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Countries seek to launch e-commerce talks at WTO

More than 75 countries have declared that they intend to commence plurilateral negotiations at the WTO on "trade-related aspects of electronic commerce". However, such talks are opposed by other WTO member states and by civil society groups concerned that any resulting e-commerce rules would lead to "digital colonization" of the developing world.

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Countries announce intent to launch WTO e-commerce talks

Over 75 countries have declared their intention to commence plurilateral negotiations at the WTO on the contentious subject of electronic commerce.

by D. Ravi Kanth

DAVOS: A group of 76 countries, including the United States and China, on 25 January announced in Davos their intention to launch plurilateral talks at the WTO on electronic commerce.

After a breakfast meeting on the sidelines of the annual World Economic Forum confab held in the Swiss ski resort, a joint statement was issued confirming the intention of the 76 countries "to commence WTO negotiations on trade-related aspects of electronic commerce."

The signatories to the joint statement were: Albania; Argentina; Australia; Bahrain; Brazil; Brunei Darussalam; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union (which has 28 member states); Georgia; Honduras; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; Korea, Republic of; Kuwait; Laos; Liechtenstein; Macedonia; Malaysia; Mexico; Moldova; Mongolia; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Norway; Panama; Paraguay; Peru; Qatar; Russia; Singapore; Switzerland; Chinese Taipei; Thailand; Turkey; Ukraine; United Arab Emirates; United States; and Uruguay.

Significantly, the US, which was one of the signatories, was absent at the meeting due to the ongoing shutdown of the federal government.

India, South Africa and a large majority of countries at the WTO stayed away from the meeting on grounds that they would like to adhere to the WTO's 1998 work programme on e-commerce.

The joint statement said: "We will seek to achieve a high standard outcome that builds on existing WTO agreements and frameworks with the participation of as many WTO Members as possible."

To attract the other developing countries and least-developed countries (LDCs) which stayed out of the plurilateral initiative, the statement added: "We recognize and will take into account the unique opportunities and challenges faced by Members, including developing countries and LDCs, as well as by micro, small and medium sized enterprises, in relation to electronic commerce."

The signatories also appealed to countries which were not part of the initiative to "participate" in the negotiations "in order to further enhance the benefits of electronic commerce for businesses, consumers and the global economy".

[Proponents of plurilateral e-commerce negotiations claim that the talks would, among others, benefit micro, small and medium-sized enterprises (MSMEs). However, national organizations across the developing world, including in some of the signatory countries, representing MSMEs have come out publicly opposing e-commerce trade rules and denouncing the move as merely aimed at benefiting some technology giants, particularly in Silicon Valley. The latest among these national organizations is the one from Nigeria, which has accused its government of joining the initiative without any consultations domestically.

[Some trade observers have also questioned the legality of any plurilateral WTO e-commerce rules, since what the signatories are promoting is to provide international commercial transactions via e-commerce a privileged and preferential position over other methods of commercial transactions.

[In pith and substance, this would involve changes to the existing WTO rules on trade in goods, services and intellectual property without going through the amendment processes set out by the WTO treaty. It may thus amount to a colourable exercise of amending the WTO treaty and its annexed agreements. – *SUNS*]

China's ambassador to the WTO Zhang Xiangchen told the *South-North Development Monitor (SUNS)* that China "wants to be part of the negotiations" for achieving a balanced outcome. He said it would be important to arrive at balanced rules for e-commerce.

In a statement issued at the meeting, the Chinese trade envoy said that with the multilateral trading system "in a deep crisis", the launch of e-commerce negotiations "will in a significant way help reinvigorate the negotiating function of the WTO, and shore up confidence in the multilateral trading system and economic globalization."

"China actively participated in the previous discussions on this issue," said Zhang. "To be very frank, the current text of the Joint Statement before us, in our view, could have been better drafted if time allows. However, considering the importance of e-commerce in the global economy, and the comprehensive views expressed by my previous speakers, China is still willing to co-sponsor the Joint Statement, and will play an active role in this exploratory process."

The Chinese envoy maintained that "China stands ready to work closely with all Members." He expressed confidence that "through negotiations on equal footing, we will achieve an outcome with broad participation of Members, especially developing ones, an outcome with flexible frameworks to accommodate the legitimate needs of different Members, an outcome that could strike a balance between the progress of technology, the development of business, and the public policy objectives of Members."

China emphasized that the "importance of making the negotiation an open, transparent, inclusive and non-discriminatory process was highlighted by Members."

"In recent years, China's electronic commerce has seen a boom and played a significant role in promoting the country's economic and trade growth, as well as inclusive and sustainable economic development," China maintained. "As one of the world's biggest electronic commerce markets with significant progress pace, China has been attaching great importance to the international cooperation in this area."

China said it "has been an active rule-maker on electronic commerce in its bilateral and regional free trade agreements, and tabled several submissions at the WTO in an effort to facilitate progress in the multilateral discussions on the topic."

China said it would support "making rules on trade-related aspects of electronic commerce at the WTO" that would revitalize "the WTO negotiating function and the necessary reform of the WTO, and will help the WTO better respond to calls from the industry and boost the confidence of all in the multilateral trading system and economic globalization at large."

It hoped that "the WTO negotiations on trade-related aspects of electronic commerce shall contribute to the multilateral trading system, adopt an open process and focus on development, with full respect accorded to the reasonable requests of developing members."

China said it would expect the WTO e-commerce negotiations to "strike a balance among technological development, business development and the legitimate public policy objectives of various members, and reach an outcome acceptable to all members through equal consultation."

"Only by so doing can the huge potential of electronic commerce be brought into full play, thus assisting the vast number of developing members to take hold of and benefit from relevant development opportunities, hence better participate in economic globalization," said Zhang.

Divisions

Nevertheless, said people familiar with the development, there are sharp differences among the sponsors over several issues concerning "free flow" of data across borders and regulations for retaining data in local servers.

"Surprisingly, the sponsors of the meeting remain divided on the core issues of the proposed e-commerce rules but they seem determined to create an impression that things are fine in the informal plurilateral negotiations," said a trade envoy from a developing country.

Under the existing WTO e-commerce work programme established in 1998, members are required to intensify the exploratory work so that they are in a position to decide the next steps in the multilateral rule-making in digital trade. Until now, countries have addressed various aspects concerning e-commerce with regard to development, trade in goods, trade in services and intellectual property provisions.

India has all along demanded that work on e-commerce must be continued on the basis of the 1998 work programme. A large majority of countries have also supported India and South Africa in calling for a rethink on the current moratorium on imposing customs duties on e-commerce transmissions.

In light of this, the "political" statement issued by the 76 countries in Davos is seen by the above developing-country trade envoy as an attempt to undermine the multilateral e-commerce work programme. *(SUNS8833)* ❐

India, South Africa reject attempts to launch talks on e-com, IF

Not all countries are in favour of plurilateral e-commerce talks, as was highlighted during an informal ministerial meeting in Davos where other priorities at the WTO were raised.

by D. Ravi Kanth

GENEVA: India and South Africa on 25 January rejected attempts to launch plurilateral negotiations on e-commerce and investment facilitation.

They made their opposition clear during an informal ministerial meeting held on the margins of the annual World Economic Forum gathering in Davos, cautioning participants at the meeting against pursuing divisive priorities that would strike at the very roots of "multilateralism", trade ministers told the *South-North Development Monitor (SUNS)*.

Participants who took part in the meeting included Argentina, Australia, Brazil, Canada, the Central African Republic (on behalf of the least-developed countries), Chile, China, Colombia, Costa Rica, Egypt, the European Union, Hong

Kong-China, India, Indonesia, Japan, Kazakhstan, Korea, Malawi [on behalf of the Africa, Caribbean and Pacific (ACP) Group of countries], Malaysia, Mexico, Morocco, New Zealand, Nigeria, Norway, the Philippines, Russia, Saudi Arabia, Singapore, South Africa (which represented the African Group), Switzerland, Thailand and Turkey.

Trade ministers at the meeting flagged that the continuation of the WTO's Appellate Body (AB), the highest adjudicating arm of the Dispute Settlement Body, must remain as the central goal in the face of escalating "unilateral" and "protectionist" measures imposed by the United States.

More than 30 countries spoke about the "systemic" crisis that has engulfed the WTO's dispute settlement system following the repeated attempts by the US to block the filling of four vacancies at the AB.

Instead of restoring confidence in the multilateral trading system by addressing the issues of the Dispute Settlement Body and other developmental issues, it is deplorable that some countries are pursuing plurilateral initiatives to further undermine the multilateral framework of the 164-member WTO, India said.

South Africa's trade minister Rob Davies rebuked attempts to launch plurilateral negotiations on e-commerce without addressing the "digital divide".

The plurilateral e-commerce initiative, Davies told *SUNS*, is an attempt to bring some two dozen rules crafted in the failed Trans-Pacific Partnership agreement under the WTO's purview.

India and South Africa also called for addressing the asymmetrical WTO rules on agricultural trade based on the mandates set out in the Doha Development Agenda.

China, which had raised serious concerns on issues such as cross-border data flows and data storage within local servers, chose to sign off on the plurilateral e-commerce initiative. However, it insisted that the e-commerce negotiations must be "pro-multilateral" and mutually complementary to the multilateral discussions under the WTO's 1998 e-commerce work programme.

During the deliberations at the informal meeting, the ministers were assisted by the chairperson of the WTO General Council, Ambassador Junichi Ihara of Japan, and WTO Director-General Roberto Azevedo. Every participant was given three minutes to spell out their priorities for the WTO for this year.

Unprecedented challenges

Switzerland's economy and education minister Guy Parmelin, who chaired the half-day meeting, spoke about the unprecedented challenges facing the multilateral trading system. He said discussions on WTO reforms have gained momentum, suggesting that members must accelerate the dialogue on reforms.

In his intervention, Azevedo said that members must determine priorities, including in areas of agriculture and development. He said there has to be an outcome on fisheries subsidies by the end of this year. He also touched on what he called the growing momentum in the joint initiatives, particularly e-commerce.

The Director-General said the multilateral trading system is under threat but did not throw any light on why it is facing the worst systemic crisis, said a participant who asked not to be quoted.

After spending considerable time speaking on improving the functioning of the WTO's regular bodies and pursuing both plurilateral and multilateral initiatives simultaneously along with "policy space," Azevedo said urgent resolution of the AB crisis is critical, according to another participant.

In a hard-hitting statement, India said members must safeguard the multilateral framework embodying the WTO. India said the much-talked-about WTO reforms must "adopt a sequential approach". In the first stage, WTO member states must confront "appointment of new members to the AB" so as to restore trust among the WTO members.

The AB's continuation is essential for "preserving the rights and obligations of members", India said. "After the WTO membership has successfully addressed this issue, other reform issues, including improvements in the dispute settlement mechanism, could be taken up for detailed discussion by members."

The two-tier structure of the dispute settlement mechanism, comprising the panels and the AB, independence of the AB, automaticity in the dispute settlement process and the decision-making by the Dispute Settlement Body by consensus, must be safeguarded, India maintained.

India expressed concern over "innovative" ways adopted by some countries to undermine their market access commitments. Members must address the "asymmetrical and unbalanced" rules that are tilted against the interests of developing countries, India said.

South Africa's Davies warned against pursuing reforms selectively, saying the top priorities at the WTO must include the resolution of the AB crisis, the permanent solution for public stockholding programmes for food security, domestic farm subsidies, and effective rules for special and differential flexibilities.

Davies said that appropriate lessons must be drawn from the uneven playing field created by globalization, adding that the digital divide is a major challenge for countries in Africa. He said South Africa will not support rules that would entrench the existing disparities among countries.

Malawi, on behalf of the ACP Group, said that members must address the uneven playing field in which many developing and poorest countries are not properly integrated into the global trading system. Malawi said the Doha Development Agenda is the biggest reform agenda agreed by all members, emphasizing that it must guide members in addressing the unresolved issues.

Canada said it is deeply concerned about the rise in protectionism and the AB crisis, adding that the clock is ticking with no action on several fronts.

Australia, which had hosted the Davos breakfast meeting on e-commerce along with Japan and Singapore, spoke of the plurilateral e-commerce initiative, emphasizing that it would be inclusive.

The European Union said though the priority is addressing the AB crisis, members must pursue negotiations, including in areas such as e-commerce.

Malaysia said it does not want a retreat into protectionism, arguing that "unequal trade relations should not be the new form of colonialism".

Korea said 2019 is a crucial year for the AB, while Morocco said a solution to the AB crisis is an imperative.

Brazil said it is fully committed to WTO reform, suggesting that no one should be blamed for the systemic challenges facing the WTO. It pressed for improvements/reforms in the Dispute Settlement Body, monitoring and transparency initiatives, and in reinvigorating the negotiating function of the WTO. Significantly, Brazil also said it is open to new special and differential flexibilities.

Norway said the AB crisis is the most serious issue to be addressed.

In his concluding remarks, the WTO Director-General said the participants had highlighted the importance of finding a solution to the AB crisis. Azevedo said participants acknowledged the importance of pursuing reforms. He said a lot of work remains on the table to strengthen the multilateral trading system.

In a statement issued after the meeting, the Swiss minister Parmelin said ministers recognized that 2019 would be a crucial year for the multilateral trading system. "Ministers welcomed the process recently initiated to address concerns related to WTO's dispute settlement system," he said, emphasizing the urgency of restoring a full-functioning AB.

Ironically, even as many ministers called for resolving the AB crisis, attempts were made to turn the focus to plurilateral initiatives and controversial WTO reforms that are inimical to the interests of developing countries, said a trade minister who asked not to be quoted. *(SUNS8834)* ❐

A blueprint for digital domination

Ahead of the Davos meet, the Just Net Coalition, a global network of over 35 civil society groups working on Internet justice issues, had come out with a statement flagging the threat of "digital servitude" at the hands of a few corporate tech giants as a result of the proposed e-commerce rules. The text of the statement is reproduced below.

The World Economic Forum's (WEF) Davos meeting in January, 2019, is expected to witness the launch of plurilateral negotiations on global e-commerce rules, bypassing the WTO. Dominant digital interests – global digital business and governments supporting it – plan the proposed rules to be a blueprint for a whole new global digital order.

A new digital social contract

Agrarian-feudal economic and social relationships centred on land ownership, and industrial age ones on ownership of industrial and later intellectual capital. In the digital age, these relationships will revolve around ownership of data and the resultant artificial intelligence.[1] The proposed e-commerce rules[2] mandate unrestrained global flow of data – the primary resource of the digital society. This in essence means that data will be the property of whoever collects and hoards it. It provides, in perpetuity, legitimacy to global data land-grabs by a few digital corporations such as Facebook, Google, Amazon, Alibaba, etc.

These rules would insulate global digital corporations from national regulation by disallowing any requirement for their "local presence" in the domestic territory, and inspection of their software and algorithms. Digital inter-connections, payments, authentication, cyber-security etc. get mostly subject to global private law – under pro-big business arbitration – further curtailing the remit of domestic jurisdictions over global digital interactions. Prohibition against any border-crossing tax on commercial digital transactions would, in turn, debilitate the nation state's finances in the digital era.

Digital economy is not just a sector. It pervades and increasingly transforms all sectors – like the industrial society/economy paradigm did before it. As every sector and activity becomes digital, and infused with artificial intelligence, this proposed political economy and private governance framework for the digital will dominate all aspects of societies. It will increasingly upend the social contract that underlies the nation-state-based mixed economy and welfarism for the last many decades.

Digital opportunities, many believe, can bring unprecedented prosperity for all. But for this, digital governance must be based on principles of social justice and equity within and across societies. This is required even more in this formative period of the digital society. Quite the opposite is sought, however, through rules for global usurpation of the most valuable digital resource, and hamstringing national regulation. A few powerful businesses and governments plan to digitally control all social activities and economic sectors across the world. The omnipresent tentacles of the Internet, globally extracting granular data about every person and thing, underpin these new controls.

The e-commerce chimera

The biggest bluff of global e-commerce rules is how they get sold in the name of helping micro, small and medium enterprises in developing countries. So apparently, the new messiahs of small enterprises in developing countries are going to be a few US-based global digital corporations, that monopolize e-commerce to take up to 40% commissions, abuse sellers' and manufacturers' data to manipulate them and/or replace their products by in-house ones, are most arbitrary and exploitative in their relationships with sellers/producers, and beyond national regulations to impose any fairness on their activities!

Some developing country leaders get led to believe that global e-commerce simply represents a great expansion of the marketplace, opening more market opportunities for their struggling businesses. For one, expanded and more open markets are not necessarily better for their small businesses, an overwhelming majority of which deal in goods that are easily out-priced by global mass manufacturing centres like in China. The latter can now so much more readily penetrate even the remotest local markets. These leaders that are enthusiastic about global e-commerce perhaps need to first list the actual goods that their domestic businesses produce in a globally competitive manner! Artisan and other cultural goods tend to form the staple of the "global e-commerce for development" rhetoric, but they constitute an extremely small part of any economy.

Digitalization can enhance efficiencies in every economic activity and layer of the economy. It is NOT digital efficiencies in the global trade layer that will bring the most immediate benefits to developing countries. It will simply expose their vulnerable economies and markets to endless exploitation. Developing countries need to first digitalize their domestic production processes, to produce globally valuable products cheaply. They must focus on developing domestic digital platforms. In short, they need to undertake digital industrialization before they can benefit from global digital trade. To the extent that trade across borders also can stimulate industrialization, and scale being important for the digital economy, developing countries should first collaborate among those with comparable digital development.

The founder of e-commerce giant Alibaba, Jack Ma, himself considers e-commerce to be an outdated concept. This clearly underlines the fallacy of seeing e-commerce primarily as digitally expanded marketplaces. What global digital platforms really do is to re-organize every sector employing data-based digital intelligence, and then control them in a monopolistic manner. Such controls tend to be very one-sided and highly exploitative, with deep lock-ins. This situation demands new kinds of digital regulation, and national frameworks mandating local ownership of data for nurturing domestic digital businesses. The proposed e-commerce rules pre-empt all such possibilities, which shows how their proponents know their game well into the future.

Developing countries cannot simply hope that the benefits of their local producers getting new markets through global e-commerce will somehow outweigh the disadvantages of cheap products from mass manufacturing centres inundating their domestic markets. They would be equally misplaced to expect that global e-commerce rules will help the flourishing of their domestic digital platforms, where they already exist. The latter face quick annihilation as soon as global digital majors cast their eyes on the corresponding markets. India, which has been a little ahead of the curve among developing countries (other than China), has already seen its major digital platform companies unionize and seek government protection against global "capital dumping".

A reality check is needed for the chimera of "global e-commerce for development" created by digital superpowers, with the support of some donor and international agencies.

Resist digital colonialism

Global business leaders from the South – like Bob van Dijk, CEO of Naspers, Africa's biggest company; Anil Ambani, head of India's largest business house; and Nandan Nilekani, chairman of India's top IT company – have been warning against data and digital colonization. Traders' groups in many developing countries are holding protests, and local digital businesses are complaining, as they face being captured or wiped out by global digital corporations.

Some developing country leaders, however, remain blinded by the lure of sitting at the high table with global digital business leaders, this time at the snow-white Davos. They keep hoping that these business leaders will somehow magically usher in the appropriate digital economy/society in their countries.

It would be useful to understand the future that dominant digital interests have in mind through the proposed e-commerce rules. Data flows unchecked from all countries to a very few global digital corporations, mostly in the US and some in China. Such expansive and minute data enables them to develop thorough real time digital intelligence about every sector and every single economic activity and actor. It would be as if the "brains" of all physical activities and processes in all other countries are "outsourced" to these few corporations. A complete cognitive lock-in and digital intelligence dependency soon sets the conditions for total economic and social domination. As it gets entrenched, future options for developing countries to ever extricate themselves also get foreclosed. In any case, as explained earlier, the proposed rules simultaneously de-fang key levers of national digital regulation, render digital relationships subject to global private law, and considerably squeeze the taxation base of the state.

The choice of the Mecca of global business, WEF, for launching this potent new framework for domination of the world by a few digital corporations indeed rings of poetic appropriateness!

We, the undersigned, call upon the people and the governments of the world to oppose this blatant attempt at a new elitist digital social contract which is nothing but one between the digital masters and the rest of us, laying out the rules of our digital servitude for all times to come.

Let us claim our data, and our digital future, for ourselves! ❐

Notes

1. Among others, the prominent author and public intellectual Yuval Harari recently employed the analogy across land, capital and data ownership.

2. First developed as a part of the Trans-Pacific Partnership trade treaty, its template of e-commerce rules has been repeated at all trade discussions that the US and its allies get involved in, including at the WTO.

Process to address AB crisis kicks off

WTO members have begun talks on ways to unlock an impasse that has prevented new appointments to the tribunal charged with hearing appeals in trade dispute cases.

by Kanaga Raja

GENEVA: An informal meeting of the WTO General Council on 17 January saw the Council chairperson, Ambassador Junichi Ihara of Japan, kicking off a process of targeted discussions for resolving the current crisis in the WTO's Appellate Body (AB).

According to trade officials, as part of this process, the chair selected Ambassador David Walker of New Zealand to serve as the facilitator to lead this process going forward.

The United States has been repeatedly blocking consensus in the WTO Dispute Settlement Body (DSB) to launch the selection processes to fill four current vacancies on the seven-member AB.

There were two proposals before the General Council meeting over the AB appointments, as well as one on the issue of adjudicative bodies adding to or diminishing WTO members' rights or obligations. All three proposals had earlier been tabled at a formal meeting of the Council on 12 December 2018.

The proposals

The first proposal was from the European Union, China, Canada, India, Norway, New Zealand, Switzerland, Australia, Republic of Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro.

In their proposal, the proponents said they were deeply concerned that the enduring absence of consensus to fill the vacancies on the AB risks undermining the viability of the WTO dispute settlement system.

The proponents acknowledged the successful contribution of the dispute settlement system to the security and predictability of the multilateral trading system. They recognized the essential role of the AB within the system that serves to preserve the rights and obligations of WTO members under the covered agreements, and to clarify the existing provisions of those agreements without adding to or diminishing the rights and obligations provided therein.

At the same time, they acknowledged that concerns have been raised about the functioning of the dispute settlement system and were ready to work on solutions, while preserving the essential features of the system and of its AB.

To this end, the proponents called on all WTO members to fill the vacancies on the AB and to amend certain provisions of the WTO's Dispute Settlement Understanding (DSU). The proposed amendments aim at improving the DSU while addressing the concerns that have been raised on these issues, they said.

The proposed amendments relate to transitional rules for outgoing AB members; the issue of 90 days (for an AB report on appeal); the meaning of municipal law as an issue of fact; findings unnecessary for the resolution of the dispute; and the issue of precedent.

The second proposal was from the EU, China, India and Montenegro.

In their proposal, the proponents said that they were mindful of the shared responsibility of all members for the proper functioning of the WTO dispute settlement system that is essential to a multilateral trading system based on rules.

They acknowledged that concerns have been raised about the functioning of the dispute settlement system and were ready to work on solutions on the basis of the first proposal above to amend certain provisions of the DSU.

At the same time, in order to achieve balance and taking into account the experience with the application of the DSU to date, they considered that these amendments should be accompanied by further amendments set out in their own proposal. These proposed additional amendments relate to independence of AB members; efficiency and capacity to deliver; transitional rules for outgoing AB members; and the launch of the AB selection process.

The third proposal, which was from Australia, Singapore, Costa Rica, Canada and Switzerland, related to adjudicative bodies adding to or diminishing rights or obligations under the WTO Agreement.

In their proposal, the proponents recognized the central importance of a properly functioning dispute settlement system in the multilateral rules-based trading system, which serves to preserve the rights and obligations of members under the WTO Agreement and ensures that rules are enforceable.

The proponents emphasized the collective responsibility of all members to ensure the proper functioning of the dispute settlement system, including the AB.

They acknowledged that for a number of years concerns have been raised by members about the functioning of the dispute settlement system. In this regard, they welcomed any proposals addressing such concerns, including the first proposal above.

They also noted specific concerns raised regarding panels and the AB adding to or diminishing rights or obligations under the WTO Agreement. "We recognize the importance of covering these specific concerns in future discussions on ways to safeguard and strengthen the WTO dispute settlement system and ensure its proper functioning."

In this light, the proponents proposed the immediate initiation of a solution-focused process allowing for targeted discussions between interested members on dispute settlement issues, including the specific concerns described above.

Without prejudice to each member's own views, the proponents said, this process could, for example, consider some possible options as set out in a document circulated by Canada in WTO document JOB/GC/201.

This includes identifying options for binding or non-binding guidance to be provided to adjudicative bodies on specific issues, such as through the development of a clear pathway for the potential negotiation and adoption of "authoritative interpretations".

Discussions could also consider options to strengthen frameworks that secure the proper balance in the functions and responsibilities of the Dispute Settlement Body on one hand, and of the adjudicative bodies on the other hand, they said.

As the issues underlying the specific concerns referred to above are multi-faceted in nature, the proponents recognized that no single means can fully address the issues; rather, a combination of approaches may be necessary.

(Subsequently, in addition to the above three proposals, Honduras on 21 January circulated a proposal addressing the issue of timelines for the conclusion of AB proceedings.

(In its proposal, Honduras noted that concerns have been expressed regarding the extension of appellate proceedings far beyond the stipulated period of 90 days provided in Article 17.5 of the DSU. Others have called for a revision of such a deadline in order to be more reflective of today's complex disputes and the AB's workload.

(First, said Honduras, WTO members need to decide what time period they want to allocate to an appeal after the conclusion of the panel process.

(Second, members may explore how to streamline the appellate process. The right of appeal extends the period of the dispute settlement process and hence needs to be limited and subject to certain conditions. Better cooperation among disputing parties and the AB, and incorporating more stringent adherence to conditions of appeal may reduce unnecessary delays.

(Third, members may have to decide on the nature of the time period allocated to an appeal, whether such deadline is mandatory and the consequence of its non-respect, said Honduras.

(The Honduran communication proposed several specific options in the above areas.)

Desire for resolution

According to trade officials, at the 17 January informal General Council meeting, chair Ihara reported that after the meeting of 12 December 2018, he had held consultations with some 25 delegations that he said were conducted in a constructive spirit.

Delegations expressed their desire to see the crisis in the AB resolved in an urgent manner. An immediate action should be the unblocking of the selection process for AB members.

Delegations wanted a focused solution-oriented approach and a degree of fluidity in the interactive process that allows for different configurations.

Some delegations highlighted the need for a clear timeline, while some others said that this depended on overall political considerations.

Yet others pointed to 11 December 2019 as being the deadline as that is when the AB will not be able to function (when the second terms of AB members Thomas Graham and Ujal Singh Bhatia expire, leaving just one sitting AB member. Three members are required to hear an appeal.).

All delegations said that they wanted a stocktaking of the process that began on 17 January at the upcoming formal General Council meeting on 28 February.

According to trade officials, the appointed facilitator Walker then began specific discussions on the three proposals above.

During the discussions, the EU highlighted the proposal it co-sponsored with China, Canada, India, Norway, New Zealand, Switzerland, Australia, Korea, Iceland, Singapore, Mexico, Costa Rica and Montenegro.

According to trade officials, the US said that this proposal does not address its concerns. It said the AB should follow the rules from 1995, adding that the existing articles are not being adhered to.

Ukraine said that it would like to see all these proposals put together in a simple template so that it could follow it more closely.

Japan underscored the need for greater clarity and for some kind of constructive criteria with respect to AB members staying on beyond the expiry of their terms. On advisory rulings, Japan pointed to a phrase that says that the AB must adhere to the facts at hand to the extent necessary to resolve the dispute. It said that it is examining the issue of municipal law closely.

Egypt said that perhaps the issue should be taken up in the discussions on DSU reform. It would like more clarification on the other proposals.

Ecuador expressed support for the EU proposal. On the 90-day rule (for issuance of AB reports), it wanted to see safety, security and predictability in the dispute settlement system.

Benin expressed concern over the non-functioning of the AB, which it said would have knock-on effects on the DSU.

Brazil said that getting the AB selection process underway is the gateway issue on which everything else hinges. Otherwise, there will not be a functioning DSB by 2020. It was agreeable to the question of changing the terms and number of AB members.

Russia said that the EU proposal was a good basis for the work. It did not like the idea that appeals consistently run beyond the 90-day limit. It also did not like any suggestion that rulings by the AB should add to or subtract from members' rights and obligations.

Peru called for urgent and full attention to the issue, while Turkey said there is a need for a clear and well-defined process that is multilateral in nature.

Malawi, on behalf of the Africa, Caribbean and Pacific (ACP) Group of countries, said that they are not a demandeur but there is a need to unblock the process. It supported all efforts to try and move this process forward. For the ACP Group, the most important thing is to protect and preserve the independence and impartiality of the dispute settlement system.

The Philippines agreed on a solution-based approach.

Canada said that the proposal which it co-sponsored with the EU and others had been drawn up specifically to address the US concerns, but that if there were other things that the US wanted, it was open to discussion.

China said that the proposal does actually address the US concerns, while Singapore asked how much time an AB member should have on the case.

The EU said the points that had been put forward had been heard before, but given the solution-oriented nature of the system, there was a need to clarify where the problems were.

The EU then highlighted its second proposal above, which it co-sponsored with China, India and Montenegro.

According to trade officials, the US said that this proposal would make the AB less accountable.

Australia subsequently introduced the proposal it co-sponsored with Singapore, Costa Rica, Canada and Switzerland.

It called for a discussion on whether AB rulings have added to or diminished the rights and obligations of members. It further asked: Should we amend the DSU? Should we have binding or non-binding guidance? Are there some pre-emptive steps that could be taken to ensure that this kind of thing does not happen?

Canada expressed support for the proposal, and the US welcomed it, saying that it shows that there is widespread concern about AB "over-reach".

The EU said that it is ready to engage, but that its proposal has already addressed many of these issues. *(SUNS8828/8831)* ❐

(continued from page 16)

policymakers on the best regulatory practices to support thriving agricultural sectors and "inclusive agricultural transformation." However, the Bank oscillates between politically correct messages about the need to support smallholder farmers and the actual promotion of large-scale, industrial agriculture.

The EBA's guidance is heavily skewed in favour of large-scale agribusinesses and the project is anything but inclusive of developing countries' and farmers' interests. With the introduction of the land indicator, the Bank encourages the commodification of land, more land grabbing and land concentration, while accelerating the dispossession of the rural poor across the developing world.

Governments should be urged and helped to design food and agricultural policies that put family farmers, pastoralists and Indigenous Peoples at the centre to address the major challenges of hunger, environmental degradation and the climate crisis. Instead, with its new land indicator, the World Bank is launching an unprecedented attack on the land rights of the most vulnerable and their future. Introduced as a pilot in 38 countries in 2017, the land indicator is expected to be expanded to more countries in the EBA 2019 report. Whereas the EBA was already much biased towards industrial agriculture and agribusiness corporations, the threats that come with this new indicator make it even more important to end this harmful initiative permanently. ❐

The above is extracted from "The Highest Bidder Takes It All: The World Bank's Scheme to Privatize the Commons", a report published by the Oakland Institute, a US-based independent policy think-tank. The report was authored by Frédéric Mousseau with research assistance provided by Flora Sonkin and editorial support by Anuradha Mittal and Elizabeth Fraser. The full report including references is available at www.oaklandinstitute.org.

Gloom ahead of world economic storm

Another recession could be in store for the sluggish global economy, and this time around the damage it wreaks may be far greater.

by Anis Chowdhury and Jomo Kwame Sundaram

In light of the uncertainty caused by the US-China trade war, the International Monetary Fund (IMF) expects US economic growth to slow from a three-year high of 2.9% in 2018 to 2.5% in 2019, while China's expansion has already slowed in recent years, albeit from much higher levels.

US President Donald Trump and the previous Republican Party-controlled US Congress claimed to be breathing new life into the US economy with generous tax cuts. The US economy is now overheating, with inflation rising above target, causing the US Federal Reserve to continue raising the federal funds rate to dampen demand.

As most families hardly gained from the tax changes, US purchases of houses and consumer durables continued to decline through 2018.

Instead of investing in expanding productive capacity, US companies spent much of their tax savings on a $1.1 trillion stock buyback spree in 2018.

Hence, the positive impacts of the tax cuts were not only modest, but are also diminishing.

Nearly half of 226 US chief financial officers recently surveyed believe that the US will go into recession by the end of 2019, with 82% believing that it will have begun by the end of 2020. Wall Street's biggest banks, JP Morgan and Bank of America, are also preparing for a slowdown in 2019. As if to confirm their concerns, both the Dow Jones Industrial Average and the S&P 500 had their worst ever December performance since 1931, when stocks were battered after the Great Crash.

Meanwhile, the European Central Bank is expecting sluggish 1.7% regional growth in 2019. Europe is close to recession with the collapse of industrial output in Germany, France, Italy and the UK.

Germany's industrial output fell by 1.9% month-on-month in November 2018, and was in negative territory in five of the six months before December. Its GDP fell by 0.2% in the third quarter of 2018.

France's industrial production fell 1.3% in November 2018, reversing a 1.3% growth recovery in October from a 1.7% decline in September.

Italy, Europe's third largest economy, recorded negative growth in the third quarter of 2018 as GDP fell by 0.1% in July-September 2018 with weaker domestic demand.

As the UK remains mired in its Brexit mess, GDP growth was dragged down to 0.3% in the three months to November with the biggest industrial output contraction since 2012. 2018 final quarter growth is expected to be 0.1%, i.e., negligible.

Reaping what you sow

David Lipton, the first deputy managing director of the IMF, warned in early January 2019, "The next recession is somewhere over the horizon, and we are less prepared to deal with that than we should be ... [and] less prepared than in the last [crisis in 2008]."

Although the IMF had projected 3.7% global economic growth for 2019 in October 2018, Lipton's statement suggests that the IMF is likely to revise its 2019 growth forecast downward.

There have also been growing concerns over the continued efficacy of unconventional monetary policy since the 2008-09 global financial crisis (GFC).

Undoubtedly, countries now have less fiscal space than in 2009, and overall borrowing, including public debt, has risen since.

The policy blunders since the GFC have only made things much worse. The ideologically driven case for fiscal consolidation did not boost investor confidence for a robust recovery as promised. Despite acknowledging false claims cited to justify fiscal consolidation, including the IMF's admission that its early advice was based on faulty calculations, there was no recommended change in policy course.

Instead, all responsibility for recovery was put on the monetary authorities which resorted to unconventional policies, especially "quantitative easing" (QE).

However, the global economic recovery since then has remained tepid and easily reversible.

Additional liquidity, made available by QE, has largely been used to buy financial assets and for speculation, amplifying the financial vulnerability of emerging market economies, which have experienced increased volatility. Governments also failed to take advantage of historically low, even negative real interest rates to borrow and invest to boost productive capacity in the longer term. By mainly benefiting financial asset holders, QE has exacerbated wealth concentration.

Meanwhile, cuts in public services and social spending have worsened social polarization, as tax cuts for the rich have failed to generate promised additional investments and jobs growth. The failure to achieve a robust recovery has not only worsened the debt situation, but also made lives harder for ordinary people. Growing polarization has also worsened resentments, eroding trust, and undermining solidarity and progressive alternatives.

But lack of preparedness can hardly be due to ignorance as there have been many such predictions recently, certainly more than in 2007-08 before the GFC.

The cooperation that enabled coordinated actions to prevent the Great Recession from becoming a depression has not only waned, but major countries are now at loggerheads, preventing collective action.

National political environments are also more hostile. In Europe, the rise of ethno-populist nationalism is making it harder to pursue EU-level policies and to act together to prevent and mitigate the next financial crisis and downturn. The "new sovereign-tists" and false prophets of American exceptionalism are undermining multilateral cooperation when needed most.

Thus, a recession in 2019 may well

elevate geopolitical tensions, exacerbating the negative feedback loop for a "perfect storm". *(IPS)* ❐

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Why capital controls are important

***Kavaljit Singh* underlines the need for capital controls in a time of global financial volatility.**

The massive surge in capital inflows to emerging market economies (EMEs) following the 2008 global financial crisis has reignited the debate on the pros and cons of international capital mobility. While free movement of capital across borders can reduce the cost of capital, enable investments and allow investors to diversify their portfolio, it can also pose significant systemic risks in the recipient country with negative consequences for growth and development.

Large capital inflows in excess of domestic absorption capacity could result in rapid exchange rate appreciation, making exports more expensive and imports cheaper, and thereby weakening the country's economic growth and employment prospects. Apart from complicating the conduct of monetary policy, large inflows of capital could also fuel a boom in consumption spending as well as asset price bubbles in real estate and stock markets.

After a surge in inflows, a country may witness large reversals in capital flows ("sudden stops") when foreign investors abruptly stop lending to domestic entities or ask for repayment of the existing debt, and the domestic economy is cut off from international capital markets.

The sudden-stop episodes can be triggered by domestic factors (such as economic slowdown) or external factors (such as a hike in US interest rates, increased risk aversion and contagion effects due to crises elsewhere). There are several instances where EMEs experienced sudden stops in capital flows despite the absence of domestic vulnerabilities.

The sudden stops in capital flows could lead to rapid exchange rate depreciation, credit crunch and firesale of assets, which, in turn, could lead to a big contraction in economic activity. If the foreign debt is denominated in foreign currencies, a sharp depreciation in the domestic currency leads to currency-denomination mismatch and increases the likelihood of a currency crisis or balance-of-payments crisis. Since the 1990s, sudden-stop episodes have become more frequent. A recent study identified 44 such episodes in 34 EMEs between 1991 and 2015.[1]

Unlike foreign direct investment (FDI), foreign portfolio investments in debt and equity markets tend to be volatile and prone to quick reversals and therefore pose significant risks for the recipient economies. Heavily influenced by exchange rate expectations and interest rate differentials, short-term flows can amplify market volatility and induce financial fragility.

As the size and volatility of international capital flows have increased since the early 2000s, policymakers are re-examining the role of capital controls in mitigating systemic risks that cannot be addressed by macroprudential tools. Post-crisis, the issue of capital controls has moved from the fringes to centrestage. Capital controls are increasingly being recognized as a legitimate instrument in the macroeconomic policy toolkit as several EMEs used a variety of capital controls to dampen capital inflows during the post-crisis period.

The rationale

The rationales for capital controls are summarized below.

Firstly, capital controls can alter the composition of capital flows. In Brazil, Chile and Colombia, the imposition of unremunerated reserve requirements and similar measures helped in altering the composition of inflows towards longer maturities (i.e., reducing the share of short-term flows while increasing the share of FDI).

Monetary policy autonomy is another important motivation behind the imposition of capital controls. In the absence of capital controls, central banks cannot pursue an independent monetary policy. To illustrate, take the case of interest rates. Any attempt to change interest rates will bring undesired capital movements. If the interest rates are lowered to stimulate domestic investment, capital will move out to other countries offering higher interest rates. If the interest rates are kept high, domestic investment declines and a resource transfer to the rest of the world takes place.

With capital controls in place, countries can maintain differential interest rates and follow a relatively independent monetary policy without risking capital flight. With the aid of capital controls introduced in 1998, for instance, the Malaysian authorities were able to lower the interest rates without being concerned about currency depreciation or capital flight. Exchange rate stability is vital for maintaining a stable macroeconomic environment that is conducive for investment, trade and growth.

Thirdly, capital controls can restrict foreign ownership of certain domestic assets (such as natural resources) or strategic sectors (such as banking or telecommunications).

Fourthly, by restraining the private sector from investing abroad for higher returns, capital controls can retain domestic capital within national borders. This capital could be used for productive purposes in accordance with national development priorities.

Fifthly, capital controls also help in generating government revenues through taxes and premia on controlled exchange rates.

Lastly, the use of capital controls for maintaining financial stability becomes imperative because currently there are no global rules for regulating international capital flows.

Policy challenges

In the context of EMEs, it needs to be underscored that capital controls must be an integral part of regulatory measures to manage capital flows and address financial risks arising from the large presence of internationally active banks in the domestic banking sector, and the high degree of global financial interconnectedness. If effectively used in conjunction with other macroprudential measures (such as loan-to-value ratios and capital buffers), capital controls can be useful tools in mitigating systemic risk in the financial markets.

The enforcement of capital controls may require a sizeable administrative apparatus. As controls give enormous powers to the enforcement authorities, it is imperative that a regime of capital controls is accompanied by a transparent and accountable system of enforcement. Otherwise, capital controls could lead to evasion and corruption as there are various legal and illegal means (including under-invoicing of exports, over-invoicing of imports, and exporting cash-filled suitcases) to circumvent controls.

International policy cooperation on managing volatile capital flows is vital because nowadays some advanced economies are also experiencing sudden stops. Apart from imposing capital controls within the recipient countries, there is a logical reason for imposing capital account restrictions at the source countries to manage destabilizing capital flows at both ends. Even though the prospects of such a cooperative multilateral approach remain bleak in the current political environment, its potential benefits for global financial stability are enormous. ❐

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Notes

1. Barry Eichengreen and Poonam Gupta, "Managing Sudden Stops", Policy Research Working Paper No. 7639, April 2016, World Bank. Available at: http://documents.worldbank.org/curated/en/877591468186563349/pdf/WPS7639.pdf

Off the land

How the World Bank is facilitating rural dispossession

Through its Enabling the Business of Agriculture programme, the World Bank is paving the way for increased commodification and concentration of land for large-scale industrial farming at the expense of smallholders, pastoralists and Indigenous Peoples. The following is an extract from an Oakland Institute report which examines the potentially ruinous impacts of this land privatization agenda on rural livelihoods and food security.

Some 3.1 billion people worldwide rely on land for their livelihoods, mostly as farmers. Eighty percent of the food consumed in the world is produced by family farmers. Despite the essential role they play, farmers and pastoralists have come increasingly under threat over the past 10 years with mounting pressures over their land and natural resources by corporate interests.

Around the Global South, land grabs have led to dispossession and forced displacements, while posing threats to local and national food security. This trend intensified with the food and financial crises of 2008, when the high volatility of food prices led to a surge of interest in large-scale agriculture and land acquisitions. In 2009, less than a year after the food price spike, 56 million hectares' worth of large-scale farmland deals had been announced, more than 70% of which were in Africa. By 2016, an estimated 42.4 million hectares of land had come under contract, one-third of which involved land formerly used by smallholder farmers.

The World Bank has played a pivotal role in promoting these large-scale land deals. For years, through different mechanisms including technical assistance and advisory services to governments, aid conditionality and business rankings, the Bank has encouraged regulatory reforms aimed at attracting foreign private investment for economic growth and development. By 2014, the International Finance Corporation (IFC) – the World Bank's private-sector arm – was managing 156 projects worth $260 million for advisory services to promote private-sector development in 34 African countries.

Around the world, the expansion of large-scale farming has been the cause of dispossession and loss of livelihoods for millions, while failing to bring promised economic development and food security. It has led to massive environmental degradation and loss of biodiversity while worsening climate change through deforestation and industrial agriculture, as seen for instance with oil palm in Indonesia.

But the past 10 years have also seen countless stories of resistance by farmers, pastoralists and Indigenous Peoples opposing the takeover of their land and the destruction of their environment. Often mislabelled as "land disputes," many of these struggles challenge the takeover by foreign firms of land that is either legally public or state land and/or land on which local communities have customary rights. While some of these struggles have resulted in violent repression and forced displacement, many have been successful in delaying, disrupting or stopping the establishment of plantations.

This is recognized by the World Bank, which has reached the conclusion that "undocumented [land] rights pose challenges and risks to investors," and that, in the case of Africa, the continent is "held back by land ownership confusion." This may explain why the Bank, supported by the US and UK governments and the Bill & Melinda Gates Foundation – all strong proponents of corporate industrial agriculture – has embarked on a new, unprecedented effort to tackle the land issue in the developing world, particularly Africa.

The introduction of a land indicator in the Bank's Enabling the Business of Agriculture (EBA) project is a significant move given that the EBA is intended as an instrument that prescribes policy reforms that developing countries' governments must undertake to favour agribusiness and foreign investment. Like with the Bank's Doing Business Index, the EBA scores obtained by countries are intended to condition aid and investment money.

The EBA – a "doing business in agriculture" ranking

The EBA was commissioned by the G8 leading industrial countries in 2012 as one of the so-called "enabling actions" for the then newly formed New Alliance for Food Security and Nutrition. Initially bankrolled by five Western donors including the Bill & Melinda Gates Foundation and the US, UK, Danish and Dutch governments, the project was officially launched by the World Bank in 2013.

The EBA's goal is to help create "policies that facilitate doing business in agriculture and increase the investment attractiveness and competitiveness of countries." To achieve this, it benchmarks areas including seeds, fertilizers, markets, transport, machinery, finance, and now land, to determine whether countries' laws do or do not facilitate doing business in agriculture. The Bank recommends pro-business reforms and scores countries on their performance in applying these recommendations. The scores obtained then condition the provision of international aid and are intended to influence foreign investment in these countries. The EBA exemplifies a growing trend in international aid programmes which have become instruments to enforce market-based and pro-private-sector industrial agriculture.

In 2014, a multi-continental campaign, Our Land Our Business, was launched with over 280 organizations, including farmers' groups, trade unions and civil society organizations, joining hands to denounce the top-down imposition of policies detrimental to farmers and food security by the EBA and the Doing Business projects. Pressured by the campaign, the Dutch and Danish governments terminated their funding of the EBA in 2016.

What is the EBA's new land indicator?

Officially, the "EBA land indicators measure laws and regulations that impact access to land markets for producers and agribusinesses." The EBA identifies and evaluates the "regulatory burdens" impacting private access to land. The 2017 pilot scored 38 countries according to three main sub-indicator groups:

1. coverage, relevance and currency of records for private land;
2. public land management; and
3. equity and fairness.

The first group of sub-indicators assesses the documentation and coverage of private land, for instance the presence and extent of systems for mapping private property and the existence of online records for land-related legal procedures, such as land transfers, mortgages and land disputes. According to the World Bank, a key purpose of land records is to increase investments in agriculture and allow land owners to transfer their property to others "if they decide to take up non-agricultural opportunities."

The second set of sub-indicators deals with public land management. It scores countries in terms of existing mechanisms such as state land mapping, monitoring, and the use of public tenders to transfer public land to private owners. Though the stated goal of these sub-indicators is to prevent encroachment, all of the nine questions that guide the scoring relate to processes for easing the transfer of state lands such as parks, natural reserves, forests and other public spaces to commercial use. The Bank emphasizes the "potential economic value" of public land and claims that privatizing it via public auction will "ensure that state land is put to its best uses." For low-income countries to improve their poor ratings in public land management, they must establish adequate tender mechanisms to transfer public land to the private sector and ensure a good price for the land sold. In other words, public land *must* be sold to the highest bidder.

The third set of sub-indicators concerns equity and fairness in land markets. It recommends gender-differentiated land records as well as the lifting of "restrictions on land leasing." For the Bank, encouraging the long-term leasing of land would allow "farmers with higher skills to expand and invest in more capital-intensive production methods," while "less efficient" farmers would exit agriculture. Most of the questions related to equity and fairness (7 out of 12) concern procedures for expropriation, so that "land rights are protected against expropriation without fair compensation."

The pilot EBA land indicator ranks rich OECD countries highest, whereas countries in Sub-Saharan Africa are ranked lowest.

Throughout the EBA report, the establishment of land markets for selling and leasing land to investors is encouraged for "efficiency-enhancing" land transfers and "effective land use," which, for the Bank, consists of allocating farmland to capital-intensive agriculture.

The EBA's land indicator and associated World Bank documents raise important questions about the Bank's policy prescriptions to governments. An initial concern has to do with the assumption that formalizing "private ownership" over land will secure land tenure and spur development.

Is formalizing private property the right way to secure land tenure?

While the EBA prescribes the formalization of private property as a way to increase land tenure security, it also encourages land registration in order to turn land into a transferable asset. According to its logic, once land tenure is formalized – i.e., the rights and conditions of access of a now bounded piece of land are officially registered – landowners will be able to access credit, using their new title as collateral for loans. As a result, they will be able to invest in more "capital-intensive agriculture" or sell their land to others if they "choose" to exit agriculture.

This approach raises a number of questions. First, the Bank's premise that people would freely choose to exit agriculture overlooks the high vulnerability of family farmers around the world. Their vulnerability is further increased when the land on which they rely for their livelihoods becomes an economic asset that can be traded and speculated upon. In Western economies with "formal" land tenure systems, stories of farmers losing their land to banks and creditors abound. For instance, in June 2018 the Banking Royal Commission of Australia evidenced how farmers were forced off their land by banks: "After getting into financial difficulty, [the bank] ANZ gave them just six weeks to sell their properties, and a week to leave. The Cheesmans begged to keep their homes and their machinery so they could earn an income and pay the debt. The bank forced them to sell it all." In September 2018, protests broke out in Ireland when farmers were forced to sell their land by a so-called vulture fund, which had put farmland for sale by online auction without even informing the farmers.

The consequences of formalizing land as a "transferable asset" are likely to be even more dire in developing countries, where farmers are highly vulnerable to environmental shocks, receive limited public support and lack crop insurance, and where agricultural prices are generally deregulated and volatile. Where tenure systems allow such sales, farmers may then be forced to sell their land in years of bad harvests or low commodity prices. This happened on a large scale following the 2005 food crisis in Niger, when in just one season, hunger forced 8-14% of the farmers to sell or mortgage their land in order to survive.

The Bank's approach thus provides a legal avenue for increased land dispossession, land concentration and land grabbing. This agenda is made obvious as the Bank encourages governments to prioritize formalizing private land rights in "high-potential agricultural areas." The Bank only considers other forms of land tenure arrangements, such as communal or customary land tenure, "in rural areas with lower levels of agricultural potential."

Moreover, the Bank's assertion that private titles constitute a necessary building block for eradicating poverty and achieving development is challenged by its own Independent Evaluation Group (IEG). A 2016 IEG review of the Bank's land projects from 1998 to 2014 found that most projects failed to deliver on development promises and did not even target the poor and marginalized groups in the first place. Furthermore, the same review found weak evidence of enhanced credit access as a result of titling and registration.

The IEG review adds to a growing body of evidence on the ineffectiveness and devastating consequences of the Bank's approach to land. As in the case of land titling projects in Brazil or Guatemala, "formalizing land rights" may well favour land grabbing instead of securing access to land for farmers and Indigenous Peoples.

Preventing encroachment on public land: a licence for land grabbing

The World Bank claims that the primary objective of governments regarding the management of public land should be to "prevent encroachment." But the majority of so-called "encroachment" in the developing world is actually the use of public lands by pastoralists, smallholder farmers and Indigenous Peoples for their livelihoods.

It is estimated that as much as 65% of the world's land area is stewarded by communities under customary systems. Throughout history, large expanses of these lands have been claimed by colonial and later independent states under statutory laws. After their independence, a number of formerly colonized countries adopted legal systems establishing that all land was owned by the state. Communities were allowed to maintain customary tenure systems and could still access and use public land and natural resources, while the state reserved the right to transfer or lease land for "public interest" purposes. Examples of this form of arrangement can be seen in Tanzania's Land and Village Land Acts of 1999, Ethiopia's Constitution of 1995, Mozambique's 1997 Land Law, Zimbabwe's Land Acquisition Act of 1992, Zambia's Lands Act of 1995 and Mali's Land Code of 2000, amongst others.

Public land is therefore often land that is used under customary arrangements. Communally managed natural resources such as farmland, water, forests and savannas are essential to the livelihoods of millions of pastoralists, fisherfolk and family farmers, and generally also valued as ancestral assets with deep social and cultural significance. In Africa, it is generally customary arrangements that organize cultivation and grazing, as well as fallows and reserves, the gathering of wild food, timber, fishing and hunting.

The Bank's policy recommendations and its stated goal to "prevent encroachment" thus transform customary land users into "squatters," "encroachers" or "trespassers" on their own lands that they have protected and used for generations. This is exactly how local communities have been labelled in a number of cases of forced eviction documented by the Oakland Institute in recent years. "This land belongs to the state" is a recurring argument used by governments to grab the land from their own citizens for the benefit of foreign business ventures, as documented in the case of Indigenous communities in Ethiopia, the Maasai in Loliondo, Tanzania, and the villagers who lost their land to the Bukanga Lonzo agro-industrial park in the Democratic Republic of Congo.

By dismissing community-based customary rights, the EBA land indicator imposes a neoliberal agenda that views individual private property rights as functionally superior to collective rights. By doing so it negates the reality of millions around the world who recognize land, just like water, as a common good that should not be privatized and rely on collective land rights for their livelihoods.

Unfolding the Bank's agenda: privatization of public land in the developing world

The Bank emphasizes the "potential economic value" of public land, as if this land is universally idle and available. In a rather cynical posture, oblivious of centuries of colonial and neocolonial exploitation, the Bank claims that poverty in Africa is largely due to its poor land governance: "Despite its abundant agricultural land and natural resources, Sub-Saharan Africa is still mostly poor and has been unable to translate its recent robust growth into rapid poverty reduction." The continent is "held back by land ownership confusion," the Bank claims.

For the World Bank, in order to improve low EBA ratings, developing-country governments should enforce transparent public tender mechanisms to offer land to private investors at the highest market prices. The Bank considers that fairness would be ensured by such transparent sales of land to the highest bidder, while ignoring that in a world rampant with inequality, this is likely to drive further land concentration. The highest bidders are likely to be the most powerful economic interests, such as corporations and rich individuals.

The use of public auction to sell public land is posited as the way to "ensure that state land is put to its best uses." Once public land is transferred to commercial use, investors will ensure "economically valuable" land is used with "efficiency." The Bank fails to provide a definition for "economically valuable land" nor what it means by its "best use" or "efficient use."

This is highly problematic. Who gets to assess and decide what the "best use" of the land will be? Using what criteria? Will communities living on that land have a say? And who will benefit eventually?

Brazil's new far-right president, Jair Bolsonaro, is following the World Bank's doctrine to put "economically valuable" land to use with his declared intention to abolish protected Indigenous lands in order to expand ranching, industrial agriculture and resource extraction. Considering that "where there is Indigenous land, there is wealth underneath it," Bolsonaro is threatening the very survival of the hundreds of Indigenous communities living on that land, whereas his plans are likely to lead to more deforestation, an acceleration of the climate crisis and increased environmental degradation, posing a major threat to billions of people around the world.

Bringing equity and fairness or driving expropriation and land concentration?

Given the massive threats to land rights around the globe, it would be commendable if the World Bank prescribed measures that actually increased equity and fairness in access to land. However, what the Bank recommends to governments falls short of what is required to achieve these goals. Instead, its measures could contribute to increased concentration of farmland in the hands of a few.

The first EBA policy prescription to improve "equity and inclusion" in land rights consists of having gender-disaggregated land records. Though gender discrimination in terms of access to land is a big problem globally, it is unclear how gender-disaggregated land records will address the issue. Furthermore, this ignores land concentration derived from historical power asymmetries and colonization, including land concessions to settlers, slavery of colonized populations, and others. While the Bank's focus on gender is commendable, it fails to recognize other groups whose land rights have been systematically marginalized, such as pastoralists and Indigenous Peoples.

The second EBA recommendation for equity and fairness focuses on the "freedom of leasing" land, i.e., removing regulations and restrictions on leasing. According to the Bank, "leasing is critical for structural transformation," and "restrictions on its use" should be removed to allow "efficiency-enhancing land transactions" and "more effective land use." The positive-sounding "freedom of leasing" recommendation is promoted as a way to allow land transfers for "farmers wishing to grow into the commercial sector, but also for those wanting to exit agriculture." Yet, as discussed earlier, many farmers don't exit agriculture by choice but are forced to do so because of social marginalization, poverty, conflict, climate, lack of institutional support and more. In this context, promoting the "freedom of leasing" is geared towards easing large-scale land acquisitions and land concentration in the hands of corporations, influential individuals and those with more resources.

Not lacking cynicism, the third EBA prescription for equity and fairness on land relates to expropriation. The land indicator assesses "laws that ensure expropriation is limited to public purposes, implemented transparently and with effective appeal mechanisms." It is meant to ensure that when expropriations take place, adequate compensation is provided and due process followed. But it is hard to ignore the contradiction in bringing together the very notion of equity and fairness and the act of expropriation.

Instead of providing policy guidance that could prevent the loss of land for farmers, the Bank suggests that farmers losing their land to large-scale agricultural schemes or to land speculators is an inevitable outcome of agricultural development and thus recommends how expropriations should occur in a supposedly fair way. Furthermore, it is important to ask what constitutes "public purpose" and "public interest" in the context of the development of agribusiness and large-scale agriculture in the developing world. The fact that the Bank features a section of the EBA report on expropriations suggests that the Bank believes that displacing people for large-scale industrial farming constitutes public interest.

The World Bank has a long history of encouraging developing countries to favour foreign investments by fast-tracking procedures and dismissing consultations that might "burden" investments. The EBA's guidance on ensuring "fair" expropriation mechanisms logically complements the Bank's policy advice towards the privatization of public land and the promotion of large-scale agribusiness, which will both result in dispossessing people from their ancestral lands on which they work and live.

The Bank's approach to "effective" land use

The Bank stresses that "to encourage investments that can increase productivity, rights to land must be secure and transferable." There are two main arguments behind this premise. First, that farmers will have access to credit to invest in more "capital-intensive" agriculture by using their land as collateral. Second, that land markets will allocate land to the most "efficient" producers who are able to invest in capital-intensive methods, while less profitable farmers will supposedly "choose" to exit agriculture.

Yet, it is highly questionable that giving land away to private investors or developing more "capital-intensive agriculture" will lead to more efficient land use. The World Bank itself has documented that the expansion of large-scale industrial farms has little impact on poverty reduction compared with increasing access to land and water for smallholder farming communities. Furthermore, given the climate crisis, the rapid depletion of natural resources and land degradation that is increasingly affecting soils around the planet, the Bank's definition of "effective" land use must be challenged. The effectiveness of land use should not only consider yields per hectare but also incorporate sustainability in social, environmental and economic terms.

Whereas the EBA pushes governments to facilitate "efficiency-enhancing" land transfers – i.e., farmland sales or leases to agribusinesses – it also urges them to deregulate the import of chemical fertilizers and the production and marketing of industrial seeds. In this sense, the Bank's recommendations on policies for "effective" land use are intimately linked to the expansion of industrial agriculture. Although presented as the main solution for increasing food production while lifting millions out of poverty, the Bank's evangelizing of more "capital-intensive" modes of production is based on yet another widely refuted assumption that overlooks some key realities.

In terms of productivity and food security, as early as 2009, the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), a multidisciplinary study involving over 400 scientists and co-sponsored by FAO, UNDP, UNEP and the World Bank itself, widely discredited the supposed benefits of capital-intensive, industrial agriculture. The report urged all actors involved in agricultural development to shift their support towards agroecological practices that are less dependent on capital and external inputs. The IAASTD also called attention to the negative environmental impacts of intensive agriculture, which are hardly taken into consideration by the Bank's current policy advice.

Another comprehensive study, carried out by the World Bank's own research staff in 2009, deconstructed the fallacy of the economic efficiency argument that is used to favour the privatization of land and expansion of land markets. According to the Bank's experts, the creation of land markets ultimately leads to land concentration for industrialized agriculture and monocultures in large mechanized land holdings, which are less productive than family farms.

In addition, large industrial farms often lead to much higher economic burdens for farmers (e.g., debt) and health and environmental damage (e.g., loss of biodiversity, soil depletion, contamination of water sources by chemical fertilizers, food insecurity/lower nutrition intake). Overall, the World Bank's own experts assert that land markets not only fail to distribute land to the poor, but also do not make economic sense in terms of enhancing productivity. Beyond productivity, the expansion of plantations also affects the livelihoods and the food security of the rural poor, as illustrated by the history of the Afar region of Ethiopia.

Concentrating land in the hands of the most "efficient" producers has little positive impact, if any, on employment generation and poverty reduction. A series of reports by the Oakland Institute on large-scale agricultural investments in Africa shows that transferring farmland to the hands of corporations does not ensure wealth for the majority. On the contrary, job creation and labour conditions on large farm holdings generally fail to match the revenue, quality of life and employment levels generated by small farms, and rural migration towards over-populated cities does not guarantee employment or improved livelihoods.

The Bank's focus on foreign investment and large-scale agriculture for export stands in complete opposition to evidence-based approaches that increase self-sufficiency and food security of the poorest farmers. As confirmed in the Oakland Institute's series of agroecology case studies, agricultural yields, farmers' incomes and food security can be drastically increased with practices and policies that encourage crop diversification, require less external inputs, enhance soil fertility and increase biodiversity.

In the name of land use efficiency and improved tenure security, the EBA's policy advice on land, such as formalizing private property, privatizing public lands and ensuring "fair" expropriation, bets that the marketability of land will ensure equitable development. But in the real world, the Bank's assumptions have been continuously proven wrong. Despite this evidence, the EBA continues to be guided by a few Western powers in their efforts to force their neoliberal pro-corporate agenda on the world.

A Western donor-driven vision

The three remaining donors of the EBA – the US Agency for International Development (USAID), the UK's Department for International Development (DfID), and the Bill & Melinda Gates Foundation – have long promoted their corporate-driven vision of industrial agriculture. While pushing for policy reforms in developing countries through initiatives like the EBA and the New Alliance for Food Security and Nutrition, the EBA donors support agribusiness corporations that sell products and services or invest in farmland. This bias is even more obvious when looking at the EBA's advisory group, which is mainly comprised of multinational agribusiness and chemical corporations such as Monsanto, Bayer, Cargill and Syngenta, among others.

The EBA's policy agenda is largely influenced by DfID, whose official vision for agriculture "is based on the assumption that sustained wealth creation and a self-financed exit from poverty depend, in the long-term, on economic transformation and the majority of the rural poor finding productive and better paid employment outside of primary agricultural production."

Building on this premise, the framework calls for a twin strategy: "On the one hand, promoting agricultural transformation focused on commercialization and agroindustry development, to create jobs and raise incomes and, on the other, facilitating a long-term rural transition from subsistence agriculture to off-farm job opportunities." This linear trajectory towards commercial and industrial agriculture development contradicts a large body of evidence-based publications – including work published by World Bank economists – on the long-term productivity and efficiency of family farms.

To put this vision into practice, the UK has contributed £600 million to the G8's New Alliance for Food Security and Nutrition, a partnership between international donors, 10 African countries and multinational companies which uses the Doing Business and EBA reports as its main progress indicators. A crucial requirement for this partnership, and an important conditionality to receive aid, is that African countries commit to reform their land policies to be more attractive to foreign investors.

Like the UK, the US has been a key donor of the New Alliance, which was launched under its leadership in 2012. Similar to the New Alliance, the US Feed the Future (FtF) programme also emphasizes partnership between recipient governments and corporations. It has brought together over 60 US agribusiness corporations and 12 developing countries. Between 2010 and 2014, FtF received over $11 billion from USAID and other federal agencies for activities around food security and agriculture development.

USAID finances aid programmes aiming at land titling in 23 countries, including Ethiopia, Central African Republic, Colombia, Tajikistan, Kosovo and Liberia. These projects are accompanied by strong advocacy for the privatization of land. For instance, in Mozambique, US officials have advocated for many years for a reform of the country's land laws that would allow for the privatization of land. In 2011, the US Millennium Challenge Account made transferability of the right to use and develop land a condition of further aid to Mozambique.

The Bill & Melinda Gates Foundation (BMGF) is also a major player in international aid for agriculture. The BMGF is best known for using its money to push for an agricultural "Green Revolution" in Africa based on the use of synthetic fertilizers, chemical inputs, and genetically modified and patented seeds. This agenda largely benefits the agribusiness corporations that dominate input markets and global agricultural value chains. The Gates Foundation's trust invests in the same companies it serves through its development programmes, including Monsanto, BASF, Coca-Cola, PepsiCo, Unilever and many others.

At a World Bank panel discussion in spring 2016, Bill Gates blamed developing countries' regulatory systems for deterring investment and advocated for "expertise conditionality" to drive their development choices. This vision is the basis for the BMGF's support to the World Bank's EBA project. In 2015, over 12% of the BMGF's agriculture-related grants ($56 million) went to policy and advocacy programmes, indicating the Foundation's intent to influence the narrative around food and agriculture development. The Foundation's controversial hiring of a PR firm to manipulate UN debates on gene drives and its ongoing funding of Cornell University's Alliance for Science and Ceres2030 projects further demonstrate its push to control the narrative around agricultural development globally.

Conclusion

Since the EBA's inception in 2013, the World Bank and its donors have defended the project as a tool to guide

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