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Select group launches drive for WTO reforms

Meeting in Ottawa on 24-25 October, trade ministers from 13 countries kickstarted a push for far-reaching substantive and procedural reforms in the WTO. If realized, the reforms could alter the framework of international trade rules in ways inimical to the interests of many developing countries.

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Ottawa meet's move to launch new round of WTO talks

A select group of WTO member states are planning to usher in wide-ranging reforms at the organization which could undermine the interests of many developing countries.

by D. Ravi Kanth

GENEVA: Trade ministers from 13 countries have set the ground towards launching a new round of trade negotiations at the WTO's 12th Ministerial Conference (MC12), arguing that "the current situation at the WTO is no longer sustainable".

This appeared to be an euphemism for burying the Doha work programme of the WTO once and for all while launching plurilateral negotiations at MC12 (which will be held in Astana, Kazakhstan, in June 2020), trade envoys told the *South-North Development Monitor (SUNS)*.

(Since the Dillon Round of trade negotiations at the old GATT forum preceding the WTO, leading industrial countries have always engaged in this game: launch a new round with all issues on the agenda, negotiate accords on issues of concern to them, and then end the round, placing unfinished issues on a new work programme. Developing countries will have only themselves to blame if they swallow this bait once again. – *SUNS*)

In their 24-25 October meeting in Ottawa, Canada, the 13 trade ministers from the European Union, Japan, Canada, Norway, Switzerland, Australia, New Zealand, Singapore, South Korea, Kenya, Brazil, Mexico and Chile, along with the WTO Director-General Roberto Azevedo, finalized a one-and-a-half-page communique which emphasized that they will "move forward urgently on transparency, dispute settlement and developing 21st century trade rules."

The communique includes a hotchpotch of unspecified multilateral issues as well as plurilateral issues, without mentioning a word about the Doha work programme.

The United States, which had given tacit approval for the meeting, stayed out of the talks. China, India, South Africa and Indonesia were not invited.

(In trade history, Ottawa was hitherto known for the infamous Ottawa Pact of the 1930s for British Imperial Preferences. If the new initiative succeeds, Ottawa will be associated with winding up multilateralism. – *SUNS*)

In many ways, the 13-member coalition, which was very carefully chosen, is the new ginger group that will produce ideas with the able support of the WTO Director-General for launching plurilateral negotiations on the so-called five joint initiatives – electronic commerce; investment facilitation; disciplines for micro, small and medium enterprises (MSMEs); domestic regulation for services; and trade and gender – at MC12, said trade envoys who asked not to be identified.

The group will also simultaneously prepare the groundwork for the launch of negotiations using the multilateral route for issues that would involve "flexible and open negotiating approaches" for "the market distortions caused by [industrial] subsidies and other instruments." These issues fall under the rubric of "level playing field", said a representative of a participating country.

In the area of dispute settlement, the communique underscored the need to "unblock" the appointment of WTO Appellate Body members so as to make the Dispute Settlement Body effective. However, Canada's trade minister Jim Carr, who chaired the two-day meeting, said "there should be consideration for an alternative which would focus on mediation among disputants," according to the *Washington Trade Daily* of 26 October.

Effectively, the Canadian minister's suggestion amounted to what the US Trade Representative Robert Lighthizer had insisted over the past two years. Lighthizer had maintained several times unambiguously that Washington would prefer to go back to the GATT approach of negotiating dispute settlement panel rulings as opposed to appealing them before the Appellate Body.

Main points

The three main points of the Ottawa communique cover the three functions of the WTO – the negotiating function, the dispute settlement system, and the WTO secretariat.

The underlying danger is that work in two areas – preparing the ground for the launch of plurilateral negotiations, and the transparency and monitoring role of the WTO – will move at warp speed but work on dispute settlement reform will be held hostage because the US is unlikely to move on filling the existing vacancies at the Appellate Body, said trade envoys who asked not to be quoted.

So the danger is that by the time trade ministers meet at MC12, the Appellate Body would have become dysfunctional while member states could launch new plurilateral negotiations that have been multilaterally disapproved.

The communique's three main points are:

(i) The dispute settlement system is a central pillar of the WTO. An effective dispute settlement system preserves the rights and obligations of WTO members, and ensures that the rules are enforceable. Such a system is also essential in building confidence amongst members in the negotiating pillar. The continued vacancies in the Appellate Body present a risk to the WTO system as a whole. Therefore, there is the urgent need to unblock the appointment of Appellate Body members. The concerns raised about the functioning of the dispute settlement system (by the US) need to be addressed, while preserving the essential features of the system and of its Appellate Body.

(ii) Reinvigorating the negotiating function of the WTO by concluding "negotiations on fisheries subsidies in 2019 consistent with instructions from WTO Ministers at MC11" and simultaneously updating the WTO rules "to reflect 21st century realities, such as the Sustainable Development Goals". Addressing modern economic and trade issues, and tackling pending and unfinished business is key to ensuring the relevance of the WTO. This may require flexible and open negotiating approaches towards multilateral outcomes.

Work that is being undertaken through the plurilateral initiatives on electronic commerce, investment facilitation, MSME disciplines, domestic regulation in services, and trade and gender will be intensified so as to launch negotiations at MC12.

Further, "market distortions caused by subsidies and other instruments" will also be issues during the launch of the negotiations at MC12.

On "development", the Ottawa communique says that it will "remain an integral part of our work," including exploring "how the development dimension, including special and differential treatment, can be best pursued in rule-making efforts" – a pointer towards "differentiation".

(iii) Strengthening the monitoring and transparency of members' trade policies which play a central role in ensuring WTO members understand the policy actions taken by their partners in a timely manner. This will largely be centred around strong notification requirements.

The 13 ministers said they are concerned with "the overall record of compliance by WTO members with their notification obligations", and underscored the need for "improvements" to ensure "effective transparency and functioning of the relevant agreements".

Clearly, this is a reference to the recent trilateral proposal by the US, the EU and Japan on transparency and notification requirements.

In short, the communique seems to have the imprint of the WTO secretariat, particularly the Director-General, who was all over the place during the meeting in Ottawa, said a trade envoy in Geneva.

The meeting host Carr said the group will act as a "catalyst" in convincing other members about the urgent need for reforms. He said he will soon brief his counterparts from the US and China.

The group will next meet in January on the margins of the annual informal ministerial summit that Switzerland convenes during the World Economic Forum meeting in Davos.

The large majority of developing and least-developed countries now face a do-or-die battle: either preserve the consensus principle, the special and differential treatment architecture, and the multilateral negotiating framework in the WTO; or allow a select group of the trade body's member states to ram through rules that will deny the developing and poorest countries the policy space to develop. *(SUNS8783)* ❐

Secretariat violates WTO treaty to promote US agenda

The secretariat of the WTO has contentiously lent its voice to calls for reforming the trade body along lines favoured by the US.

by D. Ravi Kanth

GENEVA: The WTO secretariat has violated the WTO's foundational Marrakesh Agreement by advocating a set of reforms without prior approval from its 164 members.

The reforms proposed by the secretariat, along with the World Bank and the International Monetary Fund (IMF), include jettisoning the consensus principle, launching plurilateral negotiations on new issues, and introducing a case-by-case approach for availing of special and differential flexibilities, several trade envoys told the *South-North Development Monitor (SUNS)*.

In a 34-page joint report with the World Bank and the IMF, the WTO crossed the Marrakesh Rubicon that clearly laid out rules for the conduct of business by the secretariat.

[When the Marrakesh Agreement and the Uruguay Round accords were settled at the level of officials in 1993, the Uruguay Round participants, including the US, the EU and leading developing countries like India and Brazil, refused any role for the WTO secretariat akin to that of executives of UN system organisations, despite repeated efforts by the then GATT Director-General Peter Sutherland. The secretariat was mandated to undertake only what members (at Ministerial Conferences or the General Council) asked it to do.

DG did not read WTO-WB-IMF report!

GENEVA: The WTO Director-General Roberto Azevedo said on 16 October that he had not had the opportunity to read the report on "Reinvigorating Trade and Inclusive Growth" prepared by his secretariat along with the World Bank and the International Monetary Fund, which calls for doing away with the consensus principle to launch plurilateral negotiations, several trade envoys told *SUNS*.

At an informal WTO Trade Negotiations Committee (TNC) meeting on 16 October, several developing countries – India, South Africa on behalf of the African Group, and Ecuador among others – sharply criticized the WTO secretariat for advocating reforms without prior approval from members.

India said it was "deeply concerned at the WTO secretariat becoming a party to the recent report by international organizations on WTO reforms," according to trade envoys present at the meeting.

According to a participant who asked not to be quoted, India's trade envoy J.S. Deepak said while "the issue of institutional reform of the WTO is important for some members," it is "best resolved by the membership without the secretariat offering its suggestions."

Ambassador Deepak said, "In the absence of any explicit request from the membership by consensus, we expect the secretariat to act with restraint in this matter so that the member-driven character of the WTO is preserved."

On behalf of the African Group, South Africa's trade envoy Xavier Carim said "we did not consider the recently released IGO [intergovernmental organizations] report by the WTO secretariat, World Bank and IMF."

"Suffice it to say that the secretariat's stature is secured when it maintains its international character and stands apart from the partisan positions of members," said Ambassador Carim, according to a participant present at the meeting.

China said while it agreed with the Director-General's call for reforms to fix specific problems to make the system work better, members should be cautious "not to undermine the core values and basic principles of the WTO such as non-discrimination, diminish the development right of developing countries, or weaken the spirit of consensus."

"Any kind of reform," according to China, "should be a mutual, comprehensive and gradual process, as it is a common cause of 164 members. No one can be left out. No one can be singled out either. Particularly, developing countries' interests should be strongly voiced and fully reflected in this process."

Several developed countries – the European Union, Japan, Canada, Australia, Switzerland and Norway among others – welcomed the reform proposals for modernizing the WTO, including the "Reinvigorating Trade and Inclusive Growth" report.

In his concluding remarks on the criticism levelled against the WTO-World Bank-IMF report, the Director-General said his secretariat participated in drafting the report after receiving requests from the World Bank and the IMF, according to several trade envoys present at the meeting.

Azevedo said he was not sure which division in the secretariat participated in drafting the report. He said he did not remember all the contents of the report as he had read it sometime ago.

He said he would now look into the report in the face of criticisms made by members, suggesting that there was no bias, according to several envoys present at the meeting.

The Director-General along with the chiefs of the World Bank and the IMF had publicly issued the report at the IMF-Bank annual meetings in Bali earlier in October, a South American trade envoy said, arguing that the DG was pretending that he did not know the report's contents.

"What the DG said in his concluding remarks is a classic case of Azevedo, who tends to put an innocent face on his continued violations of multilateral rules time and time again," said another trade envoy, preferring anonymity.

(If the DG's explanation on the joint report is to be believed, it would appear to mean a case of self-confessed professional incompetence and inability to run a secretariat. – *SUNS*) *(D. Ravi Kanth/SUNS8776)* ❐

[It is time developing countries call to account the WTO Director-General as head of the secretariat, and decline to allow the WTO-World Bank-IMF declaration to be tabled at WTO bodies. It may also be time for developing countries to decline to enable the Director-General's remarks and interventions before WTO bodies. – *SUNS*]

Even though the WTO secretariat is required to remain neutral in negotiations without advancing any member's positions, the reforms proposed in the joint report tilted towards the proposals made by the United States at the WTO's 11th Ministerial Conference (MC11) held in Buenos Aires in 2017.

The secretariat has "opted" for a change by setting aside the consensus principle on grounds that it is disrupting the negotiating activity at the trade body, said a trade envoy from South America who asked not to be quoted.

Moreover, the report remained totally silent on the existential crisis facing the WTO's dispute settlement system, particularly the gradual demise of its Appellate Body. Even as the report vociferously argued for new "rules" and "rulebook" in five areas – electronic commerce, investment facilitation, disciplines for micro, small and medium enterprises (MSMEs), domestic regulation for services, and gender – that would penetrate into the autonomous space of domestic regulatory structures, it failed to answer the vital question as to how these rules are going to be enforced and whether there will be a dispute settlement system to oversee any trade disputes arising from these new rules.

The report's central goal is aimed at preparing the ground for a formal burial of the Doha Round at the WTO's 12th Ministerial Conference to be held in Astana in 2020, and for the simultaneous launch of plurilateral negotiations on e-commerce, investment facilitation, MSME disciplines, domestic regulation for services, and gender, several trade envoys familiar with the report told *SUNS*.

Titled "Reinvigorating Trade and Inclusive Growth", the joint report, in which the WTO secretariat provided major inputs, argues that "reliance on an approach [consensus principle] in which all members must agree on all issues [the single undertaking] risks driving negotiating activity outside the WTO."

Under the sub-title "Role of the International Trading System," the WTO secretariat has argued that "the practice of bundling negotiating issues together in giant, all-or-nothing trade rounds [based on the single undertaking] has become extremely difficult to manage."

The report suggested that the single-undertaking approach, which was earlier adopted in the Uruguay Round and now the unfinished Doha Round, "became increasingly vulnerable to delays and deadlocks as progress on more feasible issues was held back by a lack of progress on more controversial and intractable ones."

According to the report, "the multilateral trading system has not always relied on large-scale 'single undertakings' like the Uruguay Round."

The report unabashedly spoke about the US trade policy priorities since 1995. The US had all along pressed for "compact" agreements such as the Information Technology Agreement, the Trade Facilitation Agreement and Competition Policy among others. But the European Union, which was required to make concessions in the area of agriculture trade, had proposed the Millennium Agreement based on a single undertaking that would include the controversial so-called Singapore issues, i.e., investment, government procurement, competition policy and trade facilitation.

Without providing the historical background, the report said "when the WTO was created in 1995 many expected it would foster a flow of new agreements on various topics."

It argued that "many approaches have been deployed over the years – some fully multilateral, and others not" – suggesting that "key parts of the current WTO rule book were initially agreed by and applied (in the 1970s and 1980s) only to those countries adopting the Tokyo Round 'Codes'."

"In certain areas – especially those emerging issues where policy innovation is needed and where not all 164 WTO members are equipped or ready to engage – some countries wish to move further and faster than others, and are doing so," the report maintained.

(In terms of the Marrakesh Agreement, such plurilateral accords need agreement by consensus of all WTO members at the Ministerial Conference. – *SUNS*)

Promoting plurilaterals

The report made a strong case for launching plurilateral negotiations on e-commerce, investment facilitation, MSME disciplines, domestic regulation for services, and gender. These "open-plurilateral" discussions, said the report, are not aimed at exchanging market access concessions "but to improve regulatory coordination – in order to minimize policy frictions and advance shared goals in a 'least trade restrictive' way" – and could thus lead to "a more cooperative, less mercantilist, approach to WTO negotiations in the future."

The report added that new rules negotiated through these plurilaterals "would likely be inherently non-discriminatory – because they involve domestic regulations that cannot be easily tailored to benefit specific trade partners – making concerns about 'discrimination,' like calculations of 'reciprocity,' less relevant."

The report maintained that the WTO's General Agreement on Trade in Services (GATS) offers a structure for new agreements in these areas. It explained the core features of the GATS but did not, however, reveal the gross asymmetries in market access commitments between GATS Mode 3 concerning commercial presence and Mode 4 dealing with the movement of natural persons.

On e-commerce, the report advocated that members be guided by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), citing the following benefits flowing from the CPTPP's chapter on e-commerce:

- The CPTPP "seeks to promote the free flow of data and prevent 'localization requirements' of technologies and servers, while allowing the pursuit of legitimate public policy objectives. It includes disciplines ensuring that companies and consumers can access and move data freely (subject to safeguards, such as for privacy)."
- "CPTPP countries retain the ability to maintain and amend regulations related to data flows, including those oriented to protecting privacy, but have undertaken to do so in a way that does not create barriers to trade."
- "Also innovative [in the CPTPP] is the prohibition against forcing businesses to build data storage centres or use local computing facilities in CPTPP markets."
- "CPTPP countries have committed not to impose these kinds of 'localization' requirements on computing facilities, thus ensuring that information can travel across borders and business and consumers can benefit from the advantages of the 'cloud'."
- "Restrictions on data flows and localization requirements may be imposed for a 'legitimate public policy objective,' including the protection of privacy, to the extent that that measure is not a disguised restriction to trade, or that it imposed restrictions 'greater than required' to achieve the desired policy objective."
- "Another new provision in the chapter is the prohibition of measures that force suppliers to share software source code with governments or commercial rivals when entering a CPTPP market."
- "Continuing the trend found in previous trade agreements, the chapter prohibits the imposition of customs duties on digital products, including products distributed electronically, such as software, music, video, e-books, and games."
- "A similar provision prevents CPTPP countries from favouring national producers or suppliers of such products through measures such as discriminatory taxation or outright blocking or other forms of content discrimination."
- "To facilitate electronic commerce, the chapter includes provisions encouraging CPTPP Parties to promote paperless trading between businesses and the government, such as electronic customs forms; and providing for electronic authentication and signatures for commercial transactions. The agreement also requires CPTPP members to maintain a legal framework for electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts."
- "To protect consumers, CPTPP members agree to adopt and maintain consumer protection laws related to fraudulent and deceptive commercial activities online and to ensure that privacy and other consumer protections can

be enforced in CPTPP markets. Parties also are required to have measures to stop unsolicited commercial electronic messages (spam). The agreement recognizes that governments have different ways of implementing privacy protections, and CPTPP promotes interoperability between those diverse legal regimes."

In contrast, many developing countries, including China and India, have proposed retaining data in local servers and sought clear localization requirements.

Trade envoys from the developing and poorest countries said the WTO secretariat has chosen to "compromise" the core principles of the Marrakesh Agreement that established the 164-member intergovernmental trade body.

The secretariat's open advocacy for undermining the special and differential flexibilities and for launching plurilateral negotiations on all issues, except fisheries subsidies, does not augur well for the organization as it could polarize the membership horizontally, said trade envoys.

More crucially, the secretariat's proposed reforms, which lean towards addressing the US' concerns, have also completely ignored the most important issue of strengthening the WTO dispute settlement system by filling the vacancies at the Appellate Body.

In crux, there has never been such a moment in the history of the GATT/WTO when the WTO secretariat has chosen to behave like a global Minotaur in trade by openly undermining the rules-based organization.

The writing on the wall for developing and poorest countries is clear: they either survive by safeguarding the consensus principle, the special and differential flexibilities, and the multilateral trade negotiating framework of give-and-take, or face the prospect of becoming vegetables forever. *(SUNS8773)* ❐

South call for expeditious conclusion of DDA talks, oppose new issues

A recent WTO meeting saw member states voice their concerns about unresolved multilateral issues, proposed plurilateral ones, and the "existential crisis" facing the Appellate Body, as *D. Ravi Kanth* reports over the following two articles.

GENEVA: A large majority of developing and least developed countries on 16 October demanded the expeditious conclusion of the Doha Development Agenda (DDA) trade negotiations while opposing aggressive attempts to pursue plurilateral negotiations on new issues without multilateral approval, several trade envoys told the *South-North Development Monitor (SUNS)*.

At an informal Trade Negotiations Committee (TNC) meeting of the WTO, South Africa, on behalf of the African Group, issued a strong call "to continue to pursue outcomes on the core developmental issues in line with the Doha mandate in respect of agricultural domestic support, public stockholding and fishery subsidies."

The African Group said it is encouraged by engagement for making improvements on cotton subsidies and market access.

The African Group demanded an outcome on the proposals on special and differential treatment (S&DT). "As such, we do not see a likelihood of consensus on proposals calling for graduation, case-by-case application of S&DT or further differentiation," South Africa said.

India said "some of the ideas on reforms being floated, in their breadth, novelty and potential impact, are akin almost to launching a new Round, even when we still need to address some of the Doha issues, build on the work done and harvest some outcomes."

India argued "we have been proponents of reforms of the Uruguay Round agreements like the Agreement on Agriculture and believe that though reforms may be necessary, and even help enhance the effectiveness of the organization, the need at this time is to follow approaches that build and enhance trust among members and provide a healing touch."

India warned that attempts to run away from the core developmental issues by pursuing new issues or reforms will have the following consequences:

- may increase divergences or be divisive;
- freeze the inequities against the interests of developing countries and least developed countries (LDCs);
- perpetuate the monopoly of platforms and thwart competition;
- go against the development focus which is part of the basic structure of the organization;
- seek to dump principles of non-discrimination and consensus which have made the WTO inclusive;
- do not address the asymmetry of existing agreements; or
- compromise the ability of developing countries and LDCs to fight hunger and poverty, which are still huge challenges for them.

Malawi, on behalf of the African, Caribbean and Pacific (ACP) Group, said "any proposals for WTO reform must clearly set out reasons why this is considered necessary; how the reform takes into account the interests of the whole WTO membership, especially developing countries, including the ACP Group; and how the reform would contribute towards the discharge of the DDA and other ministerial mandates."

The ACP Group said "inclusivity, transparency, S&DT for developing countries and LDCs are cardinal principles enshrined in the institution that must be fully adhered to."

A large majority of developing countries – India, South Africa, Indonesia on behalf of the G33 group, and the ACP Group – called for addressing the unresolved issues of the Doha work programme.

Many developing countries expressed sharp concern over attempts to undermine the consensus principle and to introduce "differentiation" in availing of special and differential flexibilities.

Many members said that they are ready to accelerate the current discussion for crafting disciplines on fisheries subsidies.

Members, however, remained divided on the plurilateral discussions on electronic commerce, micro, small and medium enterprises, domestic regulation for services and trade and gender. *(SUNS8776)* ❐

Members warn demise of AB is the worst crisis facing the WTO

by D. Ravi Kanth

GENEVA: A large majority of members of the WTO warned at the 16 October TNC meeting that the worst existential crisis facing the trade body at this juncture is the possible demise of its Appellate Body (AB), the highest adjudicating arm for resolving global trade disputes.

The US, which has blocked for more than one year a proposal from over 100 members to fill the vacancies at the AB, has stuck to its isolationist position that the WTO's dispute settlement system has gone far beyond what was intended in the Uruguay Round commitments.

At the TNC meeting, the standoff between the large majority of members on one side and the US on the other, exposed the irrelevance and redundancy of crafting new rules through plurilateral negotiations on electronic commerce, investment facilitation, disciplines for micro, small and medium enterprises (MSMEs), domestic regulation in services, and trade and gender at a time when the AB is going to disappear by December 2019 if the vacancies remain unfilled.

On behalf of the African Group, South Africa said forcefully "that unless and until members come to terms with the growing threat to the dispute settlement mechanism, not only existing rules but also any discussion of new WTO rules or reform will become redundant."

"The DSM [dispute settlement mechanism] is the one matter on which we need urgent engagement," said South African Ambassador Xavier Carim.

India said "the existential crisis facing the Appellate Body is our gravest concern."

"With only three members left, its effectiveness is compromised, and with the continuing impasse, its future is a question mark," said India's Ambassador J.S. Deepak, according to trade envoys present at the meeting.

"The looming paralysis and possible disappearance of the Appellate Body will be the death knell of the dispute settlement system, which, in spite of its limitations, has served us well," India maintained.

In this context, India argued, "the topmost priority for the [WTO] membership needs to be to break the impasse in the filling up of the vacant positions of the Appellate Body members."

"A number of ideas have been floated to address the issues raised, and we are open to engage on any or all of them, and to focus our efforts on arriving at a breakthrough in this important area," India said.

"A swift and independent, two-stage dispute settlement system is necessary, we believe, for fair enforcement of the rules of international trade and preserving the credibility of the WTO," India argued.

"This needs to be at the top of the agenda in the coming weeks and months!" emphasized India.

"Severe crisis"

China pointedly criticized the US for blocking the appointment process for filling the four vacancies in the AB. "The entire dispute settlement system is in severe crisis," China said.

"Ever since August last year, more than 100 WTO members voiced serious concerns by means of joint proposals, joint statements or interventions at various occasions," China's trade envoy Ambassador Zhang Xiangchen said at the TNC meeting. "Recently, the EU, Canada and Honduras put forward some concrete suggestions as well."

Malawi, on behalf of the ACP Group of more than 90 countries, said that at this juncture it places priority on the unblocking of the selection of AB members – "without which the system will not function, therefore placing the merits of negotiating new rules into question."

The ACP countries pointed out that "developing countries, including the ACP Group, have in the past tabled proposals on the reform of the WTO dispute settlement system but some of the members now calling for reform blocked those proposals."

"Even though our concerns on the [dispute settlement system] still remain not addressed, we do not think blocking the whole system is the way to handle things," Malawi said.

The EU said it is particularly worried about the situation surrounding the AB. It argued that "the blockage of appointments, hostage-taking of the dispute settlement system, and its eventual crippling cannot be accepted as a 'new normal'."

Japan cautioned that if "the Appellate Body ceases to operate, the entire dispute settlement system could be brought to a halt."

Australia, Canada and several other countries also called for addressing the gravest crisis at the WTO.

But the US, which has called for reforms in the transparency and notification functions of the WTO secretariat and for pursuing plurilateral negotiations, remained unmoved by the calls for filling the vacancies at the AB.

WTO Director-General Roberto Azevedo said there is no progress in ending the stalemate for filling the vacancies.

Consequently, the DG's repeated calls for crafting new rules to address "21st century" challenges lack credibility and integrity, said trade envoys who asked not to be quoted. *(SUNS8776)* ❐

US threatens to hold "WTO reforms" hostage over dispute panel requests

The US has blocked a move by seven other WTO members to seek an adjudicatory ruling on its disputed steel and aluminium tariffs, apparently tying this issue to progress on the WTO reforms pursued by some of the seven.

by D. Ravi Kanth

GENEVA: The United States threatened at the WTO on 29 October that it would hold the proposed "WTO reforms" a hostage to the invocation of dispute settlement panel proceedings by seven members against Washington's steel and aluminium tariffs imposed under the US Section 232 national security provisions.

Warning the seven complainants – China, the EU, Canada, Mexico, Norway, Turkey and Russia – the US issued bellicose threats: "If the WTO were to undertake to review an invocation [by the US] of Article XXI, this would undermine the legitimacy of the WTO dispute settlement system and even the viability of the WTO as a whole."

"Infringing on a sovereign's right to determine, for itself, what is in its own essential security interests would run exactly contrary to the WTO reforms that are necessary in order for this organization to maintain any relevancy," the US told the seven members.

The US has imposed additional import duties of 25% on steel and 10% on aluminium on national security grounds under Section 232 of its Trade Expansion Act, arguing that this is permitted by Article XXI of the General Agreement on Tariffs and Trade (GATT) which deals with "security exceptions".

Requests blocked

At the 29 October meeting of the WTO Dispute Settlement Body (DSB), the US blocked the requests by the seven members for the establishment of a panel to rule on the steel and aluminium tariffs.

Under the WTO's dispute settlement rules, panel establishment will be automatic if and when the requests come up for a second time before the DSB.

In separate responses to the first-time requests from the seven complainants, the US issued dire threats of serious consequences to the WTO if parties "undertake to review an invocation of Article XXI".

Effectively, the US told the so-called "reformers" among the seven complainants, such as the EU, Canada, Norway and Mexico, not to proceed with their second-time requests at the DSB.

The likes of the EU and Canada are currently spearheading an effort to institute substantive and procedural reforms at the WTO.

The US accused Norway of "undermining the trading system by asking the WTO to do what it was never intended to do."

"It is simply not the WTO's role, nor its competence, to review a sovereign nation's judgment of its essential security interests," the US argued. Further, "issues of national security are political matters not susceptible to review or capable of resolution by WTO dispute settlement".

The US said it has all along been its position for over 70 years that "issues of national security are not matters appropriate for adjudication in the WTO dispute settlement system."

Citing the European actions before the GATT Council in 1982, the US said the then European Economic Community (EEC) and its member states had stated that Article XXI was a reflection of a GATT member's "inherent rights".

The EEC, according to the US, had maintained that "the exercise of these rights constituted a general exception, and required neither notification, justification, nor approval, a procedure confirmed by thirty-five years of implementation of the General Agreement ... [since] every contracting party was – in the last resort – the judge of its exercise of these rights."

The US told Norway that it had supported the EEC and its member states, Canada and Australia in their invocation of Article XXI by stating that "in taking the measures ... [they] did not act in contravention of the General Agreement."

The sharp exchanges between the US on the one side and the seven members on the other offered a glimpse of how the US is going to proceed in the coming days and months on a range of issues at the WTO.

It is clear as daylight that the US intends to decimate the WTO dispute settlement system which operates under the Appellate Body while forcing plurilateral negotiations in areas of its interest as well as imposing on WTO members burdensome and intrusive requirements for notifications, said several trade envoys who asked not to be quoted.

The reforms proposed by the EU and Canada along with 11 other countries at a recent ministerial meeting in Ottawa are meaningless because the US will not enable any progress on dispute settlement reform, said a South American trade envoy who asked not to be quoted.

"Shared conviction"

On their part, the seven members said that the US steel and aluminium duties violated several core WTO provisions such as most favoured nation (MFN) treatment, the integrity of scheduled commitments and various provisions in the WTO Agreement on Safeguards.

They called for a single panel to be established, saying that their requests "reflect a shared conviction among the co-complainants that the US steel and aluminium tariffs are inconsistent with the United States' WTO obligations."

Though the US "does not characterize the steel and aluminium tariffs as 'safeguard measures' as a matter of US municipal law," the question is not one of municipal law, Norway said.

The complainants asserted that the tariffs do constitute safeguard measures under the Agreement on Safeguards.

In a sharp response, the US raised two sets of criticisms against the complainants.

It singled out China by saying that it is not the only member to have expressed concern that China's "non-market" economic system is at the source of the international steel and aluminium glut.

A joint proposal from the EU, Japan, Mexico and the US had warned that "overcapacity is a major cause of distortions to international trade."

"China's non-market economic system and the policies it generates in the steel and aluminium sectors are recog-

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The invisible, hungry hand

Despite playing a critical role in global food security, agricultural workers are themselves "among the world's hungriest people", says a UN rights expert.

by Tharanga Yakupitiyage

NEW YORK: The very people who help put food on our tables often face numerous human rights violations, forcing them to go to bed hungry.

In an annual report presented to governments at the United Nations in October, UN Special Rapporteur on the Right to Food Hilal Elver found that agricultural workers worldwide continue to face barriers in their right to food including dangerous work conditions and the lack of employment protections.

"[Agricultural workers] are a major element of our reaching available food but they are among the world's hungriest people," she said, highlighting the paradoxical relationship.

"We are dealing with smallholder farmers, poverty, inequality, and land issues but we don't deal with the actual workers working from farm to table – there's a huge chain of production that we are not paying attention [to]," Elver added.

Agricultural workers make up over one billion, or one-third, of the world's workforce.

Despite playing a critical role in global food security, many farm workers are left without enough money to feed themselves or their families in both developing and developed countries due to low wages or even late payments.

According to the Food and Agriculture Organization of the United Nations (FAO), nearly 80% of rural farmers in developing countries earn less than $1.25 per day. In Zambia, for example, agricultural workers earn less than $2 per day on third-party farms.

In the United States, while the minimum wage is higher, 50% of farm workers were paid less than minimum wage and 48% suffered from wage theft. A survey by the Food Chain Workers Alliance also found that one-quarter of all farm workers have incomes below the federal poverty line, contributing to farmers' food insecurity and trapping them in poverty.

Migrants and women in the sector often face the brunt of such violations, Elver noted.

"Employers are more likely to consider migrant workers as a disposable, low-wage workforce, silenced without rights to bargain collectively for improved wages and working conditions," she said.

For instance, in California, which produces the majority of fruits and vegetables in the US, 91% of farm workers are foreign-born, primarily from Mexico. The rates of food insecurity for such labourers and their families range from 40% to 70% across the state.

While many industries have adopted minimum wage standards put forth by the International Labour Organization (ILO), they remain unenforced.

Pesticide threat

Elver also noted that the agricultural sector is one of the world's most dangerous sectors, with more than 170,000 workers killed every year on unsafe farms, twice the mortality rate of any other industry.

This is partly attributed to exposure to toxic and hazardous substances such as pesticides, often leading to a range of serious illnesses and even death.

Argentine farm worker Fabian Tomasi, who recently died after contracting severe toxic poly-neuropathy linked to his exposure to agrochemicals, is a reminder of this.

Glyphosate, a weed-killer developed by controversial company Monsanto, has been widespread around the world and its use has increased in the South American nation, which is one of the world's largest soy producers. Since its use, there has also been an increase in cancer and birth defects in farming regions in Argentina, with rural populations experiencing cancer rates three times higher than those in the cities.

The World Health Organization (WHO) also classified glyphosate as "probably carcinogenic to humans."

In developed countries, acute pesticide poisoning affects one in every 5,000 agricultural workers, the report found.

In the US, Dewayne Johnson also used Monsanto's glyphosate-based herbicides while working as a groundskeeper in California. Years later, he discovered that he had non-Hodgkin lymphoma, a debilitating blood cancer.

After the case was brought to court, a California jury ruled against the agrochemical corporation, claiming that it caused Johnson's terminal cancer and that it acted with malice and negligence in failing to warn consumers.

Monsanto continues to deny allegations that its glyphosate-based products cause cancer.

Now, the US government is trying to reverse a ban on another pesticide, chlorpyrifos, which has been associated with developmental issues among children and respiratory illnesses.

However, like Johnson, many agricultural workers around the world have begun to organize and rise up in the face of corporations and countries that fail to protect their human rights.

"This is an important new thing, giving the public much more understanding about pesticides," Elver said.

Migrant farm workers from Vanuatu recently won a settlement against company Agri Labour Australia after being underpaid and working in dangerous conditions which included exposure to chemicals.

But states must do more to protect and promote the rights of agricultural workers, Elver noted.

"Labour rights and human rights are interdependent, indivisible, and mutually inclusive. The full enjoyment of human rights and labour rights for agricultural workers is a necessary precondition for the realization of the right to food," she said.

The report states that governments must set "living wage" and working standards, and they should establish enforcement and inspection mechanisms to ensure such standards are being met.

The international community should also reduce pesticide use worldwide, including the ban of highly hazardous pesticides and the development of alterna-

tive pest management approaches.

International organizations such as the ILO and FAO also have a role to play and should establish a fact-finding group to examine whether nations are implementing such changes.

Companies which fabricate evidence or misinform the public of health and environmental risks should be penalized, the report adds.

"It is time for States to step up, and take swift and urgent action to hold accountable those who commit human rights violations against agricultural workers and to prevent further violations," Elver concluded. *(IPS)* ❐

(continued from page 8)

nized as a global problem," the US maintained.

"China's choice to pursue dispute settlement against members defending their legitimate interests would make WTO rules an instrument for China to protect its non-market behaviour," rather than promoting "fair, market-based competition that improves the welfare of all our citizens," the US added.

The US levelled the second set of criticisms against the EU, Norway and four other members, saying that "issues of national security are political matters not susceptible to review or capable of resolution by WTO dispute settlement."

More ominously, the US warned that "infringing on a sovereign's right to determine, for itself, what is in its own essential security interests would run exactly contrary to the WTO reforms that are necessary in order for this organization to maintain any relevancy."

The US, however, will not be able to prevent the establishment of a panel if the seven countries make a second request at the next DSB meeting in November.

But it remains to be seen how the EU, Canada, Mexico and Norway – which were among the signatories to the Ottawa communique for reforming the WTO – will proceed at the DSB. If they fail to bring their second requests for establishing the panel in November, then they will lose their credibility for pursuing reforms, trade envoys said. *(SUNS8785)* ❐

Confronting climate change in a deeply unequal world

Sam Pizzigati **draws a disturbing link between economic inequality and environmental catastrophe.**

Two meticulously sourced – and deeply disturbing – warnings about our shared global future appeared in the first half of October. One has terrified much of the world. The other hasn't, not yet at least, but most certainly should.

You've most likely already encountered the first of these warnings, a grim report from the United Nations Intergovernmental Panel on Climate Change, a broad and distinguished panel of the world's top climate scientists. They're advising us that the level of global warming that governments once saw as "safe" would, if ever reached, trigger catastrophic dangers.

Humanity has, the scientists tell us, about a dozen years to get our environmental act together. Or else ...

The second warning came from researchers at Oxfam, the global anti-poverty charity that has emerged as a top critic of our world's increasingly concentrated income and wealth. Oxfam and the non-profit Development Finance International have been working over recent years to develop an index that tracks how well the world's nations are moving "to tackle the gap between rich and poor."

Oxfam released what amounted to a "beta" version of this index last year. The just-released second version, entitled The Commitment to Reducing Inequality Index 2018, offers us a considerably clearer picture of what nations are and aren't doing to make our world more equal.

The bottomline of the new Oxfam analysis: Nations aren't doing nearly enough. Oxfam's researchers examined the records of 157 nations. Of these 157, 112 "are doing less than half of what the best performers are managing to do."

And even those "top performers," Oxfam emphasizes, aren't doing "particularly well." In Oxfam's top-ranked Denmark, for instance, inequality has increased by 20% since 2005.

Oxfam's findings haven't made much of a worldwide ripple. The shocking warnings implicit in the UN group's update on our impending climate catastrophe have garnered far more of the world's attention, and we probably could have predicted that outcome. We're living, after all, in a burning house. Who has time to argue about who gets the biggest rooms?

But in this case, we have to find that time. We'll never put out the fire, we'll never forge a sustainable future, until we confront the concentration of our world's wealth and power.

To be a bit more blunt: Either we become a far more equal world or we have no future.

Inequality's environmental impact

And just why does inequality pose such a threat to the more sustainable future we so need to fashion?

Let's start with all those fossil fuels still underground. Scientists look at those fossil fuels and see a stark environmental imperative. If those fuels stay in the ground, we have a shot at curbing global warming. If we burn up those fuels, we have no shot at all.

But many of our world's wealthiest look at those fossil fuels and see no danger. They see the present and future source of their personal wealth. A significant chunk of the world's billionaires owe their billions, directly or indirectly, to extractive industries. Keeping fossil fuels buried would jeopardize those billions, and our super-rich have the political power, thanks to their wealth, to insist that we keep extracting.

If we let that wealth and power continue to concentrate, fossil fuels will continue to burn.

In a deeply unequal world, in societies where the rich have far too much and the poor far too little, we face still another difficult environmental danger – from the other end of the economic spectrum. Grand private concentrations of wealth pressure the poor to engage in behaviours that despoil our natural world.

In some developing nations, as analyst Tom Athanasiou has noted, the wealthiest 2% of the population own over 60% of available arable land. Should we be surprised when the dispossessed in outrageously unequal nations like these migrate into fragile environments, slashing and burning their way through rainforests and turning marginal range lands into deserts?

But rising inequality has an environmental impact that goes far beyond the political power of the rich and the desperation of the poor. Rising inequality conditions those of us between rich and poor into consumption patterns that strain our Earth's capacity to absorb our wastes. Our normal daily lives, explains environmental analyst and activist Bill McKibben, are overwhelming our planet.

Our planet, as environmental economist Herman Daly stresses, cannot sustain these insults forever. We can only shove so much economic activity through our Earth's ecosystems before they break down. If we keep increasing our "throughput" – the sum total of energy and materials we drive through the human economy, everything we make and throw away, and all the energy we expend doing the making and tossing – we make that breakdown, at some point, inevitable.

What drives this ever-increasing "throughput," this hunger for more and more "things"? Not some innate human quality. Growing inequality drives this waste.

How so? In more equal societies, societies where most everyone can afford the same sorts of things, things tend not to matter particularly much. In societies growing more unequal, by contrast, things quickly become markers of social status. Only the "winners" can afford the best things, the most things.

Few of us feel comfortable having others see ourselves as "losers." So we feel under constant pressure to get more things, better things. We keep stomping ever larger environmental footprints.

And the super-rich with their yachts and private jets and multiple mansions stomp the biggest footprints of them all. Our world will never become sustainable, we need to better understand, as long as they keep stomping. ❐

Sam Pizzigati co-edits Inequality.org, from which this article is reproduced. His latest book, The Case for a Maximum Wage, *has just been published. Among his other books on maldistributed income and wealth:* The Rich Don't Always Win: The Forgotten Triumph over Plutocracy that Created the American Middle Class, 1900-1970. *Follow him at @Too_Much_Online.*

The global financial crisis, its aftermath and the policy response

Andrew Cornford **surveys the measures taken to improve financial regulation in the wake of the 2008 global financial crisis and points to gaps and shortcomings in the reform agenda.**

The aftermath of the global financial crisis (GFC) which began in 2008 is still with us. The widespread macroeconomic downturn which followed the GFC's outbreak has been contained and growth of GDP has been restored, though not at rates which have repaired earlier losses. The post-crisis reform agenda is still being put in place but without a consensus as to the relative importance of different causes for the GFC and thus as to the importance of the different reforms required.

The seriousness of the crisis in the autumn of 2008 had several manifestations. Global credit markets were no longer functioning. GDP in the United States was falling at an annual rate of nearly 7%. The S&P index of US stock prices had fallen by 40%. The Chairman of the US Federal Reserve, Ben Bernanke, stated in testimony to the US Financial Crisis Inquiry Commission: "As a scholar of the Great Depression, I honestly believe that September and October of 2008 was the worst financial crisis in global history, including the Great Depression. If you look at the firms that came under pressure... out of 13 of the most important financial institutions in the United States, 12 were at risk of failure within a period of a week or two" (Russo and Katzel, 2011: 11).

The effects of the GFC were also experienced in advanced economies (AEs) other than the US. Following a recession in the GFC's immediate aftermath and weakly positive economic growth in 2010-11, the eurozone experienced six consecutive quarters of negative growth until the second quarter of 2013, and in the first quarter of 2016 GDP was still below the 2008 level in Italy, Spain, Portugal, Greece and Cyprus (Akyüz, 2017: 23-26). The macroeconomic slowdown was accompanied by widespread weakness and failures amongst European banks.

Emerging and developing economies (EDEs) were affected in more various ways. The downturn in AEs was not immediately associated with corresponding movements in EDEs. But the latter group of countries were eventually affected by unfavourable movements in commodity prices and capital inflows. Of a group of major EDEs, only India achieved a growth of GDP in the period 2008-17 higher than in 1998-2007 (Chandrasekhar and Ghosh, 2018).

The initial international policy response to the GFC came from the G20 grouping of major economies in November 2008. The Washington Declaration stated that the G20 leaders had reached a common understanding of the root causes of the global crisis; had reviewed initiatives which countries could launch in a coordinated way; had agreed on principles for financial market reform; had created an action plan to implement those principles; and reaffirmed a commitment to free markets.

Important parts of the new agenda were assigned to the Financial Stability Board (FSB), a body containing all member countries of the G20 as well as representatives of major financial and regulatory institutions. The FSB's responsibilities were to include providing early warnings of macroeconomic and financial risks and reshaping regulatory regimes. In January 2010 the FSB published a Framework for Strengthening Adherence to International Standards. Here it stated that FSB member jurisdictions had undertaken the following commitments: (1) to undergo an assessment under the IMF-World Bank Financial Sector Assessment Programme every five years; (2) to disclose the extent of their adherence to international standards; and (3) to submit themselves to periodic peer reviews. As will be described in more detail below, the FSB has since launched and coordinated initiatives regarding best practices and harmonization of financial regulation. The agenda of the FSB has to a significant extent shaped the policy response to the GFC regarding financial regulation and governance.

Banks' financial positions and the Basel Capital Accord

Observers were in agreement that major features of the GFC in the banks of the principal AEs were excessive leverage and inadequate provisions of liquidity. Leverage is a measure of financial institutions' exposure to risks in relation to protective layers of capital. The exposure consists not only of straightforward instruments like loans but also of derivatives and several financial services. Liquidity refers to the ability of financial institutions to meet financial obligations as they fall due. Satisfactory liquidity denotes sufficient cash for this purpose from different sources. Excessive leverage leaves financial institutions vulnerable to weakening of profitability and to zero levels of capital in the face of widespread defaulting. These two processes call into question their capacity to attract deposits and commercial funding, and thus also their liquidity positions.

Thus unsurprisingly a central role in the international agenda of financial reform is played by standards for banks for reduced leverage and improved liquidity management together with strengthened regulation and infrastructure for their operations. The most important standards for this purpose are contained in the successive versions of the Basel Capital Accord, which have gone by official titles of Basel I, Basel II and Basel III. These are paralleled by corresponding directives and regulations of the European Union.

The Basel capital framework is designed to control banking risks through requirements for capital levels and liquidity management combined with improved internal risk controls. There are four key categories of risk in the Basel capital framework: credit risk resulting from the failure of borrowers or other parties to meet payments due to the bank; market risk due to losses arising from changes in market prices; liquidity risk due to the bank's inability to meet financial obligations promptly;

and operational risk due to losses resulting from failures of banks' internal systems and procedures or to external causes such as legal rulings, government actions, natural disasters or criminal activity.

A bank's capital serves as a buffer against unidentified or unexpected losses. Capital consists of equity and other financial instruments with the property of being available to support the bank in times of crisis through reducing the probability of insolvency. The Basel capital framework initially addressed primarily credit risk. However, owing to developments in the financial markets and in banking operations, there was an extension of its scope from 1996 onwards – firstly to market or trading risk and then to operational and liquidity risk.

The initial versions of the capital framework had two principal objectives. One was microprudential, namely to help to ensure the strength and soundness of individual banks – and thus only indirectly of the banking systems of which they are a part. The other was to help to equalize cross-border competition between banks (provide "a level playing field") by eliminating competitive advantages due to differences among countries in their regimes for capital adequacy.

Since the initiation of Basel III, the objectives of the capital framework now incorporate a macroprudential dimension. This reflects more explicit acknowledgement than previously amongst regulators and other policymakers that many of the risks to banks targeted by regulation in crisis situations can spill over into risks affecting several institutions and thus threaten essential functions of the financial system such as payments, lending and deposit taking.

The 1988 edition of the Basel capital framework, Basel I, was originally designed for internationally active banks in the countries of the G10 (a group of AEs originally formed to ensure that members would have access to IMF resources adequate to meet their needs for market intervention following liberalization of controls over capital movements). However, by the second half of the 1990s, it had become a global standard and had been incorporated into the prudential regimes of more than 100 countries. This was a source of problems in both the design and implementation of the framework since the rules apply, inter alia, to cross-border banks with constituent entities in several jurisdictions often subject to regulatory systems reflecting the different histories and different levels of financial sophistication of the countries involved.

Basel I became the subject of increasingly widespread dissatisfaction owing to its crude calibration of credit risks and to the growing importance of practices such as securitization as well as of new financial instruments such as derivatives and securitized assets, for which its rules were not well adapted. Thus a decision was taken to initiate what proved to be the much lengthier than anticipated process of drafting successor agreements. The first of the series of successors, Basel II, became available in 2004 (BCBS, 2006).

Basel II consisted of three pillars in a framework which has been retained in Basel III. Under Pillar 1, minimum regulatory capital requirements for credit risk are calculated according to two alternative approaches, the standardized (based on externally determined indicators) and the internal ratings-based (based to varying degrees on banks' own rating systems). Pillars 2 and 3 of Basel II were concerned with supervisory review of capital adequacy and with the achievement of discipline in banks' risk management through disclosure to investors.

Partly on the basis of quantitative impact studies of Basel II on banks' financial position, regulators in different countries became concerned that levels of capital under Basel II were not going to be sufficient. This concern was accentuated by the stress on banks evident since the outbreak of the GFC.

The initial resulting revision of Basel II, dubbed Basel II.5, concerned rules for the market risk of exposures in the trading book. Since revision of the rules for the trading book is not yet completed, I shall not cover these rules here.

Agreement on major changes to the Basel II rules for the banking book followed in September 2010 (with a revised version in June 2011) (BCBS, 2011). The revised rules, now called Basel III, incorporate much of Basel II. But they have also been extended and changed:

- Basel III contains more stringent rules for the categories of financial instrument which are eligible for inclusion in different categories of minimum required regulatory capital.
- The capital is to include a conservation buffer. This consists of equity and is intended to absorb losses during periods of economic and financial stress.
- National authorities may also impose a countercyclical capital buffer as a way of countering rapid credit growth. This can be relaxed during periods of stress. The countercyclical buffer is intended to achieve the macroprudential goal of protecting the banking sector from periods of excess credit growth which can trigger economy-wide financial crises.
- For global systemically important banks (GSIBs), there is an additional capital charge in the range of 1% to 3.5%. The capital surcharge for GSIBs also is to serve the objective of macroprudential stability.
- Moreover, GSIBs are to be subject to additional rules on absorption capacity, another extension of the capital framework designed to cover macroprudential risks. These rules specify total loss absorption capacity (TLAC) in the form of 16-20% of a bank's risk-weighted assets. TLAC will consist of instruments meeting certain conditions as to their capacity for absorbing losses. The instruments will include some but not all of those which count towards Basel III capital minima. The rules are designed to facilitate the resolution of GSIBs during the process following insolvency, minimizing the resulting costs to governments and to taxpayers.
- The correlation parameter in the formula for risk-weighted assets in the estimates of exposures to credit risk is now to be multiplied by the factor 1.25 (asset value correlation/AVC multiplier) for selected large regulated financial institutions and for all unregulated financial institutions whose main business is in certain specified activities.
- As already mentioned, Basel III now includes rules for the management of banks' liquidity risk. It also includes overall restrictions on the leverage of banks' balance sheets in the form of limits on the ratio of common equity Tier 1 capital to the accounting measure of their exposures. There is a supplement to the leverage ratio for GSIBs. The leverage ratio is intended to be a non-risk-based backstop measure, the need for which was indicated by banks' build-up of excessive leverage while still showing strong risk-based capital ratios.

The Basel Committee on Banking Supervision (BCBS), the body responsible for developing the capital standards, an-

nounced at the end of 2017 that Basel III was now complete. However, this is questionable. The final capital standards for market risk have not yet been issued. There are indications that the standards for banks' exposures to sovereign risk (still not subject to minimum risk weights in the internal ratings approach) are still being rethought and may yet be the subject of further revisions. And regulators are apparently still debating whether to include Pillar 1 capital standards for interest-rate risk in the banking book.

Revisions of the standards for the credit risk of securitized assets issued in July 2016 were not incorporated in the text of Basel III of December 2017, though this may be a drafting rather than a substantive matter. Securitized assets are pools of financial assets which are individually illiquid but after aggregation become marketable securities. Securitized assets, particularly pools consisting of packaged mortgages, have often been of questionable quality. They played an important role in the illiquidity and insolvency of major parts of the banking sectors in the United States and Europe during the GFC. The revisions to the framework for such assets published in July 2016 were designed to eliminate shortcomings highlighted by the GFC as follows: they seek to reduce mechanistic reliance on often misleading external credit ratings; they increase risk weights for highly rated risk exposures and reduce risk weights for low-rated senior securitization exposures; and more generally they are designed to enhance the framework's risk sensitivity (BCBS, 2016).

The Basel Capital Accord has been the subject of much criticism even by those who believe that strengthened capital standards are an essential part of the post-GFC reform agenda. On the one hand, the banking lobby would like to limit the stringency of the new standards, arguing that they have an unfavourable effect on banks' capacity to finance higher economic growth (an argument lacking proof). On the other hand, several experts, including some US regulators, think that the prescribed increases in capital are insufficient.

Other measures of the reform agenda for financial institutions and markets

The reform agenda is not of course limited to banks' capital and their liquidity management. For example, the FSB vets progress on the convergence of accounting standards in accordance with the G20 objective of the eventual achievement of a single set of high-quality accounting standards. The FSB is responsible for oversight of reform of over-the-counter (OTC) derivatives markets (in other words, those not exchange-traded), which includes estimates of the extent to which such derivatives are being centrally cleared and reported to trade repositories. It provides support for the introduction of the global Legal Entity Identifier (LEI) system, a standardized system to identify institutions across the globe. It has developed oversight and reporting on shadow banks, financial institutions which hold assets of a total amount similar to those of the rest of the financial sector and which have many features of as well as interactions with banks but are not inside the normal regulatory perimeter. It has organized a review to enable less regulatory reliance on the ratings of credit rating agencies. And it has undertaken the development of a resolution regime for insolvent global systemically important financial institutions.

But many would argue that a major weakness of the FSB's coverage so far is the absence from it of macroeconomic policies concerning subjects such as controls over capital movements and foreign exchange markets despite the inclusion in its mandate of the monitoring of macroeconomic risks.

Criticisms and shortcomings of the international regulatory agenda

Generally the view has been expressed that the international regulatory agenda has given excessive emphasis to reforming the traditional prudential framework for banks and to strengthening the infrastructure within which financial transactions are carried out, to the exclusion of other issues with an important bearing on financial stability. Financial crises are usually linked to both domestic macroeconomic developments and shocks due to cross-border capital movements. The severity of such crises is also likely to reflect breakdowns of internal risk management in the banking sector. Thus policies dealing with external financing are an integral part of governments' armouries of financial policies. And the size, structure and complexity of financial institutions, which can reduce the effectiveness of internal controls – perhaps especially in the case of large banks – also belong to any comprehensive agenda of regulatory reform. This is true of banks in AEs and EDEs.

The vulnerability of banks and other financial institutions to cross-border financial shocks means that the regulatory agenda cannot be considered in abstraction from policies concerning the exchange rate and the management of foreign reserves and from controls over capital transactions. The first two subjects are in fact part of the agenda for the prevention and control of financial crises, though not necessarily with proper acknowledgement of their limitations and of the links of cross-border finance to the stability of a country's banks and other financial institutions.

Capital controls have now been accepted by orthodox policymakers as a legitimate policy for maintaining financial stability but only on a market-friendly and temporary basis. The alternative view concerning such controls is that in a world characterized by high degrees of integration of domestic and global capital markets, where large capital movements are increasingly normal, there are strong arguments in favour of active long-term management of a country's capital account and abandonment of liberalization as the eventual objective of policy. This view has many supporters – including the writer – but lacks official endorsement.

There have been steps in European countries towards structural reforms of the banking sector, in particular in the form of separation of banks' retail from their other activities. But these have met with resistance from the banking lobby and have so far been limited. Concentration and firm size in the banking sector would not be likely to command consensus among member countries as legitimate subjects for policy guidance in the FSB. This seems unlikely to change. Indeed, mergers of weak with stronger institutions, and thus bigger institutions and greater concentration in the banking sector, have actually been part of the policy response in some AEs to the GFC.

Another important observation is that the focus of the reform agenda is not truly global. As explained above, the agenda was drawn up by the FSB in response to a mandate from the G20. Thus it is not surprising that the perspective of its standards is frequently that of AEs and EDEs with relatively advanced financial sectors. This has meant little attention, for example, to countries' supervisory capacity, limitations of which can pose serious problems with regard to implementation of international banking standards. Moreover, since about 2013 reports of the work of the BCBS indicate that much of it has concerned highly technical issues affecting the rules for measuring credit and market risks for banks in the principal AEs. Under market risks, for example, supervisory approval for use of a bank's models for measurement now applies at the microinstitutional level of each of a bank's trading desks rather than at a bank-wide level.

As is acknowledged by the BCBS (Coen, 2018), there appear to have been voices even within the regulatory community which have questioned whether the rules adequately balance "simplicity, comparability and risk sensitivity".

Compatibility of the reform agenda with GATS rules

Major parts of the World Trade Organization (WTO) General Agreement on Trade in Services (GATS) which bear on financial regulation are Article VII (recognition of standards), Article XII (restrictions to safeguard the balance of payments), Articles XVI and XVII (specific commitments as to market access and national treatment), and the Annex on Financial Services, paragraph 2(a) (accommodation of prudential measures including those in possible conflict with other provisions of the GATS).

The most important of these articles from the point of the reform agenda and related actions taken by countries in the aftermath of the GFC are probably paragraph 2(a) of the Annex on Financial Services (often referred to as the "prudential carve-out") and Article XII. In financial crises these two provisions may need to be read in conjunction with each other.

The practical scope of the prudential carve-out's permission for "measures for prudential reasons... or to ensure the integrity and stability of the financial system" is qualified since such measures also "shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement". The apparent ambiguity has led many critics to argue that there should be redrafting to achieve greater clarity. But this has not been granted.

The acceptance of restrictions to safeguard the balance of payments is designed for periods of severe balance-of-payments stress and is subject to various conditions such as being temporary and not exceeding what is necessary to deal with the balance-of-payments stress. Some flexibility is introduced by the phrase "Members may give priority to the supply of services which are more essential to their economic or development programmes". But the scope of this flexibility is not clear.

The combination of Article XII and the prudential carve-out would probably serve to justify the imposition of capital controls in a crisis combining balance-of-payments stress and the risk of widespread insolvencies among banks. But the problem with the approach of Article XII is that, probably partly because it was negotiated before experience of recent major incidents of financial instability beginning with the Asian crisis in 1997, it accommodates only temporary capital controls and not longer-term ones which the governments involved might believe to be required, let alone the use of management of the capital account as a more permanent measure for the prevention and control of financial crises which, as mentioned above, has been advocated by some critics of current approaches.

New challenges

Since work began on the post-GFC repair of the regulatory regime for financial institutions and markets, new challenges for international financial regulation have arisen. Some are the result of technological innovations capable of radically altering financial transactions. Others concern the response of the financial sector to environmental problems. These are of interest not only in themselves but also for what they indicate concerning the adaptability to changing conditions of international rules and standards for trade in financial services.

Banking and other financial operations have in recent years been radically affected by opportunities provided by advances in computer technology. Distributed ledger technology (DLT) (often treated as a synonym of blockchain technology, though the latter is in fact simply one type of DLT) is an example that has recently been much discussed in the news (Mills et al., 2016). DLT has many actual and potential applications, including for the transmission of messages and for payments, clearing and settlement (PCS). Under the latter heading, there is already widespread recognition of DLT's utility in trade finance owing to the reduction in the number of intermediaries required and thus in costs associated with traditional trade finance transactions (BIS, 2018: 106).

DLT for these purposes does not seem to require alterations in the framework of financial regulation or in the coverage of GATS rules. In countries' schedules of GATS commitments, for example, the role of DLT would presumably be included explicitly under PCS or under some other denomination for the same activities. There is no reason to expect that regulation of these activities would pose a special issue under the heading of national treatment.

The environment may prove to be a source of more open-ended problems for both management and regulation in the financial sector. Awareness of these problems is increasing among financial institutions and investors. For example, a survey of banks conducted by the International Chamber of Commerce (ICC) in 2016 found the following: 75% tracked developments and market demands/expectations related to sustainable trade and sustainable trade finance; 65% were implementing (or considering implementing) more stringent environmental and social criteria in respect of trade finance transactions; and 55% had rejected trade finance transactions due to internal or external environmental policies (ICC, 2016).

The ICC has identified three areas where banks can – and presumably should – take action: bank-client engagement which involves integrating considerations of sustainability risk into due-diligence processes and other aspects of the relationship; into risk screening of trade finance from a sustainability point of view; and into pricing practices by banks which reward better sustainability. Much of the FSB's work in this area

has involved promotion among non-financial as well as financial companies of fuller disclosures concerning their practices with relation to climate-related issues.

Government environmental policy involving financial firms has not yet had major implications for the regulatory regimes under which the firms operate, including GATS rules. However, this may change in the not-too-distant future if forecasts concerning the drastic effects of climate change prove to be reasonably accurate. These effects may trigger political and social innovation which include a retreat from liberalization of international trade in banking services. Article XIV of the GATS accommodates measures "necessary to protect human, animal, or plant life or health". The Decision on Trade in Services and the Environment adopted by the Trade Negotiations Committee in December 1993 endorses Article XIV and mandates the Committee on Trade and Environment "to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development". This is impeccable as far as it goes but may need to be extended and strengthened when some of the environmental threats forecast actually materialize. *(SUNS8772)* ❐

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