenos Aires. While it expressed support for the general objective of advancing the rules negotiations, Canada said that it had concerns with specific aspects of the Chinese proposal, such as the idea of members refraining from initiating anti-circumvention investigations. Trade remedies are a fair and justified answer to injury caused by unfair trade, Canada maintained.

According to trade officials, Russia said it was high time that members contributed to more predictable rules of trade. It welcomed the Chinese proposal, saying that many of the ideas put forward by China could be discussed at the least. Transparency and due process were two areas where members could leverage past achievements.

Russia expressed hope that all the rules negotiation "tracks" would be given equal treatment and addressed in the same constructive manner for outcomes in Buenos Aires.

According to trade officials, South Africa called for the preservation of policy space for members with regard to their practices. It underlined that measures to address injurious trade should not be questioned as long as they were in line with WTO obligations.

According to South Africa, the consolidated text of 2011 did not represent a consensus outcome and substantial differences existed between members on the issues contained therein.

According to trade officials, India said that its officials in capital were still considering the Chinese proposal. It however expressed concerns that some of the ideas outlined in the proposal could impose additional burdens on investigative authorities.

Brazil said that a realistic approach was needed in terms of what could be achieved in Buenos Aires.

Both Brazil and Argentina cited the work in the Rules Group on fisheries subsidies, where intensive efforts were underway to develop new disciplines for the sector, and the importance attached to the issue by many WTO members.

Argentina said that the UN's Sustainable Development Goal 14.6, which calls for a global deal to eliminate subsidies that contribute to illegal, unreported and unregulated fishing by 2020, did not link the issue of fisheries subsidies with any other issue under discussion at the WTO.

According to trade officials, a number of delegations highlighted concerns about linking progress on trade remedies to progress in other areas, in particular fisheries subsidies. *(SUNS8474)* ❐

Global South calls for international body to fight tax havens

A workshop held at the UN resounded with calls for international cooperation to combat tax dodging that is depriving poor countries of development resources.

by Tharanga Yakupitiyage

NEW YORK: Tax havens are "one of the worst enemies of our democracies", said state representatives during a meeting at the United Nations.

Due to concerns over the impacts of illicit financial flows, the country missions of Ecuador, South Africa and India convened an informal workshop to discuss the issue and potential solutions.

"Tax revenues are said to be the lifeblood of a state. With integration of economies in a globalized world, actions taken on taxation in one country affect practically everybody within borders and across borders," said Permanent Representative of India to the UN Syed Akbaruddin, who added that the trends in illicit financial flows are alarming.

While Oxfam suggests that $7.6 trillion is held in offshore accounts, others estimate a much higher figure, including UN expert Alfred de Zayas who found that up to $32 trillion could be in secret jurisdictions around the world.

This deprives developing nations of essential resources needed to achieve major social and economic goals as laid out in the internationally agreed 2030 Agenda for Sustainable Development, whose motto is to leave no one behind.

"[In] the commitment to leave no one behind ... the issue of taxation is fundamental in that effort," said Deputy Permanent Representative of South Africa to the UN Mahlatse Mminele.

According to the UN Conference on Trade and Development (UNCTAD), illicit financial flows cost developing countries more than $100 billion per year.

Africa bears the brunt of such outflows as they are estimated to be equivalent to all official development assistance received by the continent in the last 50 years. In one case revealed by the Panama Papers leaks in 2016, a company dodged a tax bill of $404 million in Uganda, a figure representing more than the East African nation's annual health budget.

Ecuadoran Foreign Minister Guillaume Long painted a similar picture in his country, estimating that one-third of its gross domestic product (GDP) is being "robbed" and stowed away in tax havens, which limits opportunities for the creation of wealth and further widens societal inequality.

International cooperation

Long, whose country currently chairs an intergovernmental group of developing nations known as the Group of 77, called for international cooperation on tax issues. "The issue of international tax cooperation is of crucial importance and is directly linked to the right of development and the possibility of implementing Agenda 2030, a link to guarantee human rights," he told the workshop attendees.

Akbaruddin similarly noted the necessity of international cooperation in a world of cross-border trade and finance and criticized the lack of multilateral efforts on the issue, stating: "Those who champion multilateralism in areas such as biodiversity, in areas such as human rights, in areas such as peace and security, decide to stop championing them when it comes to matters of international tax cooperation ... what accounts for this enigma?"

Currently, the Committee of Experts on International Cooperation on Tax Matters provides a framework for dialogue and cooperation on tax issues. Though it helped create the UN Code of Conduct on Cooperation in Combating International Tax Evasion, the committee has been insufficient.

Long noted that the committee works in individual capacities rather than on a governmental level and does not have sufficient resources to tackle the issue.

The three representatives therefore called for strengthening and upgrading the committee, transforming it into an intergovernmental body that represents all.

Of the 25 seats in the committee, 12 are occupied by the 35-member Organization for Economic Cooperation and Development (OECD) which includes countries like the United Kingdom and the United States, leaving the other 158 countries with only 13 seats.

"Every country, every state – rich or poor, big or small – does have the right to an inclusive place at the table to decide on an issue that impacts all of us," said Akbaruddin.

The representatives called on the UN and the Secretary-General to take urgent action on the issue.

"The international community needs to urgently address this global test ... the status quo should no longer be allowed to persist," said Mminele. *(IPS)*❐

Why do international financial crises happen?

Addressing global financial fragility requires international coherence and cooperation among policymakers – coordination that is sadly lacking today, laments *Jomo Kwame Sundaram*.

International currency and financial crises have become more frequent since the 1990s, and for good reason. But the contributory factors are neither simple nor straightforward.

Such financial crises have, in turn, contributed to more frequent economic difficulties for the economies affected, as evident following the 2008-09 financial crisis and the ensuing Great Recession still evident almost a decade later.

Why is global coordination so necessary? There are two main reasons. One big problem before the Second World War was the contractionary macroeconomic consequences of the "gold standard".

In 1944, before the end of the war, US President Franklin Delano Roosevelt convened the United Nations Conference on Monetary and Financial Affairs – better known as the Bretton Woods Conference – even before the UN itself was set up the following year in San Francisco.

After almost a month, the conference established the framework for the postwar international monetary and financial system, including the creation of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), or World Bank.

To be sure, the Bretton Woods system reflected sometimes poor compromises made among the negotiating government representatives. Nevertheless, it served postwar reconstruction and early post-colonial development reasonably well until 1971.

In September of that year, the Nixon administration in the US – burdened with mounting inflation and unsustainable budget deficits, partly due to the costly Vietnam War – unilaterally withdrew from its core commitment to ensure full US dollar convertibility to gold at the agreed rate.

Thus, the unilateral US action did not involve a transition from the Bretton Woods system to any coherent, internationally agreed alternative.

The pre-1971 postwar period has often been referred to as a Golden Age, a period of rapid reconstruction, growth and employment expansion after the devastation of the Second World War. It was also a period of development and structural transformation in many developing countries.

All this came to an end when coordination and multilateralism collapsed following President Nixon's decision to renege on the 1944 US commitments at Bretton Woods which became the basis for the postwar international monetary system.

The leading international monetary economist of the postwar period, Robert Triffin, described the post-1971 arrangements as amounting to a "non-system".

Now, with the international monetary system essentially the cumulative outcome of various, sometimes contradictory and ad hoc responses to new challenges, the need for coordination is all the more urgent.

A strong case for coordination has long been made by the United Nations. For example, soon after the global financial crisis exploded in late 2008, the 2009 mid-year update of the UN's *World Economic Situation and Prospects* report showed how better coordinated and more equitable fiscal stimuli would have benefited all parties – developed countries, developing countries, transition economies and, most of all, the least-developed countries.

Anarchy and fragility

Since the collapse of the Bretton Woods system in 1971, a small handful of currencies – especially the US dollar, the international favourite by far – have been held by others as reserve currencies. This has allowed the issuers of these currencies – especially the US – to run massive trade deficits, contributing to unsustainable global imbalances in savings and consumption.

A second underlying cause of international financial crises has been the ascendance, transformation and hegemony of the financial sector – termed "financialization" – over the past three to four decades. Partly as a consequence, many decision-makers are now often more concerned with short-term financial indicators than other key economic indicators, often presuming that the former reflect the latter despite the lack of such evidence.

A third factor has been growing "financial fragility", partly due to the global financial "non-system" in place since the collapse of the Bretton Woods system. Referring to this "non-system" as an international financial "architecture" is really insulting to architects.

The lack of coherence and coordination has been exacerbated by financial deregulation, liberalization and globalization over the past three decades.

The growing and spreading subordination of the real economy to finance in recent decades is a fundamental part of the problem.

While finance is indeed a very important if not an essential handmaiden for the functioning of the real economy, the subordination of the real economy to finance has transformed macro-financial dynamics, with unproductive, contractionary, even dangerous consequences.

So, to address the root causes of crises, much better, including more appropriate regulation of the financial system is needed to ensure consistently countercyclical macro-financial institutions, instruments and policies, and to subordinate the financial sector to the real economy.

The 2008 financial crisis has catalyzed many debates on these issues – some old, some new – for instance, between Keynesian / Minskyian economists and their opponents; between Anglo-American and continental European worldviews; and between the global North and South.

Any sustainable solution will clearly require much better international cooperation and coordination. Almost a decade since the 2008 global financial crisis began, there is no shared political commitment to much-needed international financial reforms.

It took 15 years from the beginning of the Great Depression, a world war and Roosevelt's extraordinary leadership before the world was able to reform the international financial system in 1944. But sadly, there is no Roosevelt for our times. *(IPS)* ❐

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

Out of Africa

Much more resources are being siphoned from Africa than are entering it. The following extract from a new report published by a coalition of UK and African civil society groups examines how the rest of the world is profiting from Africa's wealth and what can be done to stem the unfair flow of funds.

Africa* is rich – in potential mineral wealth, skilled workers, booming new businesses and biodiversity. Its people should thrive, its economies prosper. Yet many people living in Africa remain trapped in poverty, while much of the continent's wealth is being extracted by those outside it.

Research undertaken for the "Honest Accounts 2017" report calculates the movement of financial resources into and out of Africa and some key costs imposed on Africa by the rest of the world. We find that the countries of Africa are collectively net creditors to the rest of the world, to the tune of $41.3 billion in 2015 (see tables). Thus much more wealth is leaving the world's most impoverished continent than is entering it.

African countries received $161.6 billion in 2015 – mainly in loans, personal remittances and aid in the form of grants. Yet $203 billion was taken from Africa, either directly – mainly through corporations repatriating profits and by illegally moving money out of the continent – or by costs imposed by the rest of the world through climate change.

- African countries receive around $19 billion in aid in the form of grants but over three times that much ($68 billion) is taken out in capital flight, mainly by multinational companies deliberately misreporting the value of their imports or exports to reduce tax.
- While Africans receive $31 billion in personal remittances from overseas, multinational companies operating on the continent repatriate a similar amount ($32 billion) in profits to their home countries each year.
- African governments received $32.8 billion in loans in 2015 but paid $18 billion in debt interest and principal payments, with the overall level of debt rising rapidly.
- An estimated $29 billion a year is being stolen from Africa in illegal logging, fishing and the trade in wildlife / plants.

Summary of the figures

INFLOWS	**Latest available annual figure**
Net private grants	$11.8 billion
Decrease in international reserve holdings	$20.7 billion
Loans to governments	$32.8 billion
Loans to private sector (FDI and non-FDI)	$20.6 billion
Net portfolio equity	$7.2 billion
Net FDI equity	$15.8 billion
Inward remittances	$31.2 billion
Official aid from OECD	$19.1 billion
Official aid from non-OECD countries	$0.6 billion
Debt interest received	$1.8 billion
Total	**$161.6 billion**

OUTFLOWS	**Latest available annual figure**
Debt payments by governments	$18.0 billion
Debt payments by private sector	$9.8 billion
Increase in international reserve holdings	$0.0 billion
Multinational company profits	$32.4 billion
Illicit financial outflows	$67.6 billion
Outward remittances	$3.8 billion
'Brain drain'	$6.0 billion
Illegal logging	$17.0 billion
Illegal fishing	$1.7 billion
Illegal trade in wildlife / plants and poaching	$10.0 billion
Climate change adaptation costs	$10.6 billion
Climate change mitigation costs	$26.0 billion
Total	**$202.9 billion**

Net annual deficit: $41.3 billion

There are other ways in which the rest of the world extracts resources from Africa, but for which figures are not available; for example, trade policies mean that unprocessed agricultural goods are often exported from African countries and refined elsewhere, causing the vast majority of their value to be earned abroad.

The figures show that the rest of the world is profiting from the continent's wealth – more so than most African citizens. Yet rich-country governments simply tell their publics that their aid programmes are helping Africa. This is a distraction, and misleading.

Our figures comprise both the movement of financial resources and two categories of costs imposed on African countries by the rest of the world. First, there is the cost to African countries of adapting to climate change – a process which has been overwhelmingly caused by richer industrialized and industralizing countries, not Africa – amounting to $10.6 billion a year. Then there is the cost to Africa of mitigating climate change – to reorient African economies onto a low-carbon path, again due to the need to tackle climate change: the annual cost here is even greater, at $26 billion. These costs are included since they entail expenditure – a loss of resources – by Africa for processes for which it has largely not been responsible.

Time to rethink

Those claiming to help Africa need to rethink their role. Their priority should be: "first do no harm." Yet much harm is currently being done. In particular, billions continue to be stolen from African citizens through insufficient global action to curb tax dodging. The British government bears special responsibility in this since it sits at the head of a giant network of overseas tax havens (perhaps more accurately described as secrecy jurisdictions) facilitating this theft – something that could easily become a greater problem post-Brexit. Other rich countries are also failing to curb the tax dodging practices of their multinational companies.

The second priority of outsiders should be to reconfigure aid as 'reparations' for the ongoing extraction of wealth and other damage being done. The level should be set at the level of the damage, not some arbitrary rate set by governments out of their own 'generosity'. Beyond that, redistribution of wealth is important for any society, as a means of addressing injustices and ensuring everyone can live a dignified life. A current problem with 'aid' is that it casts Western countries in the role of benevolent benefactors giving their wealth to poor countries. But exactly the opposite is true. As Jason Hickel of the London School of Economics has written, aid currently does not exist in any meaningful sense, given the actual flows of wealth.

The current extraction of wealth from the poor to the rich world is a continuation of historical trends. In his book *Capitalism and Colonial Production*, Hamza Alavi estimates that the resource flow from India to Britain between 1793 and 1803 was around £2 million a year, the equivalent of many billions today. The British academic theologian Robert Beckford has given a rough estimate that Britain extracted an astronomical £7.5 trillion in wealth from African countries due to the slave trade.

Africa is rich

Africa is not poor. Whilst many people in African countries live in poverty, the continent has considerable wealth. A key problem is that the rest of the world, particularly Western countries, are extracting far more than they send back. Meanwhile, they are pushing economic models that fuel poverty and inequality, often in alliance with African elites.

Africa is generating large amounts of wealth and, in some ways, is booming. For example, the largest 500 African companies recorded a combined turnover of $698 billion in 2014. In 2015, countries in Africa exported $232 billion worth of minerals and oil to the rest of the world. The value of mineral reserves in the ground is of course even larger – South Africa's potential mineral wealth is estimated to be around $2.5 trillion, while the untapped mineral reserves of the Democratic Republic of Congo are estimated to be worth an astronomical $24 trillion.

These are very large numbers but various reasons explain why the majority of people in Africa do not benefit from them, and why the present mode of minerals extraction actually leads to impoverishment. These include:

Foreign companies take most of the profits generated by Africa's natural wealth

When multinational companies export commodities such as minerals from African countries, African governments often benefit only marginally, receiving very little tax revenue from those companies. In key sectors such as mining and oil and gas, companies tend to pay low taxes and / or are given tax incentives that reduce them still further. Companies are anyway easily able to avoid paying the taxes that are due, because of their use of tax planning through tax havens. Many African tax policies are the result of longstanding policies of Western governments insisting on Africa lowering taxes to attract investment.

Money is leaving Africa partly because Africa's wealth of natural resources is simply owned and exploited by foreign, private corporations. In only a minority of foreign investments do African governments have a shareholding; even if they do, this tends to be small, usually around 5-20%. A recent report for War on Want found that 101 companies listed on the London Stock Exchange control an identified $1.05 trillion worth of resources in Africa in just five commodities – oil, gold, diamonds, coal and platinum. These 101 companies have mineral operations in 37 African countries and are mainly British, with 59 incorporated in the UK. However, some 25 of the 101 LSE-listed companies are incorporated in tax havens, principally the British Virgin Islands, Guernsey and Jersey.

Corporations stealing wealth

The $68 billion stolen from Africa in illicit financial flows amounts to around 6.1% of the continent's entire gross domestic product (GDP). Multinational companies are stealing $48.2 billion alone through "trade misinvoicing" (a method for moving money illicitly across borders which involves deliberately misreporting the value of a commercial transaction on an invoice submitted to customs), according to figures produced by Global Financial Integrity. Previous research by the UN Economic Commission for Africa found similar figures – that multinational companies stole around $40 billion a year from African countries through trade misinvoicing in the decade up to 2010.

Another massive problem is corporations buying concessions at falsely knocked-down prices, often linked to corruption and to tax havens. In 2013, the Africa Progress Panel and Global Witness examined five major sales of mining rights in the Democratic Republic of Congo in which each deal involved firms registered in the British Virgin Islands. They found the firms paid at least $1.36 billion below the market value – almost double what the DRC spends each year on health and education combined. ❐

To take one country example, figures from the South African Reserve Bank in 2016 show foreign corporations drawing away profits from South Africa far faster than they were reinvesting or than local firms were bringing home. The net outflow paid to owners of foreign capital reached R174 billion ($11.9 billion) in the first quarter of 2016 alone. Due to falls in commodity prices, multinational mining companies such as Lonmin, Anglo American and Glencore saw their share values fall and were desperate to please their foreign shareholders; thus they increased their exported profits more rapidly in comparison with the overseas-generated profits that South African corporations paid to local shareholders. The liberalization of capital controls means there is little that the South African government can do to stop this outward flow.

Those controlling tax havens are enabling the theft of Africa's wealth

Africa's people are effectively robbed of wealth by a process that enables a tiny minority of Africans to get rich by allowing wealth to flow out of Africa. Thus, according to a recent report on African wealth, there are now around 165,000 high-net-worth individuals living in Africa, with combined holdings of $860 billion. In 2016, there were 24 billionaires in Africa with a combined wealth of $80 billion. Where do these people mainly keep their wealth? In traditional, low-tax and secretive offshore holding centres such as the Channel Islands, Switzerland and the UK.

Gabriel Zucman, an academic at the London School of Economics, estimated in 2014 that rich Africans were holding a massive $500 billion offshore (i.e., in tax havens) – amounting to 30% of all Africa's financial wealth. The fact that this wealth is untaxed means that African elites have stolen $15 billion from their own countries, according to Zucman's conservative estimate.

Action needed

The key task is to dismantle the system extracting wealth from Africa. This requires action by African civil society organizations to press for change in their countries, and action by civil society organizations in the countries that are enabling this wealth extraction to take place, such as the UK. Global elites have no intrinsic interest in changing a system that benefits them. It is critical for civil society organizations to expose the role of multinational corporations and Northern governments in impoverishing Africa and to step up their work in building coalitions to end tax dodging and other unfair resource transfers out of Africa.

We highlight nine policies that are needed to help reverse the resource flows (although this list is not exhaustive):

1. Promote economic policies that genuinely lead to equitable development.

Africa's economy has been growing at 5% in recent years but poverty remains deep and is rising, showing how current models of economic growth are not generally benefitting the poor. For decades, Western governments have been encouraging or forcing African governments to promote trade and investment liberalization and privatization, as though opening up economies is an end in itself. These policies have mainly enriched foreign investors – but have not tended to benefit Africa's people. African governments must be allowed and helped to promote development models that: fairly create and redistribute wealth, create jobs for citizens, promote social welfare, ensure the progressive taxing of the rich, and protect natural resources and ecosystems and the rights and livelihoods of the communities who rely on them. Economic policies that nurture domestic companies over foreign investors are likely to have the greatest development impacts. In East Asia, which has spectacularly reduced levels of poverty in recent decades, a key policy was state intervention to nurture and develop domestic industries. This often involved imposing protectionist trade barriers to keep out foreign competitors, until the point when those industries were strong enough to compete in world markets.

2. Reconfigure 'aid' as reparations to – at least – compensate for the wealth extracted from Africa.

An independent international process is needed to specify the degree to which individual countries are responsible for extracting wealth from Africa. This process must include evaluations of all the resource flows considered in this analysis, including the costs associated with adapting to and mitigating climate change. African academic and civil society organizations could undertake analyses of the movement of resources between their countries and the rest of the world. Progress should be made towards a true international aid system that is not based on voluntary donations but on reparations for damages caused.

3. Transform aid into a process that genuinely benefits Africa.

Currently, much 'aid' from Western governments, which we

Africa's poverty is much deeper than the World Bank likes to publicize

The poverty of ordinary Africans is underreported and rising. The figures most widely cited are those from the World Bank, which states that the number of "extremely poor" people in Africa has increased to 388 million now compared with 284 million in 1990 (although the percentage has fallen, from 56% to 43%). However, the World Bank defines the "extremely poor" as those living on $1.90 a day or less. This is misleading since someone living on $2 a day is clearly still extremely poor. Whilst such poverty lines are problematic and essentially arbitrary, when higher thresholds are considered, the scale of poverty becomes much larger:

- The World Bank notes that 67% of Africans live on $3.10 a day or less – around 670 million people.
- The World Bank has also said that 65% of Africans lived on $3.10 a day or less in 2013 – around 615 million people. This compares with 500 million in 1999. So on this reckoning, more than 100 million Africans have become poor so far in the 21st century.

Others estimate even higher figures. The African Development Bank estimated in 2011 that 82% of Africans lived on less than $4 a day – this would amount to over 800 million people.

The fact that African poverty is this overwhelming – and rising – shows the urgency with which the system of extracting wealth from Africa must be reversed. ❐

count here as 'inflows', actually contributes more to outflows from Africa: aid that pushes privatization in key sectors (such as public services), free trade or unfettered private investment can simply open up economies even further to exploitation by foreign companies. If aid is to benefit Africa, it must be delinked from Western corporate interests and be based on African priorities negotiated through open processes in country. To ensure this, there must be much greater national and international scrutiny over cooperation programmes.

4. Stop multinational companies with subsidiaries in tax havens operating in Africa.

Governments in North and South should stop prevaricating on action to address tax havens. No country should tolerate companies with subsidiaries based in tax havens operating in their country. In addition, stock exchanges, such as that in London, should not permit companies to be listed unless they can show that their structures do not use tax havens and are fairly paying taxes in all locations.

5. Enable transparent and responsible lending.

Loans to governments can be a source of funds for useful investments, but too often they are given irresponsibly. Private lenders are encouraged to act irresponsibly because when debt crises arise, the IMF, World Bank and other institutions lend more money, which enables the high interest to private lenders to be paid, whilst the debt keeps growing. Laws are needed to ensure all loans to governments are transparent when they are given, particularly in the US and UK under whose laws over 90% of international loans to governments are given. And a fair, independent and transparent debt restructuring process should be created within the UN to require lenders to cancel debts when needed. Such a process was supported by 136 countries at the UN in 2015, and opposed by just six: the US, the UK, Germany, Japan, Canada and Israel.

6. African governments must stop putting their faith in the extractives sector or, where it does continue, ensure it pays a fair share of tax.

The existence of the "resource curse" is now widely accepted: the paradox that, with a few exceptions, countries with abundant mineral wealth, fossil fuels and other non-renewable natural resources experience poorer democracy, weaker economic growth and worse development outcomes than countries with fewer natural resources. Even the World Bank now notes that "as the share of national wealth from extractives increases, human development outcomes are worse". Some countries are beginning to recognize this through legislation. African governments should deprioritize extractives and focus on promoting other forms of economic activity that foster sustainable and inclusive growth. If and where extractive sectors do continue, they must be made to pay a fair share of tax and the costs of the negative damage they cause.

7. Governments outside Africa must provide compensation to Africa to cover the costs of climate change as well as taking much greater steps to end their fossil fuel addiction.

Current promised levels of funding to help Africa adapt to and mitigate climate change are grossly inadequate and amount to Africa continuing to pay for the rest of the world's environmental damage. Richer industrialized and industrializing countries must agree and deliver urgent binding cuts in their emissions, in line with their historical contribution to the problem of climate change and their present-day resources, as well as the long-promised financial compensation to countries like those in Africa that have done little to cause the problem.

8. African governments should insist on companies promoting extensive "local content" policies.

If African countries are to benefit from foreign investment and retain the potential benefits of these operations in country, they need to insist that companies employ and train a large percentage of their staff from the country and buy a large proportion of the goods and services locally. This requires legislation, and implementation of that legislation, to ensure company conformity with laws, not a reliance on voluntary promises by companies.

9. Sections of the media and NGO community need to stop falsely claiming that Western countries, including the UK, are playing generally positive or "leadership" roles in international development.

Instead, they must expose the reality of Western countries' financial relations with Africa and focus advocacy efforts away from aid, towards addressing the root causes of poverty and inequality. ❐

The above is extracted from the report "Honest Accounts 2017: How the world profits from Africa's wealth", published in May 2017 by Global Justice Now, Health Poverty Action, Jubilee Debt Campaign, Uganda Debt Network, Budget Advocacy Network, Afrika and Friends Networking Open Forum, Integrated Social Development Centre, Zimbabwe Coalition on Debt and Development, Groundwork and People's Health Movement.

Note

* In this article, we use "Africa" to refer to the 48 countries classified as "sub-Saharan Africa" by the World Bank. We have chosen not to use the term "sub-Saharan Africa" due to the numerous problems associated with this term. However, we recognize that "Africa" is also problematic given that the research detailed in this article does not include North Africa.

Why did Ecuador terminate all its bilateral investment treaties?

In May, the Ecuadoran government took the bold step of terminating all its bilateral investment treaties, acting on the recommendations of the CAITISA commission established to audit the country's investment regime. The president of CAITISA, *Cecilia Olivet*, who is a researcher with the Transnational Institute, shares her perspective on the commission's work and its wider implications in the following interview, which was originally published on the Institute's website.

How did the Ecuador investment treaties audit commission (CAITISA) come about?

On 5 October 2012, an investment arbitration tribunal ordered the government of Ecuador to pay $2.3 billion to US oil company Occidental. It was the largest amount a state had been ordered to pay by an investor-state tribunal up to that point. For Ecuador, that sum represented 59% of the country's 2012 annual budget for education and 135% of the country's annual healthcare budget.

The decision taken by three private lawyers under the auspices of the World's Bank arbitration centre shocked the world and the Ecuadoran government. The government's move that prompted Occidental's litigation had hardly been extreme. Ecuador terminated the oil concession with Occidental when it found out that the company sold 40% of its production rights to another investor without government approval. The contract signed by Occidental with the government in 1999 explicitly stated that sale of Occidental's production rights without government pre-approval would terminate the contract. The arbitrators in the case justified their decision by calling Ecuador's cancellation of the contract a disproportionate response.

On 6 May 2013, seven months later, [then Ecuadoran] President [Rafael] Correa created the investment treaties audit commission (CAITISA). Its purpose was to audit the whole Ecuadoran investment regime in a comprehensive way. The Commission was to determine the legality and legitimacy of Ecuador's bilateral investment treaties (BITs) and the investment cases filed against the country. The Commission was also expected to assess whether the BITs have helped to attract foreign direct investment (FDI) to Ecuador and / or contributed to the quality of investment in terms of national development. Finally, the Commission would propose legal and policy alternatives to BITs and the international arbitration system.

Creating this Commission was not just a reaction to the tribunal decision in the Occidental case. By that time investors had sued the government based on international investment treaties 24 times. So, the government saw the need to assess the costs vis-a-vis the benefits of the 26 international treaties in force which it inherited when President Correa took office.

How did you get involved?

A few months before the Commission was created, I co-authored a report focusing on the role of arbitrators and law firms as drivers of an investment arbitration boom. This report had exposed some key flaws of the investment arbitration system. Government officials in Ecuador who read the report asked me to join the Commission.

What was unique about the Commission?

This Commission sets an incredible precedent. It contributed towards the ongoing international assessment of the necessity for and impact of the international investment regime on the development of countries in the Global South. It also contributed to a public debate about the legitimacy and "benefits" of the current investment protection framework.

The Commission is unique in two ways. First, it is the first time a government decided to organize a review of its investment protection system in the form of an auditing process carried out by a citizens auditing commission. It was inspired by the experience of the debt auditing commission. [That commission was established by the Ecuadoran government in 2008 to examine the country's debts contracted in the period 1976-2006. Based on its findings, the government refused to repay some $30 million in debt on the grounds that this debt was illegitimate.]

CAITISA was formed by a mix of investment lawyers, civil society representatives and government officials. It included a majority (8 out of 12) of people from outside the government, most of whom are not from Ecuador. The inclusion of non-governmental experts and civil society representatives among those carrying out the review has ensured a higher level of transparency and has allowed for broader public participation. Besides the Commissioners, the auditing task was supported by a large group of other experts (including several members of a group of social activists in Latin America focusing on investment protection), who helped to develop the terms of reference and also assisted with the audit itself.

Secondly, the scope of the audit was comprehensive. Other review efforts have been more constrained in their content. CAITISA, on the other hand, was given a mandate to audit not only the bilateral investment treaties of Ecuador (including the conditions under which these treaties were signed, their clauses and the compatibility of BITs with national and international law), but also the investment arbitration system and cases against Ecuador (including how BITs have been used by foreign investors, the role of the arbitrators that decided on Ecuador's cases, and the costs of cases), and the relationship between bilateral investment treaties, foreign investment and Ecuador's development plan (including the correlation between signing BITs and attracting FDI).

What were its main findings?

The findings of the Commission that audited Ecuador's investment regime were conclusive. The BITs have not brought benefits to the country, they only brought risks and costs.

In particular, the Commission found that the BITs signed by Ecuador failed to deliver promised foreign direct investment. Also, Ecuador's BITs contradict and undermine the development objectives laid out in the country's constitution and its National Plan for Living Well (Buen Vivir). It was also established that the companies that sued the government at international investment tribunals left behind enormous social and environmental liabilities / debt.

Investors have disproportionately benefited when suing Ecuador using BITs. In particular, the financial costs for Ecuador have been immense. The total amount disbursed so far by the state has been $1.498 billion, equivalent to 62% of health spending. The government has also spent $156 million in payments to international law firms for its defence.

The Commission also established that officials who signed Ecuadoran BITs did not try to negotiate terms that would preserve the state's regulatory capacity. None of the BITs signed by Ecuador underwent a negotiation process. Also, legislators who ratified these treaties did not consider the risk for the country. Congress ratified most treaties without a legislative debate.

Finally, the Commission found that the majority of the arbitrators nominated to decide cases against Ecuador cannot be considered fully impartial.

What was the most shocking or surprising thing for you in terms of Ecuador's experience with BITs/ISDS (investor-state dispute settlement)?

Once the audit was complete and all the findings were put together, it was shocking to see how government officials have signed on to these powerful instruments without any consideration of risks. It was shocking how investors could launch lawsuit after lawsuit attacking legitimate government measures. It was shocking to see how arbitration tribunals sided with investors, making investor-friendly interpretations of the clauses in these biased treaties. It was shocking to see a rigged system in action.

Why do you think so many countries like Ecuador signed BITs?

Most countries signed BITs during the 1990s when there was little awareness of the risks. At the time, all governments would hear about from the "international community" was the importance of protecting investment for development. International organizations, governments from capital-exporting countries and academics were pushing the idea that signing BITs was the only way countries would be able to attract foreign investment and that it was a condition for development. In an orchestrated effort, organizations like the WTO, UNCTAD, OECD, the World Bank and others encouraged governments from the Global South to sign as many investment treaties as possible.

Lauge Poulsen, in his thesis "Sacrificing sovereignty by chance", probably explained it better than anyone: "By overestimating the benefits of BITs and ignoring the risks, developing country governments often saw the treaties as merely 'tokens of goodwill'. Many thereby sacrificed their sovereignty more by chance than by design, and it was typically not until they were hit by their first claim, that officials realized that the treaties were enforceable in both principle and fact."

What were the main recommendations of CAITISA?

The Commission gave detailed recommendations that covered 11 pages. But, the key one was the termination of all BITs.

We also recommended excluding the investor-state dispute settlement mechanism from any future treaty, and providing legal security to investors in national courts.

The Commission also advised the government to only sign new investment treaties based on an alternative investment model. This new model would highly restrict the rights of investors, it would protect the rights of the government to regulate and to direct investment by applying performance requirements, and it would impose binding obligations on investors to ensure they respect national and international human, social and environmental rights.

How did the Ecuadoran government respond to your recommendations?

The recommendations of the Commission were non-binding. However, on 17 May (nine days after CAITISA publicly presented the final report), the government announced that it had proceeded to terminate the remaining 16 BITs that were still in force.

The government also announced that it is planning to renegotiate investment treaties with several countries under a different model. CAITISA made some very specific recommendations as to how that new model treaty should look. Ecuador's new model BIT has not yet been made public so we don't know if the recommendations have been followed in that regard. Hopefully, Ecuador will consider an investment treaty model that restricts investment protection while enlarging the capacity of government to regulate and direct investment, in particular including investor obligations to safeguard the public interest.

How have investors and the governments that signed BITs with Ecuador responded to the government's announcement?

Similarly to the situation when South Africa or Indonesia or India terminated investment treaties, the European Commission was quick to "warn" Ecuador (and in the past, the others) about the risk of losing European investment. The scaremongering game is aimed at deterring governments from completing the termination process. It did not work in the past, and it has not worked with Ecuador either.

What do you say to those who will argue that this will discourage foreign investment?

In the same way that the need to sign investment treaties to attract foreign investment was discredited as a myth, the idea that investors will leave when countries terminate their treaties is unsubstantiated.

Foreign investors will remain in the country as long as they can make profit, even after governments terminate investment protection agreements. So far, governments like South Africa, Indonesia, Bolivia, Ecuador and Venezuela, which terminated many of their BITs, did not experience a mass exodus of foreign investors, as predicted by politicians and investment lawyers.

For example, one year after the termination of the Germany-South Africa BIT in 2013, research led by Germany's KfW Development Bank found that South Africa was still "a favoured destination for German direct investment", with more than €600 million flowing into the country in the fourth quarter of 2014. Similar to the case of South Africa, in March 2014, the government of Indonesia discontinued 17 out of 64 international investment agreements (IIAs), including agreements with the Netherlands, Italy, France, Spain and China. 2014 was the year in which FDI to Indonesia hit a record high of $78.7 trillion, according to the latest data by the Indonesian Investment Coordinating Board. Also, in 2015, Dutch FDI to Indonesia increased by 19.2% in relation to 2014 and the Netherlands remained the fourth leading investor.

What alternatives are there to the ISDS approach?

Investors have numerous options to protect their investment. However, only investment arbitration gives them the opportunity to challenge government public interest measures.

There is a wide array of options, beyond investment arbitration, available to foreign investors who feel that they have been mistreated by the state's arbitrary and discriminatory actions.

First and foremost, foreign companies are entitled to seek compensation for wrongdoings in national courts, as with national companies and citizens in the countries in which they operate. Using domestic legal remedies should be the norm. The lack of judicial independence in a few countries cannot be the excuse to promote investment arbitration worldwide. It is important to note that most ISDS lawsuits are brought against democratic countries with a strong rule of law.

If investors want to have further 'insurance', they can resort to private political risk insurance, insurance from the Multilateral Investment Guarantee Agency (MIGA) of the World Bank, or insurance offered by the investor's home country.

Finally, if none of these reassurances are enough for investors, they can always negotiate access to investor-state arbitration in specific contracts. Then the government can assess if offering that possibility is justified for the specific investment instead of giving a blank cheque to all investors from a certain country.

What are your recommendations to other governments?

Twenty years after most of these treaties were signed, it would be advisable that governments around the world carry out a review or audit process of the treaties that already exist. It is also imperative that governments undertake a cost-benefit analysis before signing new treaties.

For the review to be meaningful, it should include: an analysis of the economic benefits to assess whether signing of investment treaties has helped to increase the volume of FDI flows into the country; an analysis of the exposure of the government to costly investor-state arbitration disputes; and finally an analysis of political costs to assess the constraints on the government regulating in the public interest without the risk of being sued.

The main benefit of carrying out a review process is that a government can take an evidence-based and informed decision on what to do with its current international investment agreements and with future IIA negotiations. ❐

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