

Double Issue

THIRD WORLD *Economics*

TRENDS & ANALYSIS

Published by the Third World Network KDN: PP 6946/07/2013(032707) ISSN: 0128-4134 Issue No 678/679 1 – 31 December 2018

Development-friendly data, digitalization policies needed

Data flows should be regulated to ensure developing countries obtain economic value from the data their citizens are generating in the digital sphere. This need was emphasized at a number of events held during the UNCTAD eCommerce Week in Geneva on 1-5 April, where participants warned against attempts to enshrine a regime of free global data flows that would only cement dominance of the digital economy by a handful of corporate tech giants.

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Trends & Analysis

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

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

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

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

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E-com pluri-talks a reality, so better join, says UNCTAD SG

A recent panel discussion on the development implications of WTO e-commerce negotiations largely featured speakers who were in favour of the contentious talks.

by Chakravarthi Raghavan

GENEVA: The plurilateral talks for rules on electronic commerce at the WTO mooted by 76 countries are a reality, though 88 other members cannot or will not participate, and "it is my hope that those holding out are not blackmailing the system but have legitimate issues that can be brought on board," United Nations Conference on Trade and Development (UNCTAD) Secretary-General Mukhisa Kituyi has said.

Kituyi was speaking at a panel discussion on 5 April jointly organized by UNCTAD and the Commonwealth Secretariat during UNCTAD's eCom-merce Week (1-5 April) in Geneva. ECommerce Week is described by UNCTAD as "the leading forum for Ministers, senior government officials, CEOs and other business representatives, international organizations, development banks, academics and civil society to discuss the development opportunities and challenges associated with the evolving digital economy".

The 5 April panel discussion was on the development implications of the proposed WTO plurilateral negotiations on e-commerce. Chaired by Chinese Ambassador to the WTO Zhang Xiangchen, the panel comprised six invited panellists who were drawn from those supporting the negotiations, and one against. There were two others from the private sector listed, whose presentations were available and who were invited to speak from the floor (but only one was present and spoke).

There were also two non-pre-arranged floor interventions, one by a former International Telecommunication Union (ITU) official and now Swiss civil society participant questioning claims that the e-commerce rules will promote development, and opposing the WTO venue for the talks.

The other intervener, a World Bank

official, said that in his experience development issues always got pushed to the end of negotiations and wound up not really being taken into account.

The panel discussion appears to have given rise to sharp, negative comments from a coalition of over 300 global and national civil society organizations (CSOs) from 90 countries (developed and developing), including international organizations of workers and national organizations of MSMEs (micro, small and medium-sized enterprises). This coalition, grouped under the Our World Is Not For Sale (OWINFS) network, has been campaigning against the e-commerce negotiations and against the WTO as the venue.

(These CSOs have generally been very supportive hitherto of UNCTAD and its work, and quite effective in their own countries against the consistent efforts of the US, the EU and others, right from UNCTAD's founding, to sideline if not abolish UNCTAD.)

The CSOs voiced "outrage" at the "lopsided" composition of the panel, and the UNCTAD Secretary-General for seemingly advocating developing-country participation in the WTO e-commerce talks. These comments got wide circulation over their listservs, tweets and the like.

Kituyi responded sharply to these comments and said that to claim UNCTAD's position as supporting the e-commerce negotiations at the WTO was "cheap and nonsensical", and that critics should read what UNCTAD had consistently said.

It remains to be seen whether the presentations, comments and exchanges have converted any side to the other's views.

As chair and moderator of the panel discussion, Chinese Ambassador Zhang noted at the start that a group of 76

(counting the 28 EU member states individually) out of 164 WTO members representing over 90% of world trade had agreed at Davos, Switzerland, in January to launch plurilateral negotiations on trade-related aspects of e-commerce, aimed at facilitating e-commerce and digital trade.

(While the US, as early as the 1982 GATT Ministerial meeting, had been advocating for the trade weightage of nations to trump consensus in decision-making, this view never prevailed. In promoting the e-commerce talks and referring to the trade weights of the countries at Davos, China is now seemingly advocating it.)

Zhang added that although the exact scope of the negotiations had not been determined, they were likely to cover a wide range of specific issues in e-commerce, such as the moratorium on customs duties on e-commerce, digital trade facilitation, issues related to data and the development dimension.

Speakers at the panel, he said, would discuss systemic implications of the negotiations, the risk of regulatory fragmentation through plurilateral accords, and how the majority of developing countries that were outside the negotiations should respond to the outcomes.

Though the Chinese envoy raised the issue of systemic implications, neither he nor any of the invited speakers addressed the fundamental systemic issue of how any outcome from the negotiations would find its way into the WTO rulebook or its legality outside the WTO framework.

(In response to a question from the floor, it was subsequently stated that it was not yet clear whether any agreement would include MFN provisions.)

Moving forward

Participating in the panel as a speaker, UNCTAD Secretary-General Kituyi injected a note of caution, pointing to the "unique circumstances and the possible ramifications."

It was too late, he said, to talk about whether there were going to be e-commerce negotiations at the WTO. Due to the failure to launch them multilaterally, there were going to be plurilateral negotiations. This was a reality. But there were 88 countries in the WTO which could not or would not participate in the process.

Kituyi said the last time there was a standoff of a similar nature, on whether the WTO members should harvest the Doha progress before launching new issues, he was the Kenyan trade minister. "I think we were wrong [then in saying] that unless we have our way, you can't have your way. We set our resistance to what we did not want. Today that tactic will not work. It plays to those who want to succumb to opposition to multilateralism. Therefore, it is my hope that those holding out are not blackmailing the system but have legitimate issues that can be brought on board."

Previously, there were drivers of multilateralism who bent over backwards to bring everyone in, said Kituyi. Now it was different. The whole multilateral experiment was in a crisis and the solution had to come from within. The crisis in multi-lateralism could not be cured by plurilaterals, which could make certain rules but not cure the challenges to multilateralism. So, while proceeding on the plurilateral track, one must be aware that it was taking energy from the revival of multilateralism and not solving the crisis.

The plurilateral talks were starting with a spaghetti bowl of regulatory regimes. So to move from there to an ambitious outcome was a big challenge. And some power was outside the group (not participating) but their interests would be implicated in the rules that were negotiated.

No one should fear negotiations, but no one should negotiate out of fear, Kituyi said.

He hoped that those staying out of the talks would see the value of moving forward with the process. If they were staying out because they were concerned about their readiness to move forward, "we at UNCTAD are ready to work with you on capacity, first to be ready for e-commerce and next to be ready to negotiate."

Australian Ambassador to the WTO Frances Lisson said that digital trade was a critical driver of global economic growth, growing 32% faster and creating jobs more quickly. While e-commerce had been a longstanding element in the WTO's work since May 1998, discussions on it had not progressed, while e-commerce provisions in free trade agreements (FTAs) were more common. It was hence clear that the WTO needed to en-

gage or fall behind in relevance.

Since the January statement of the 76 countries at Davos, a schedule had been set and the text proposals on the first tranche were due for discussion in mid-May. Hopefully, said Lisson, it would allow for developing the inclusive potential of digital trade for women and MSMEs.

Half of the Davos signatories were developing countries, including least developed countries (LDCs). All meetings were open to all WTO members, whether or not they were among the signatories. The documents were available to all members, and reports went to the WTO membership, said Lisson.

Kham-Inh Khitchadeth and Eloi Laourou, the respective ambassadors of Laos and Benin, both LDCs, also spoke at the event, both underscoring the special disabilities of the LDCs and the need for space for all developing countries, especially the LDCs, to take on all commitments.

The Laotian envoy noted that of the three LDCs which signed on to e-commerce talks at Buenos Aires in 2017, two signed on to the Davos statement. Laos, with little bargaining power, limited negotiating capacity, and scarce finance and e-technology, joined the process to have a seat at the table. The interests and concerns of the LDCs should be reflected in the negotiations, he said, adding that Laos was optimistic the WTO could deliver not only on e-commerce but also on the Doha Development Agenda.

Premature

Ambassador J.S. Deepak of India, the only invited panellist opposed to the e-commerce talks, said India felt that the talks must take place multilaterally to achieve inclusive and balanced outcomes. India well understood the benefits of e-commerce; it had a growing e-commerce ecosystem, a large number of users of social media, platforms and applications. But while there were clear benefits in developing e-commerce and applications for businesses and consumers, the negotiations on e-commerce at the WTO were "an idea whose time has not yet come."

Deepak gave three reasons why it was premature to have binding rules on e-commerce. The rules-based WTO system worked on the basis of mandates and

priorities on multilateral rules. At the WTO's Buenos Aires Ministerial Conference in 2017, there was a clear mandate and work programme multilaterally agreed by the ministers of 164 countries. It provided for the continuation of the 1998 work programme on e-commerce. In spite of this, some members were now moving forward with negotiations.

"We are watching but it's not time to join them. Before jumping into rules, we need to understand the implications. This is a rapidly evolving technology. How do emerging technologies impact on existing rules? For example, Kenya took binding commitments on road transport in Mode 1 under GATS [the WTO's General Agreement on Trade in Services]. But the technology did not exist for Uber at the time. While Kenya may have agreed to full commitments in Mode 1, does it imply that they gave away the space to have special provisions for domestic operators vis-a-vis foreign operators? What are the potential impacts of proposed rules on existing commitments in GATS and GATT?"

"Do we have a policy on data flows? Do we have a policy on managing and locating digital infrastructure? Data servers? Clouds? Digital industrialization and impacts on jobs in the era of changing technology?"

Drawing attention to a McKinsey study, the Indian envoy to the WTO said that many developing countries were leaders in business processing and call centres. With automation/mechanization, 50% of the jobs would disappear in countries like Thailand, Mexico and India. "Do we need to look for good high-tech jobs or do we need to live with the current job loss?"

E-commerce presupposed affordable access to broadband but few in developing countries and LDCs had high enough connectivity to leverage benefits, said Deepak.

Deepak added that data was a new commodity which developing countries could leverage for their development. Most data was created in developing countries but was captured, processed and mined by transnational corporations in developed countries. If data was "the new oil", what about rules on benefit sharing, use and development like in the case of oil? It was not just about privacy but about using the economic value

of data for community development. "If we do not have servers and cloud computing, we cannot have jobs in the developing countries. Yes, cloud computing without boundaries will have efficiencies – but at whose cost? Should all costs be borne by developing countries?"

At the time the moratorium on customs duties on e-transmissions came into being, e-transmissions were insignificant. Now they constituted a significant portion of trade flows, Deepak said. According to a recent UNCTAD study, countries will forgo \$10 billion in tariff revenues due to the moratorium, of which 97% will be lost by developing countries. Tariff losses will amount to \$1.5 billion for LDCs; almost \$2 billion each for Mexico and Thailand; and about \$0.5 billion each for China, India and Nigeria. For small LDCs, this was a big issue as tariffs made up a substantial portion of their total revenue. With more products being capable of being digitally printed, the tariff schedules would be further eroded.

The moratorium on e-transmissions thus had the potential of making domestic industry less competitive. It would greatly harm the revenue base of developing countries and take away their ability to have special dispensation for domestic suppliers.

Without adequate preparation, there would be a very difficult time making rules, Deepak said. He underlined the need for policy space and said India was filling it with its national data policy – "India's data should be used for India's development". Those who generated data should not become products to be used by others but should benefit from it.

Stressing that it was important not to take a leap in the dark, Deepak said there was a need to understand the present situation, engage in the exploratory work programme in the WTO and explore elements of high ambition. Regarding the role of UNCTAD, he said it could help with understanding on a bottom-up approach to digitalization and e-commerce with all the stakeholders taken into account. Enlightened engagement rather than one based on ignorance may be the way to go forward, even if an idea was the fashion of the season.

(The Indian ambassador's remarks drew a sustained round of applause.)

Resilience

The EU representative, Ambassador Paolo Garzotti, said that the issue was of systemic importance but the negotiations were taking place only among certain members on the most dynamic areas of trade, demonstrating the resilience of the WTO system. The EU had joined the negotiations for the same reasons that Ambassador Deepak had mentioned for not joining. "We don't want to go back home and come back in 10 years ... It's a resounding yes to multilateralism and a no to paralysis" at the WTO. The EU priorities in the negotiations were "comprehensive and ambitious" rules, supported by as many WTO members as possible, in the limited amount of time.

This, said Garzotti, was the classical trilemma: "a dynamics approach to provide flexibility to negotiating outcome." It was not realistic to have all rules accepted by all members. The outcome would be difficult to say before the start. "We would expect: enhancing global e-commerce; facilitating MSMEs in foreign markets; 'softer measures' like e-signatures; and enhancing consumer trust."

The negotiations "are open to everyone and transparent, everyone is welcome to join; it is already a good step for development ... in the exploratory talks in 2018, two elements came out as relevant for developing countries: create an enabling environment that facilitates consumer trust."

E-signatures and payments to protect consumers were basic and crucial and necessary elements to bring benefits. This was good for all members but especially those from the developing world. If these discussions took place at national and global level, that would be great, Garzotti said.

As for regulatory infrastructure, "we should upgrade the rules on telecom services, that we put forward last year, which will ensure a transparent regulatory environment and effective competition, higher level of legal certainty and interoperability for services providers and consumers ... The outcome should provide benefits in expanding e-commerce through sound global rules and principles; a more predictable and transparent online environment; positive impacts on MSMEs; create new avenues of

trade for landlocked countries. Also for all to be part of the global digital trade standard-setting and overcome digital trade challenges.”

Creating artificial divisions between developed and developing members was not conducive to success, said the EU envoy. These rules were going to be written anyway. If this was not done in the WTO, it would be done elsewhere; in fact it was already being done in FTAs, even FTAs where LDCs were members. There was a risk of finding the global environment set by others. That was why all members, developing countries in particular, had an interest in joining the club rather than let the rules be set without them. “If you set traffic rules while everyone is still in the street, you risk a lot of crashes. Better to do it multilaterally in a rules-based system,” remarked Garzotti.

Benin’s Ambassador Laourou said the digital economy and e-trade were part of daily life. “We purchase online, we sell online, we are people, a society, government, MSMEs, enterprises that are using ICTs [information and communication technologies], for health, education, telecommunications, agriculture. We have to take into account an assessment of the work in front of us ... the needs and concerns of developing countries and particularly LDCs. In aspects that are linked with e-commerce, LDCs need to have policy space. The specific areas we should touch on relate to data flows, data localization, revenue sharing, start-ups or enterprises in general. For the LDCs, these are constraints, and we cannot take the same commitments on regulation.

“It is also necessary to take note and consider the moratorium on e-transmission duties in the light of what the Ambassador of India has commented on; scrutinize the research of UNCTAD to make sure we have scope for policy space for developing countries, particularly LDCs.”

For all LDCs to benefit from this exercise, they should join the initiative, said Laourou. Developing countries and LDCs had a lot of constraints; their digital infrastructure and cybersecurity had to be enhanced, and they needed schemes to promote this readiness.

The Commonwealth Secretariat representative, Teddy Soobramanien, posed

the question of whether e-commerce could bring benefits and promote social welfare. He had heard the case of landlocked countries but not that of remote small island states which probably stood to get more from e-commerce to reach more markets and reduce trade costs, increase efficiency and reduce barriers.

Imbalanced

Richard Hill from a Geneva-based Swiss civil society organization, who was a former ITU official, complained that the panel was imbalanced and thanked Deepak for providing some balance. He said that he had been involved in e-commerce issues since 1987, when it was called electronic data interchange (EDI). EDI had been working well since then, and “there is no reason to think that new binding rules are needed now.” For example, the e-signature issue was sorted out way back in the 1990s by the UN Commission on International Trade Law (UNCITRAL), and there was no reason to consider new provisions.

Despite statements to the effect that it was too early to foresee the outcome of the plurilateral e-commerce negotiations, said Hill, the outcome was in fact preordained: several of the proponents of the negotiations had already agreed on e-commerce provisions in other agreements like the Trans-Pacific Partnership (TPP) and the US-Mexico-Canada Agreement (USMCA). The outcome would surely be based on the USMCA because the latter corresponded to what industry had quite openly said it wanted.

Key industry demands were to constrain national regulation so as to obtain: free flow of data; no data localization; no requirements on source code disclosure (this may prevent governments from procuring open source software and/or from examining source code to determine whether it complies with regulatory requirements regarding safety, pollution, etc.); and permanent prohibition of import duties on digital products (which could be a serious problem for developing countries, which might not have any other practical means to raise revenue, especially since many Internet companies optimized their operations so as to avoid paying income taxes in any jurisdiction).

Hill supported Deepak’s statement

to the effect that the prerequisites for e-commerce negotiations were not met. These included: affordable Internet access (which was not available in many developing countries); national data policies; global taxation policies to prevent tax avoidance; national and global anti-trust policies and enforcement; and methods to distribute equitably the value-added of data monetization.

The WTO e-commerce proposals sought to enshrine the current business model, which had been referred to as “surveillance capitalism” by Harvard Business School professor Shoshana Zuboff, who wrote a 500-page book (*The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*) explaining in detail the evils of that system.

Since the EU representative had mentioned that the e-commerce negotiations would include the telecommunications issue, Hill said he was obliged to recall his previous capacity as a senior official at the ITU and to express his astonishment that the very same countries that had refused to discuss proposals made by developing countries in the ITU in 2012 were now making the very same proposals in the WTO.

In another intervention from the floor, a representative of the World Bank stated that, in his experience, development issues always got pushed to the end of negotiations and wound up not really being taken into account.

Responding to Hill, the EU representative reiterated that the outcome of the negotiations was not preordained and stated that he was not aware of the 2012 discussions in the ITU.

In response to the World Bank representative, the panellists reiterated that they would put development at the centre of the negotiations.

Hill later told the *South-North Development Monitor (SUNS)*, “If you believe that, then you probably believe in the tooth fairy! ... Look at the hypocrisy of these developed countries who claim they are undertaking these negotiations in the interest of developing countries, while in fact promoting the interests of big tech monopolies.”

That hypocrisy, he noted, was in evidence at the session of the Intergovernmental Group of Experts on E-commerce and the Digital Economy (IGE) (which

also took place during eCommerce Week), where developed countries blocked key proposals from developing countries, including any references to “data ownership”, “economic value of data” or “data policies”. Consequently, the IGE could not come up with any agreed recommendations. (See the article “South nations take firm stand on geoeconomics of data” in this issue.)

In concluding the panel discussion,

the chair, China’s Zhang, cited the adage “If you are not at the table, then you will be on the menu.”

Perhaps more appropriate for developing countries would have been: “We must indeed all hang together or, most assuredly, we shall all hang separately.” (SUNS8885) □

This article was based on presentations posted on the UNCTAD website (<https://eweek2019.unctad.org/meetings/975063>) and notes on the proceedings shared by some participants.

Development and free data flow rules are incompatible

Any agreement arising from plurilateral e-commerce talks would be premature and detrimental to the development prospects of developing countries.

by Chakravarthi Raghavan

GENEVA: Digitalization of national and global economic activities is becoming more and more pervasive, and so are its impacts on development, in particular the development of developing countries.

At a time of many unknowns in rapidly evolving digital technologies and their linkages to economic activity, and with still little understood implications of these even in advanced countries, current efforts by a minority of WTO members to frame trade rules in this area are highly premature and would impact negatively on the development of developing countries.

Such rules as have been envisaged merely try to cast in stone existing business models of the few technology giants, guarantee them free access to the raw material of data owned by individuals, communities and countries, and ensure oligopolistic control by these few firms (based in the US and China).

These were some of the key messages that emerged out of a panel event on 2 April during the 2019 UNCTAD eCommerce Week in Geneva.

Speakers at the event included J.S. Deepak (Indian Ambassador to the WTO), Vahini Naidu (Counsellor in the South African mission to the WTO), Deborah James (Director of International Programs at the Washington-based Cen-

ter for Economic and Policy Research), Abhijit Das (Head, Centre for WTO Studies, India), and Sanya Reid Smith (Senior Advisor, Third World Network, Geneva).

Richard Hill, President of the Organization for Proper Internet Governance, the civil society group that organized the event, moderated and spoke at the event, “How e-commerce, international trade, and data flows can contribute to development.”

(Information on and presentations from this event are available at <https://eweek2019.unctad.org/meetings/969110>, from which all quotes in this article are sourced.)

Data and development

In the context of digitalization of national and global economies, there is considerable interest in domestic policies that will best favour growth of e-commerce and foster international trade based on e-commerce. Debates on these issues are taking place with many unknowns regarding the technological advances ahead, and thus the unknowns of the fast-changing and evolving digital economy.

While digital policies, domestic and international, can contribute to development, a key issue is that of data-related policies, such as data privacy, data flows

and data localization.

Proposals that had been agreed in the Trans-Pacific Partnership (TPP) agreement (which the US sponsored and shaped under the Obama administration but which the Trump administration has not signed on to) and the US-Mexico-Canada Agreement (the successor pact to the North American Free Trade Agreement) etc. are being drawn upon and put forward in the so-called plurilateral negotiations on e-commerce (outside the WTO framework).

A key message out of the panel event was that any agreement arising from these plurilateral talks would have the effect of enshrining current business models based on data monetization, thus harming rather than favouring development.

In particular, the discussions brought out that rules regarding data protection/data privacy are not likely actually to result in meaningful data protection because they are set forth only as exceptions to the principle of free flow of data.

Current proposals also do not address the real issues faced by micro, small and medium-sized enterprises (MSMEs), especially those in developing countries, such as access to payment and physical delivery systems. On the contrary, the MSMEs would be reduced to and forever remain sub-contractors (the biblical hewers of wood and drawers of water of the digital economy) for the global value chains of dominant Internet platforms.

Data is clearly a valuable natural resource, in some ways akin to oil. Nobody would agree to “free flow of oil”; why should they agree to free flow of data? In fact, existing WTO rules do not mandate free flow of natural resources. Why should such rules for data be introduced now at the WTO, except to favour existing dominant Internet companies?

It is thus premature to negotiate binding rules in the WTO or in free trade agreements.

E-commerce is taking place right now. If new international rules are needed, they should focus on bridging the digital divide, ensuring data privacy, ensuring taxation of the digital economy, and combating abuses of dominant market power by large Internet companies.

Furthermore, there is no agreement within the WTO on negotiating binding e-commerce rules. Only the Ministerial

Conference or the General Council of the WTO can provide such a mandate for launching such negotiations. Such an attempt, made at the WTO's eleventh Ministerial Conference (MC11) in Buenos Aires in 2017, failed. In fact, MC11 only reaffirmed and continued the earlier mandates on e-commerce from the 1998 Ministerial Conference, reiterated in the Doha Ministerial Declaration of 2001.

However, after MC11 concluded, the move for plurilateral talks was announced in January 2019 at the Davos meeting of the World Economic Forum, the annual jamboree where CEOs fly in on their executive jets to meet and lobby political personalities and government leaders (with ski holidays at company and taxpayer expense thrown in).

These plurilateral talks are thus not part of the WTO agenda. However, the statement by the 76 countries proposing the talks, which was issued after a breakfast meet at Davos, was within minutes already up on the WTO website, which normally does not function so promptly.

Any plurilateral accord that the proponents negotiate and conclude cannot find its way into the WTO framework, even as a plurilateral agreement in Annex 4 to the WTO Treaty, except by following the mandatory procedures in Article X.9 of the Treaty. That requires a decision "exclusively by consensus" at the WTO Ministerial Conference.

Even then, such an accord may be in violation of the "most favoured nation" (MFN) requirement under the General Agreement on Tariffs and Trade (GATT) 1994, in light of the announced intent of the proponents for e-commerce transactions and imports of goods and services via e-commerce to get tax/tariff-free treatment. Hence, an amendment to the WTO agreement may be needed and this can come into force only after acceptance by all WTO members of preferential tax/tariff treatment for goods and services imported from members of the plurilateral accord, and discriminatory denial thereof to non-members.

A plurilateral accord outside the WTO framework would be illegal, and the non-MFN border treatment actionable and amenable to retaliation by aggrieved WTO members.

Apart from these legal questions, the plurilateral e-commerce negotiations will surely result in rules that are unfavourable to developing countries.

Though the proponents have been saying that the rules will enable development, this agenda is getting pushed aside in fact. The e-commerce rules will only favour a few transnational companies, mostly based in developed countries.

As a World Bank representative pointed out at another panel event held during eCommerce Week, while "development" figures as an item on the agenda in all negotiations, "development issues always get pushed to the end of negotiations and wind up not really being taken into account".

As it is, even contractual rights that are part of the WTO's GATT 1994, such as special and differential treatment for developing countries, are sought to be brushed aside, as in the current drive of the US and other industrialized countries to push through so-called WTO "reforms".

If anyone still harbours any doubts on the intentions of the advanced countries in the area of e-commerce, they should have been dispelled at the 5 April session of UNCTAD's Intergovernmental Group of Experts on E-commerce and the Digital Economy (IGE), which was also held as part of eCommerce Week. During these negotiations at the IGE, the developed countries rejected key proposals from developing countries. For example, they refused to accept any refer-

ences to "data ownership", "economic value of data" or "data policies". As a result, the IGE ended up being unable to make any recommendations.

Prerequisites

Before negotiating any new e-commerce rules, there are some basic prerequisites for developing countries, including:

- (i) infrastructure;
- (ii) affordable Internet access;
- (iii) digital literacy; and

(iv) national digital policies for data, in particular on how data can enable development and on sharing the revenue from monetization of data: (a) protecting local businesses from large international players; (b) taxation of the digital economy; (c) income distribution; and (d) the effects of digitalization on jobs and work.

At the global level, policies need to be formulated on:

- (i) dealing with the concentration of the digital economy arising from network effects and economies of scale;
- (ii) dealing with abuses of dominant market power; and
- (iii) taxing the digital economy and tackling tax avoidance. (SUNS8891) □

Richard Hill provided inputs for this article.

South needs data digitalization policies, say civil society experts

The need for developing countries to build up digital infrastructure and to regulate data flows in the public interest was highlighted at a civil society event held during UNCTAD's eCommerce Week.

by Deborah James

WASHINGTON: Data is emerging as the centre of the new economy, and it is imperative that developing countries are able to obtain economic value from the data that their citizens are generating, and formulate and implement digital industrialization policies ensuring equitable local control, policies similar to those that developed countries took during their industrialization.

This was a key message that emerged at a civil society event on 4 April

in Geneva during the eCom-merce Week of the UN Conference on Trade and Development (UNCTAD).

Titled "Strengthening MSMEs and Creating Jobs Through Digital Industrialization: What Policies Work?", the event was organized by the National Association of Nigerian Traders (NANTS) and the East African Trade Union Confederation (EATUC).

At the event, which was chaired and moderated by Parminder Jeet Singh, Ex-

Executive Director of India-based IT for Change, civil society experts on the digital economy, representatives of labour unions and organizations of micro, small and medium-sized enterprises (MSMEs) presented a powerful case for an international digital development framework with policy space for developing countries to ensure that they are able to obtain economic value from the data that their citizens are generating.

This would need an international policy framework to guarantee that developing countries are able to adopt digital industrialization policies akin to those that developed countries successfully used in their industrialization.

While policies of developing countries may vary depending on the circumstances of each, there can be no place in such a strategy for developing countries to merely link their digital economies to the less-than-handful of digital technology giants and their oligopolistic control, speakers at the event stressed.

The organizers noted that the digitalized economy is shaping the landscape for development opportunities around the world. In order to achieve the Africa 2063 Agenda and the worldwide Sustainable Development Goals (SDGs) on expanding employment, decreasing inequality and eradicating poverty, millions of new jobs must be created. In many economies, MSMEs play a critical role, providing 50-80% of employment and at least 40% of gross domestic product (GDP). Empowering MSMEs in global trade should therefore boost job creation and promote more inclusive economic growth.

In recent years, much attention has been placed on helping MSMEs participate in trade through access to global value chains. But does linking with foreign tech companies hold the answer? Or would a focus on supporting domestic MSMEs create more decent jobs?

The co-sponsors convened the event to put forth "strategies to increase decent work and expand MSMEs in developing countries," arguing that digital industrialization holds a more likely promise for closing the digital divide, expanding manufacturing, increasing competitiveness and fomenting structural transformation.

The moderator, Parminder Jeet Singh, argued that data is the centre of the new economy, and thus the core need

is to ensure that developing countries are able to obtain economic value from the data that their citizens are generating.

He pointed out that digital industrialization is focused on utilizing "the same industrialization policies that developed countries took when they industrialized." With digitalization of the economy, "you have to have digital industrialization policies with local control that is equitable," he said.

Labour safeguards

Michael Usikuu Akuupa, the Director of the Labour Resource and Research Institute (LaRRI) in Namibia, noted that Africa is experiencing premature deindustrialization much earlier than other countries because there is less tariff protection for manufacturing today.

He posited that African countries are not gaining as much from automation because they have less absorptive capacity for technology due to a lower skills base.

He argued that African policy-makers should understand that fast-tracking e-commerce alone does not guarantee positive outcomes for employment. Recent research has warned of the risk of a "race to the bottom" through global gig work, a growing sector of e-commerce in Africa.

Therefore, policies that ensure labour safeguards are key to policy discussions on e-commerce. Policies that safeguard the "i-worker" by protecting them from child labour or forced labour, ensuring their minimum wage and safety standards, and promoting their collective bargaining and freedom of association are essential to ensuring inclusive growth from digitalization, he said.

Akuupa also warned about the potential of "crowding out" African MSMEs and the implications for employment creation in Africa under the current policy proposals on e-commerce in the WTO.

He argued for policy space to ensure priority to African-owned and -run SMEs; produced or "Made in Africa" products and services; and local content requirements, among other policies.

Importantly, he argued that "labour organizations in Africa must never be excluded from any interventions and deliberations about aspects that may affect working people."

Martin Luther Munu, a research analyst in the Trade & Regional Integration programme of the Economic Policy Research Centre (EPRC) based in Uganda, highlighted that African MSMEs have to compete with big transnational corporations (TNCs) and also with SMEs based in developed countries.

In Uganda, an enterprise is classified as "micro" if it has up to \$2,700 equivalent in Ugandan assets; "small" if it has up to \$27,000 equivalent in assets; and "medium" if it has up to \$97,000 equivalent in assets. But competitors like Google, Apple, Facebook and Amazon have between \$340 billion and \$1 trillion in assets – a very uneven playing field. At the same time, even after more than 20 years of experience with the WTO, Africa's share of global trade is minimal (less than 3%).

He pointed out that e-commerce is trade, and the gains from trade can only be realized if a country produces. "A low production base, coupled with constraints to e-commerce readiness, and the massive size of foreign competitors means that African countries are greatly exposed to dominance from established firms if they liberalize e-commerce before increasing domestic capacity," he stated, arguing that these issues need to be addressed before developing countries can benefit from e-commerce.

He agreed with the position of the Africa Group of countries in the WTO, which, in recognition of the structural challenges in the continent, are opposed to negotiating binding rules on e-commerce at the WTO.

He highlighted the issues of revenue losses, cross-border transfer of data, MSMEs' capacity constraints and the infant-industry argument as being some of the key concerns for African countries.

He acknowledged that Nigeria and Kenya have joined the "friends of e-commerce" initiative but noted that productive capacity is higher in these two than in most African countries.

In setting forth a policy framework, Munu argued, countries must first protect the policy space for digital industrialization, and then within that space they must address domestic challenges such as the infrastructure gap, the digital divide, and inadequate regulatory and institutional frameworks. This requires maintaining consistency with trade ne-

gotiating positions, investment policy and domestic laws governing digitalization.

Finally, he said, the key is to push for a developmental state. If the government puts in place proper regulation and digital industrialization, then developing countries can take advantage of the opportunities while addressing the challenges of digitalization.

Abhijit Das, the head of the Centre for WTO Studies in India, pointed out that SMEs will get into online business only if the benefits of using e-commerce outweigh the costs.

He noted some challenges regarding digital infrastructure to MSMEs in developing countries, such as the lack of high-speed Internet, particularly outside main cities; the high cost of Internet connectivity even when it is available; the fact that MSMEs are still less digitally connected than large firms; and the higher costs of online business with regard to its proportion of total revenue for an MSME compared with big business.

But he noted a less well-known phenomenon as well. According to a study by the Institute of Local Self-Reliance in the United States, when small vendors sell through Amazon or similar platforms, as soon as the platform owner realizes the profit potential of a certain product, the platform begins selling its own version of that product, which results in more competition for the vendor because of information asymmetry between the small vendor and the large platform.

Das argued for policies on the national level that support MSMEs, including "national assessments of specific challenges and needs; improvement of digital infrastructure; location of customs clearing facilities adjacent to MSME clusters; customer service policies; and policies to address problems of capitalization, such as national MSME innovation funds."

He further cautioned that "access to physical infrastructure will help improve MSME competitiveness but that without data, digital products are not competitive." As an example, he noted that Google is highly valued because it has billions of searches and its search product is based on access to all that data.

Das argued for policies for data localization combined with a framework for data sharing. He noted that localiza-

tion of data in developing countries won't create benefits until developing countries share data among countries, especially among start-ups. He introduced India's draft policy on data for development, which envisages the need for a policy on data sharing.

Digital industrialization policies

Rashmi Banga, Senior Economic Affairs Officer in UNCTAD's Unit on Economic Cooperation and Integration among Developing Countries, defined digital industrialization as the rise in digital content in all levels of industrialization.

She explained that to remain competitive in the digital world, countries need to increase digital content in all stages of production, such as the higher use of digital services such as computer programming, consultancy and related activities, and information service activities and telecommunications; a higher use of digital technologies like robotics and 3D printing; a higher use of data analytics (Big Data); and a higher use of e-commerce in distribution services.

She illustrated the pathways to the apex of a pyramid of digital infrastructure. The most basic level is access to information and communication technology (ICT) infrastructure, broadband, Internet access, connectivity and affordability. The next is ICT education, leading to digital skills such as building mass-market Internet software and Internet applications.

After this step, countries will be able to build cloud computing infrastructure which will then lead to real data infrastructure and the ability to work with Big Data. The goal of working with Big Data sets is to then be able to process that data into intelligence, which is the input necessary to operate artificial intelligence.

At the top of the digitalization pyramid are advanced technological applications such as Internet of Things (IoT), 3D printing and robotics.

Given this panorama, what is the way forward for developing countries? Banga posited that the primary issue is: who owns the data?

Right now, she said, data is privately owned, mostly by foreign firms. Thus, developing countries urgently need national-level data policies which will allow them to combine the infrastructure

with capturing and processing data.

She said "the key elements of national data policies would start with building ICT and broadband infrastructures; building digital skills and competencies; harnessing digital start-ups through Digital Innovation Hubs; and building national e-commerce platforms as well as regulating super digital platforms without which national platforms will not be able to compete."

But for these efforts to bear fruit, she argued, countries must then also combine the data infrastructure with five key national data regulatory policies.

The key to success will be the development of policies regarding the ownership of data at the national level which allow the countries to decide with whom to share their data. She noted that Rwanda's Data Revolution Policy is a good example: foreign firms are still permitted to store data in clouds outside the country, but the data is still governed by Rwandan law. She also highlighted India's Draft National E-Commerce Policy, which classifies data into different types (health, traffic, personal, non-personal, etc.) and then has rules for data ownership and sharing, depending on the type of data.

Second, she argued for localization of data and building data centres. She advocated a regional support agenda for small countries that may not have the capacity for local data centres. She noted that UNCTAD has a 10-point plan for South-South regional support mechanisms, such as the potential creation of an African cloud or a Latin American cloud.

The third step would be to encourage digital technology transfers from foreign firms, which would mandate technology sharing. She questioned why developing countries would countenance developed countries' proposals (in the name of "e-commerce for development") to ban source code sharing and technology transfer. She argued that policies such as joint ownership are essential because the issue of technology transfer is vital to developing countries' industrialization potential.

Fourth, Banga argued for regulating trade in electronic transmissions. She focused on the dangers of unregulated imports of software in the context of the rapid rise of 3D printing, arguing that if data is the heart of digital transmissions,

then software is the brain. "If there are no controls over imports of electronic transmissions, there is no control over software. If a company wants to print digital shoes and displace your domestic shoe industry, you have to be able to regulate those software imports or all of your manufacturing could be wiped out."

Fifth, she urged countries to promote digital start-ups.

A key point, however, is that to accomplish any of these digital industrialization policies, countries require policy space. But "the proposals at the WTO on e-commerce would drastically limit policy space that is absolutely needed for digital industrialization," she said. These proposed provisions include mandating the "free flow of cross-border data"; bans on data localization requirements; bans on requirements to disclose source code; and extending permanently the moratorium on customs duties on electronic transmissions.

She also warned that the flexibilities in other agreements which include these types of provisions require national policies to be based on "legitimate public policy objectives" that do not represent "arbitrary or unjustified discrimination". She noted that these conditions are subjective, and it is highly difficult to justify that a certain country's policy is "legitimate" and not discriminatory.

Banga concluded by acknowledging the need for regional support for small island countries, LDCs and many others, for whom the challenges in building digital capacities cannot be overcome alone. UNCTAD's Globalization and Development Strategies division has a regional cooperation agenda, which can also be combined with a regional pro-competition strategy against super-platforms.

(This agenda is elaborated in the document "South-South Digital Cooperation for Industrialization: A Regional Integration Agenda".)

She summarized the 10-point South-South Progressive Digital Cooperation Agenda for Regional Integration as: (1) building a regional data economy; (2) building regional cloud computing infrastructure; (3) strengthening regional broadband infrastructure; (4) promoting e-commerce in the region; (5) promoting regional digital payments; (6) progressing on single digital market in the region;

(7) sharing experiences on e-government; (8) forging partnerships for building smart cities; (9) promoting digital innovations and technologies; and (10) building statistics for measuring digitization.

Data framework

In his remarks as moderator, Parminder noted that "a lot of discussion" by member states at the meeting of the UNCTAD Intergovernmental Group of Experts on E-commerce and the Digital Economy (IGE) (which also took place during eCommerce Week) was on "data sharing." What is required for this to happen? The law says now that the data is owned by who collects it. So, if both experts and member states are saying it's beneficial to share it, then that will require a policy to share the data.

He pointed out the importance of a legal framework, noting that "sharing has to have a political framework that mandates that certain kinds of data [are] a common property and must be shared for the common benefit. And then businesses that extract data would be subject to licensing conditions for the common use of the data. This is similar to how oil companies are subject to licensing fees and requirements when they extract resources. So, in order to have data sharing, it is essential to have legal policies implemented that mandate that data is a common good and delineate how the data that is collected must be shared."

Das said that "at the heart of the debate on data flows is that the first movers have the advantage that is based on a huge mass of data. The additional data will make those products more superior, in contrast to a small amount of data going to a fledgling MSME. Even if it's the same amount of data, the digital giant is enhanced further. So, I'm not buying the argument that free flow of data will help MSMEs."

In answer to a question about whether UNCTAD can help countries build digital industrialization policies, Banga noted that "in our unit on South-South cooperation, we conduct workshops on a regional or national basis in Southern countries on digital industrialization. We also share experiences from developing countries. And the most successful at the point is China, so we have

a project to look at what policies allowed China to become a global leader. And we are also going to look at the growth of the big platforms and how these were developed, and what were the policies that allowed them to develop."

During the discussion it became apparent that there was confusion among some audience members regarding localization policies, technology and data.

Parminder highlighted that no one is proposing halting technology flows, but rather discussion is on the application of traditional performance requirements – widely used in the extractive sector – to data and technology.

"We are not talking about restricting the use of technology, but the use of the flow of the biggest resource, data, for development. Digital infrastructures are needed for the common good. The need for privacy regulations is something that many developed countries here seem somewhat willing to recognize, but no developed country so far seems willing to recognize the importance of regulating data flows in the public interest."

It was further clarified that no one is suggesting total restrictions, but neither should there be a total ban on any restrictions on data flows.

And right now, there is a big asymmetry. So, the idea is that developing countries should have the policy space to strike agreements; for example, they might offer access to national data, but with technology transfer for them to access and utilize it, to ensure local benefits.

Digital trade agenda

Meanwhile, at an event in Washington DC on 12 April, Prof. Joseph Stiglitz, recipient of the Nobel Memorial Prize in Economic Sciences in 2001, responded to a question from the writer about the digital trade agenda in the WTO, whether he was familiar with it and what he thought about it.

In her question, the writer noted that civil society groups "are particularly concerned about the efforts of developed countries to launch a new round of negotiations [at the WTO] focused on digital trade, leaving behind the development agenda forever. We're particularly concerned about the idea that it seems to be an effort by the biggest corporations

in the world, Big Tech, based in the US, to grab ownership over the most valuable resource in the world, data. And we should be thinking about the issue of countries having the sovereignty to use that valuable resource for their national development and digital industrialization; and instead [the corporations want] to keep it private and use it for the most powerful. And I'm wondering if you're seeing this in your work and if you have any comment?"

Stiglitz, in response, said: "Well I'm very concerned. On digital, I think these are really important issues. People talk about data as being the new natural resource. And I think within our own countries, we are gradually beginning to realize the wide set of problems that these digital behemoths represent for our society, in terms of privacy, market power, manipulation, fake news, a whole set of issues. And there are real efforts going on, particularly in Europe, but also in California and a few other states, to devise a regulatory framework that addresses all four of these issues. Some countries like the UK have come up with a competition focus that Jason Furman is chairing; Germany has addressed the issue of market power and Facebook. So there are a number of efforts but what is very clear is that none of these go far enough. And what I see is exactly what you see; that big corporations want to embed in international agreements, a framework that would stop domestic legislation.

"It seems to me that there should be no international agreement until there is a greater clarity about how to regulate them. Or, if there is an international agreement, be very clear that it's only temporary until there is clarity about what the rules of the game, the regulatory structure ought to be.

"There are another set of issues going on in another forum, that have to do with digital taxation. And there is a lot of concern that the principles of digital taxation, which tend to be focused on destination, where the activity occurs – where sales occur – will be used to shift the right to tax multinational corporations away from where the production occurs to where the consumption occurs. If that happens, that would have very adverse effects on developing countries. So digitalization, the issue of digital, has helped contribute to a revisiting of the multinational tax regime but we

have to be very careful about where that revisiting goes and there are some elements of that that give me concern." (SUNS8889) □

Deborah James is Director of International Programs at the Washington-based Center for Economic and Policy Research, and coordinator of the Our World Is Not For Sale (OWINFS) civil society network.

South nations take firm stand on geo-economics of data

Parminder Singh sees a potential turning point in intergovernmental discussions on the digital economy, with the North's agenda of free global data flows being increasingly called into question by developing countries.

NEW DELHI: The three-day meeting of the Intergovernmental Group of Experts on E-commerce and the Digital Economy (IGE) during the recent UNCTAD eCommerce Week marked a very significant political shift in international discussions on the geo-economics of data.

For the first time, developing country after developing country consistently argued, in one voice, a political economy language of data as an economic resource, the perils of free global data flows, data ownership, data localization, community data and digital industrialization.

Economic issues around data took centre stage at the IGE.

In the data-related presentations to the IGE by invited experts, there was considerable focus on issues of the economic value of data, data regulation, data ownership, community data, data localization and digital industrialization.

These topics were then picked up and raised with even greater force, and in terms of their contextual relevance, by nearly all the developing-country delegates, other than those of two developing countries which are OECD members.

If indeed there should be free global flows of data, one developing-country delegate asked, why does the US not "give all their health data to us so that we can analyze it" and develop health-related digital solutions?

Another delegate, from a country that was an early leader of the "friends of e-commerce" group at the WTO, wondered how their local digital economy could develop if their data flowed out unhindered.

A developing-country participant in the plurilateral initiative on e-commerce negotiations, taking place on the sidelines of the WTO, stressed at the IGE the issue of data ownership.

Another delegate wanted to know

how data flow restrictions by the EU under its General Data Protection Regulation (GDPR) do not constitute data localization.

Taking forward the concept of community data proposed by a delegate, a developing-country delegate argued for different ownership regimes for different kinds of data, and the need for making data for development policies.

Numerous such statements were made by developing countries at the IGE.

Northern countries, in their interventions, either entirely ignored global discussions on data or took it up only in terms of privacy (and not data's economic value) and individual (not collective) rights around data.

These countries have also been successful till now in dividing developing countries by misguiding them through false allurements concerning the digital economy.

New awakening

In the circumstances, the firm, unequivocal and common stand on the geo-economics of data taken by almost all developing countries during the IGE's deliberations may represent a point of no return. This new awakening among developing countries may make free data flow agreements increasingly difficult.

This could be the beginning of the end for the hopes of the United States and its allies for any kind of comprehensive agreement on global free flow of data under the guise of e-commerce trade rules at the WTO.

Any future data-related global discussion involving developing countries would prominently bring up serious political economy questions around data. And there is simply no easy resolution of them without a relatively radical reworking of the dominant digital

economy model.

Such a dominant digital economy model is indeed getting flak from many sides now, including in the developed countries. Rapidly evolving demands and moves for closer regulation of the digital economy as well as some emerging data-sharing principles and frameworks in the North appear incompatible with global free flow of data regimes, especially as posited currently. This is so even if such regimes incorporate EU-style privacy frameworks, on which there also remains a lack of clarity as to how it will be achieved.

Developed countries pushing for e-commerce rules centred on global free flow of data have been hoping that they could settle these rules before developing countries become wise to the economic value of data and its national/community/local ownership. Judging from what transpired at the IGE, however, one would think that even those developing countries that signed on to free global data flow rules as a part of the Trans-Pacific Partnership agreement – with their minds focused on industrial economy trade benefits – may not do the same if such an agreement was proposed today.

Divisions

It was thus little surprise that, at the end, the IGE failed to negotiate the customary set of policy recommendations. The positions in the room on data between the South and the North were simply too far apart.

The developed countries opposed even any non-binding recommendations on key proposals from developing countries, including any references to “economic value of data”, “data ownership” or “data and digital industrial policies.” As a result, no recommendations whatsoever were agreed by the IGE.

This proved that countries are nowhere close to any agreement or consensus on global trade-related aspects of data. Trying to force free flow of data rules down the throats of developing countries through various trade treaties would therefore be grossly inappropriate.

Such coercive efforts need to be resisted collectively. Building upon the great commonality as well as the nuanced nature of data-related views expressed at the IGE, developing countries should develop alliances and common positions to push back against the “digital and data colonization” that the US and its allies are attempting through trade agreements.

UNCTAD is the appropriate venue for shaping new frameworks on data that

are developing-country-friendly. Current activities of UNCTAD are mostly related to development of basic capabilities and infrastructures for e-commerce in developing countries. While carrying on this important work, UNCTAD must also open a second track to take the lead on structural, geo-economic aspects of the

digital economy, focusing on the political economy of data in a global context.

Developing countries are in dire and urgent need of such assistance from UNCTAD. (SUNS8890) □

Parminder Singh is Executive Director of the India-based IT for Change.

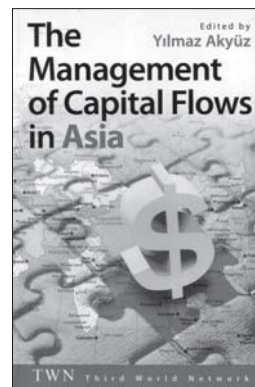
The Management of Capital Flows in Asia

Edited by *Yilmaz Akyüz*

THE 1997 Asian financial crisis brought home to the region’s economies the importance of managing capital flows in order to avert financial shocks. This book looks into whether and how this lesson was taken on board by policy makers in Asia, and, accordingly, how capital account regimes in the region evolved in the post-crisis period.

The early years of the new millennium saw a strong surge of capital flows into Asian emerging markets amid conditions of ample global liquidity. In response to the influx of funds, these countries generally chose to keep their capital accounts open to inflows, dealing with the attendant impacts by liberalizing resident outflows and accumulating foreign exchange reserves. While this approach enabled them to avoid unsustainable currency appreciations and external deficits, it did not prevent the emergence of asset, credit and investment bubbles and domestic market vulnerability to external financial shocks – as the events following the 2007 subprime crisis would prove.

This book – a compilation of papers written in 2008 for the first phase of a Third World Network research project on financial policies in Asia – examines the above developments in relation to the region in general and to four major Asian developing economies: China, India, Malaysia and Thailand.



ISBN: 978-967-5412-50-9 240pp
16.5 cm x 24 cm Year: 2011

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WTO faces hard choices, no magic-wand solutions

Faced with the possibility of a non-functional Appellate Body, a dispute settlement system with a history of dubious rulings, and an international trade order that has not delivered on development, the membership of the WTO have some tough decisions to make.

by Chakravarthi Raghavan

GENEVA: While the World Trade Organization and its multilateral trading system (WTO-MTS) are facing an existential threat that needs to be tackled as the highest priority, no one should be under any illusion that the political decisions to be taken will act like a magic wand.

Hard choices need to be made. WTO members other than the US have to decide whether they want a "World Trade Order" or a "US Trade Order",¹ a trade order whose rules will keep changing depending on the whims of the occupant of the White House at that juncture.

In making a choice for a world trade order, members perhaps also need to get over the League of Nations syndrome and experiences of the interwar years, when a British premier tried to appease the German chancellor but merely whetted the latter's appetite. War came in a few months, ending with millions dead and wounded, many parts of the world devastated, and with the victors as badly affected as the vanquished.

To end the impasse in filling the four current vacancies on the WTO's Appellate Body (AB) and enable the AB to function and resolve trade disputes, an authoritative interpretation of Article 17.2 of the Dispute Settlement Understanding (DSU) by the WTO's General Council has been advocated.² However, in practice, this may not solve the problem.

The interpretation will make it incumbent on the WTO membership to act, both individually and collectively, and "appoint persons to fill vacancies and serve on the Appellate Body". But any member, like the US at present, will be fully within its right and discretion not to agree to a particular appointment. The duty of appointing persons to serve on the AB does not prohibit a member from disagreeing in individual cases. There can be no restriction on the repetition of this process.

The concept of implementation in "good faith" will be difficult to invoke if a member says a particular candidate is "unsuitable" and even if it does so again and again. It is not guaranteed that after the rejection of, say, the third candidate, the next person has to be acceptable.

The US has discovered a lacuna in the DSU and is using it.

Ironically, the strength of the DSU – namely, "negative consensus" among WTO members for adoption of dispute settlement rulings but positive consensus on all other matters – is being applied to make the DSU ineffective and the WTO-MTS an endangered species.

Leverage

The US has made no secret of its intent of using the AB impasse as a lever to force the other members to change the WTO rules. It may continue with such tactics, denying consensus on each and every AB candidate, in order to achieve other objectives, including US Trade Representative Robert Lighthizer's aim of reverting to the GATT 1947 practice of adopting rulings by positive consensus too. This is not possible except through an amendment of the DSU, which would need consensus and acceptance by all members.

Andy Stoler, who was deputy representative in the US mission to the GATT when the WTO rules, including the DSU, were being negotiated and settled at official level in 1993, and who later became WTO Deputy Director-General, has now put forward a suggestion³ to meet the US grievances.

Under this proposal, if the US (or any other party) is dissatisfied with an AB ruling, it could prefer another appeal to "a panel of arbitrators" comprising the chairpersons of the Dispute Settlement Body (DSB), General Council and Trade

Policy Review Body (TPRB). If one of the three arbitrators is from a country involved in the dispute at hand, he or she will be substituted by a person nominated by the WTO Director-General (DG).

This is as bizarre a suggestion as one can get to appease the US! All the more so since it was Stoler, as a US deputy representative during negotiation of the WTO rules, who had contacted other key delegations to ensure (in the face of lobbying by the then GATT DG Peter Sutherland) that the WTO DG would have no powers akin to those of executive heads of other international organizations, except for particular tasks that he or she may be asked to undertake from time to time. The DG is thus, for example, only empowered under Article 8.7 of the DSU to name a chair and dispute panel members if the two parties to the dispute cannot agree.

As for Stoler's suggestion for the three designated chairpersons to be "arbitrators to rule on the AB rulings", the only mandate currently in the WTO rulebook for these three chairs is to hold office for a year, chair their respective meetings and conduct business, but subject to their rulings being challenged from the floor and reversed by vote.

In 1995, when a similar group (the WTO DG and the chairs of the DSB and the Councils for Goods, Services and TRIPS) undertook the task of interviewing candidates, consulting delegations and ultimately presenting a slate of seven names to be elected to the AB, they had privileged the US alone to exercise a veto. The slate named by them that was elected was viewed by members as "US agents".

Judging from that experience, it would be bizarre to empower the DSB, General Council and TPRB chairs to act as "arbitrators" – a sort of super-AB! This must be rejected.

Instead, if there is unanimity among the rest of the WTO members, the General Council or Ministerial Conference can and should "invite" the US to either implement DSU Article 17.2 in good faith or withdraw from the WTO.

However, though the US appears isolated on its stand over the AB, the EU, Australia and others are in fact using the AB impasse to promote their own agendas, including plurilateral negotiations on new issues and their so-called "reform agenda" to further tilt the WTO rules

against developing countries and development. As a result, unless the US changes its mind, the AB could become non-functional.

The dispute settlement system may still be able to function in disputes where the disputants agree in advance that they will not lodge an appeal after a panel ruling is issued but accept the ruling (or agree to refer the points of law to an arbitrator they can both agree upon). However, in disputes involving the US (over 40% of disputes so far) or others involving the EU, it is unlikely that any developing country involved will oblige and agree to arbitration on points of law against panel rulings; it would merely give notice of appeal and abate the ruling.

The way forward may hence be by direct action of the members. If the DSU is ineffective, it is so for the US too. The willing members and those affected by US unilateral actions may apply their own unilateral measures against the US, and the US will not have the option to get relief under the DSU. This will not be an optimal solution as it may generate a series of actions and counter-actions, but perhaps the only way by which the US can be tackled on this issue.

Recently, well-known US economist Dani Rodrik suggested, in relation to the US-China trade war, a policy of "peaceful coexistence" for the two.⁴ Equally needed for others, in particular the developing countries, is "non-alignment" vis-a-vis the two trade giants. They need policy space to craft their own economic and trade policies for development. They need the kind of policy space that Rodrik notes prevailed in the pre-WTO era under GATT 1947, rather than the current "hyper-globalism" under the WTO.

Rodrik's may be more or less a lone or minority voice in mainstream trade economics, where the "free trade theologians" hold sway. However, most developing countries in fact need such policy space vis-a-vis not only the US but China too. Both now seem to be attempting to oligopolize the global data economy via WTO rules, and are aided by the WTO secretariat, the IMF, the World Bank and many parts of the UN system.

(Interestingly, speaking to senior civil servants in February 2000 at the time of the Asian financial crisis, Malaysian

Prime Minister Mahathir Mohamad had charged the superpowers and giant corporations with making use of "globalization" and technology "to conquer the world all over again, this time without the use of arms." Leaders of international institutions, he added, stressed that globalization was aimed at helping developing countries, "but so far no developing country has benefited from globalization.")

DSU review

If by a miracle, the US changes its position and cooperates in filling up the four current AB vacancies (and two more to arise before the end of 2019), a complete review of the DSU must then be undertaken as the next order of priority and completed with changes to the rules.

In this process, not only the US complaints, now being voiced vaguely, must be taken up, but even more so the much earlier complaints by developing countries which were the principal victims of rulings by dispute panels and the AB. These must be discussed and decisions arrived at as per the Marrakesh decision to undertake a complete review of the DSU.

In the early years of the WTO, thanks to the DSU rule on adoption of rulings by negative consensus, panels and the AB abused the mandate to "clarify existing provisions" of the WTO agreements and instead piled up new obligations on developing countries, sometimes contrary to the "ordinary meaning" of language used in the agreements, and made inutile specific provisions.

For example, panels and the AB have acted contrary to the overriding interpretative note to Annex 1A of the WTO Agreement.

Annex 1A comprises: GATT 1994 and six Understandings related to the various specified Articles of GATT 1994; the Marrakesh Protocol to GATT 1994 (schedules of tariff concessions and bound rates of tariffs of members and other particulars set in the protocol); and 12 agreements on various aspects of trade in goods.

This Annex 1A has the following general interpretative note: "In the event of conflict between the General Agreement on Tariffs and Trade 1994 and the provision of another agreement in Annex 1A of the Agreement Establishing the

World Trade Organization (referred to in the agreements in Annex 1A as the 'WTO Agreement'), the provision of the other agreement *shall* (emphasis added) prevail to the extent of the conflict."

In abundant caution, the DSU (Article 3.2) further makes clear that recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements. In addition, the WTO Agreement (Article IX) further stipulates that it is the Ministerial Conference and General Council which have exclusive jurisdiction to provide "authoritative interpretations" (but this authority "shall not be used in a manner that would undermine the amendment provisions in Article X").

There are various agreements in Annexes 1 (1A, 1B and 1C), 2 and 3 of the WTO Agreement, but no other provision akin to that in Annex 1A on the sum total of rights and obligations of members under the WTO Agreement and the agreements in the three annexes.

Under customary rules of interpretation of public international law, when a country is a party to several agreements, it is expected to implement all of them in good faith. Also, the specific obligations in one treaty override the general in another; a subsequent agreement between the same parties on the same subject overrides the earlier one, etc. Where there is some ambiguity of language in an agreement, customary interpretations allow a reference to the "negotiating history" to understand the "intent".

In the case of the Uruguay Round negotiations to establish the WTO and its agreements, no negotiating history was presented to the plenipotentiaries at Marrakesh in April 1994 and none was approved by them, unlike in the case of the earlier Tokyo Round.

At the time of Marrakesh, then GATT DG Peter Sutherland told this writer that the secretariat had collected "notes" from its various divisions and had been preparing a draft negotiating history, but that this idea was given up as there was some opposition from a few countries.

In spite of this, the secretariat (the legal and substantive divisions of the WTO secretariat for panels, and the separate AB secretariat for the AB), being re-

quired to “service” panels and the AB, have briefed them, behind the backs of the parties to the dispute, by relying on internal notes “to provide the background to the ambiguous language” used in agreements. Rulings have been handed down based on this, invariably against the major developing nations.

In fact, the only materials on record that can be referred to for deducing the “intent” of any ambiguous language in the agreements are official documents which were derestricted at Marrakesh. These comprised proposals issued to participants in the Uruguay Round negotiations and minutes of meetings of Uruguay Round negotiating groups approved by the participants; they were available to plenipotentiaries at Marrakesh and were derestricted and made public.

The secretariat’s own internal notes (and some publications of official documents with comments drawn by authors/editors from US internal notes made available to them) are impermissible sources to be drawn upon by the secretariat as “negotiating history” when it services the panels and the AB.

Despite all the above considerations, panels and the AB in a series of disputes raised by the US against individual developing countries (and in the banana dispute against the EU), contrary to customary rules of interpretation, ruled that the rights and obligations in agreements were “cumulative”, even though the WTO and its agreements have no such provision. The AB said that it would “so clarify and reconcile” the various agreements to ensure no conflict, so that a member would be obliged to observe all the obligations of all the agreements. A veritable Daniel come to judgement!

These panel and AB reports showed glaringly questionable reasoning but were claimed to be based on “public international law interpretations” codified in the Vienna Convention on the Law of Treaties (VCLT).

[The US never ratified the VCLT, and as a result some others too did not. When the US Senate refused “advice and consent” to the VCLT, the US State Department announced that the US nevertheless abided by public international law. Hence, the DSU (Article 3) only mentions “customary rules of interpretation of public international law” and not the VCLT. Panels and the AB however do not

even make this distinction, but often cite the VCLT.]

At the time such rulings were being handed down, the US, the main beneficiary, was the cheerleader, often joined by the EU and Japan. Developing countries, and not only those which were parties to the disputes in question, protested and detailed their objections on record at the DSB, but they were ignored. Media briefings by the secretariat (DSB meetings, as all other WTO meetings, are not open to the media) most often did not even mention or detail the objections unless prodded.

[All these have been reported contemporaneously in various issues of the *South-North Development Monitor (SUNS)* and adverted to in C. Raghavan (2000), “The World Trade Organization and Its Dispute Settlement System: Tilting the Balance Against the South” (<https://www.twn.my/title/tilting.htm>).]

Role of WTO secretariat

According to the Washington-based *Inside US Trade*, WTO DG Roberto Azevedo, speaking on 11 April at the Peterson Institute, noted US-China efforts to end their trade conflicts and spoke of the two having similar views in some areas.

One of the main goals of (current) reform efforts at the WTO was to reinvigorate the negotiating bodies of the WTO, he said, referring in this connection to the plurilateral initiatives that groups of WTO members launched at the Buenos Aires Ministerial Conference in 2017. The rise of plurilateral negotiations, he claimed, was at least in part due to negotiation fatigue. Multilateral negotiations were not necessarily over, but members were no longer looking for those grand bargains.

“The WTO has decided to bring an end to such rounds and act as a continuous forum for negotiation,” he is reported as having added.

However, not only has there been no such decision, but there is still a binding 2004 decision of the General Council in force which makes clear that until the single undertaking of the Doha Work Programme is completed, no other item will be on the WTO negotiating agenda. Only the General Council or Ministerial Conference can reverse it specifically, not the DG.

Azevedo’s chef de cabinet, Tim Yeend, went further than his boss when speaking at a UN Financing for Development event. He is cited as saying that trade would help to reduce poverty more “if it can work with new areas”, pointing to such issues as “increased cooperation on e-commerce”, investment facilitation and domestic regulation in services.

His views were challenged from the floor by Deborah James of the Our World Is Not For Sale civil society network, who said the WTO had not delivered on allowing developing countries to use trade for their development. The issue of WTO reform, she said, included an attempt to take away from developing countries the right to use the very policy tools that developed countries had used in their own development.

James commended in this regard a new document co-published by UNCTAD, “A New Multilateralism for Shared Prosperity: Geneva Principles for a Global Green New Deal”. She opposed another misguided expansion of the WTO disguised as “e-commerce for development.” “These proposed digital trade rules are actually about rewriting the rules of the digital economy of the future, to allow monopolistic corporations to further capture and exploit the most valuable resource of the world, data, for free,” she said, calling this “a new digital colonialism”.

Yeend responded that there was no consensus or clear direction other than that WTO members agreed on the “need to strengthen rules in the WTO and the system”.

It was not clear from the response where and when there was a WTO consensus and mandate for “increased cooperation on e-commerce” and investment facilitation.

All these suggest the need for WTO reforms to ensure the WTO secretariat serves all members instead of promoting the interests of a few, and even more, that it should have no role in the DSU review and reform process (other than the normal servicing of such meetings). (SUNS8892) □

This article is the third in a series on the current AB impasse and other issues related to the WTO dispute settlement system. Parts 1 and 2 were published in TWE Nos. 676 and 677. The fourth part will appear in the next issue of TWE.

Notes

1. <https://www.thehindubusinessline.com/opinion/world-trade-order-or-us-trade-order/article26835713.ece>

2. "Time for WTO to take up overdue review of DSU", *TWE* No. 677.

3. <https://worldtradelaw.typepad.com/ielpblog/2019/04/dsu-reform-proposals-from-andy-stoler.html>

4. <https://www.project-syndicate.org/commentary/sino-american-peaceful-economic-coexistence-by-dani-rodrik-2019-04>

Japan, Australia proposal on AB reform comes under criticism

A proposal by Japan and Australia to reform the functioning of the WTO's Appellate Body is seen as a bid to "appease" the US but without being able to unlock a US-induced impasse that threatens to paralyze the WTO dispute settlement system.

by D. Ravi Kanth

GENEVA: Several countries on 23 April rejected a proposal from Japan and Australia that seeks to bring about fundamental changes in the WTO's Dispute Settlement Understanding (DSU) and its Appellate Body (AB) as per the unilateral demands of the United States.

The joint proposal fails to resolve the existential crisis brought about by the continued inability to fill the current vacancies in the AB, trade envoys told the *South-North Development Monitor (SUNS)*.

At a WTO meeting on 23 April, the European Union, China and Mexico among others criticized the proposal for offering concessions on a platter to the US without securing any commitment from Washington that as a quid pro quo it would agree to the selection process for filling the AB vacancies, said a trade envoy who asked not to be quoted.

The US has been blocking the selection process for the past two years.

"Even as Japan and Australia were prepared to appease the US and offer concessions for free, the US was unmoved and remained silent during the meeting," the trade envoy said.

The US is watching how countries such as Brazil and now Japan and Australia are willing to bend over backwards to address the concerns it had raised about the functioning of the AB, but is not even prepared to say whether it agrees or disagrees with the joint proposal, the envoy said.

The three-page draft proposal, titled

"Informal process on matters related to the functioning of the Appellate Body", was circulated on 17 April. It came up for discussion during a meeting convened by New Zealand's Ambassador to the WTO David Walker, who is also the Chairman of the WTO Dispute Settlement Body (DSB). Walker has been tasked by the WTO General Council with overseeing the informal process to overcome the deadlock in filling the AB vacancies and address the US concerns regarding the AB.

Proposed provisions

The draft proposal by Japan and Australia says that "recommendations and rulings made by the DSB are aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under the DSU and the covered agreements, and cannot add to or diminish the rights and obligations provided in the covered agreements." It insists that "the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system".

The draft proposes that the AB shall consider the following issues:

1. When the AB addresses the issues raised by the parties to the dispute per paragraph 12 of Article 17 of the DSU, the scope of the appellate review shall be limited to issues of law covered in a panel report and legal interpretations

developed by the panel in strict compliance with paragraph 6 of Article 17 of the DSU.

2. The AB shall not review the panel's fact-finding, such as meaning of municipal law, as an issue of law.

3. Members affirm that they should refrain from filing appeals to the AB beyond its remit.

On the 90-day deadline for appellate reviews, which the US says the AB has often failed to meet, Japan and Australia have called for "strict observance" of the deadline.

Their proposal also opens the door for positive consensus in cases "involving complicated measures and/or legal claims", where the members involved in the dispute "would need to resolve the resulting procedural consequences in such cases."

Effectively, the proposal does away with the existing mandatory requirement of negative consensus for extending the 90-day limit by allowing parties to decide among themselves, said a trade envoy who asked not to be quoted.

The draft says that "the prompt settlement of disputes is essential to the effective functioning of the WTO and the maintenance of the proper balance between the rights and obligations of Members, as stated in Article 3.3 of the DSU."

On the issue of precedents, Japan and Australia proposed that "an interpretation by the Appellate Body of any WTO provision does not constitute a precedent for posterior interpretations."

Further, the proposal offers full freedom to panels for adopting "an interpretation of a WTO provision that is different from the one developed by the Appellate Body".

In short, the proposal seeks to undermine the pre-eminent role of the AB, the highest adjudicating body for global trade disputes, said a trade envoy from South America who asked not to be quoted.

However, Japan and Australia repeatedly emphasized that their proposal is aimed at reaffirming "the important role of the dispute settlement system in providing security and predictability, as stated in paragraph 2 of Article 3 of the DSU."

They also mentioned "requirements that the panel and Appellate Body cannot add to or diminish the rights and obligations of Members."

The proposal says that “panels and the Appellate Body should refrain from making a finding or recommendation on any of the issues of law and legal interpretation of relevant provisions of the WTO Agreement to the extent that the finding or recommendation adds to or diminishes the rights and obligations provided in the covered agreements.”

The proposal also opens the door for the use by the US of the “zeroing” methodology in calculating anti-dumping margins, which has repeatedly been declared by the AB illegal under the WTO’s Anti-dumping Agreement.

For example, the proposal says that “members confirm that panels and the Appellate Body shall interpret, in accordance with paragraph 6(ii) of Article 17 of the Anti-dumping Agreement, any provision of that Agreement that admits of more than one permissible interpretation, so as not to add to or diminish the rights and obligations provided in the covered agreements.”

The proposal also calls for “regular dialogue” between the DSB and the AB so as to ensure the implementation of the decisions afterwards.

“Members affirm that they will also consider how to ensure the implementation of the outcomes of the regular dialogue between the DSB and the Appellate Body,” Japan and Australia suggested.

Reservations

In response to the proposal, the EU, China and Mexico among others expressed sharp reservations, saying it doesn’t guarantee that the US will agree to the selection process for filling the vacancies in the AB even if members approve the changes proposed by Japan and Australia.

“The draft decision proposed by Japan and Australia is much worse than the Brazilian proposal as it doesn’t address Rule 15 [of the Working Procedures for Appellate Review] or the selection process,” said a trade envoy who asked not to be quoted.

Rule 15 of the AB’s working procedures says that “a person who ceases to be a Member of the Appellate Body may, with the authorization of the AB and upon notification to the DSB, complete the disposition of any appeal to which that person was assigned while a mem-

ber, and that person shall, for that purpose only, be deemed to continue to be a Member of the Appellate Body.”

Further, the proposal makes things more difficult as it does not say that in return for extending the concession to the US, members can launch the selection process.

“Effectively, you are giving whatever the US is asking for for free, which goes against the cardinal principles of give-and-take,” the envoy said.

According to another trade envoy, the Japan-Australia proposal not only drastically truncates the AB by introducing the positive consensus as regards the 90-day rule but it fails to offer concrete solutions.

“With Brazil changing sides to appease the US and with the latest Japan-Australia proposal, the US can use these

proposals to say that everybody now agrees that the AB has overreached and overstepped and use that argument to say why should it continue with the AB,” the envoy said.

Effectively, in their separate proposals, Brazil and now Japan and Australia are giving the US “ammunition to say that there is a problem with the current system – and hence it is determined to throw the baby [AB] out with the bath water,” the envoy argued.

Unless the EU, China, India, Mexico and other countries remain united by fiercely opposing the “appeasement proposals” that allow the US to persist with its hegemonic demands at the WTO, the prospects for the continuation of the AB look grim. (SUNS8894) □

South reacts sharply against US notification proposals

Many developing countries have voiced opposition to a proposal by the US and the EU, among others, setting strict requirements for WTO members to notify trade measures to the Geneva-based body.

by D. Ravi Kanth

GENEVA: A large majority of developing countries on 11 April sharply rejected onerous notification requirements proposed by the United States and several other countries at the WTO that call for “administrative measures” which would name and shame those that fail to comply.

The proponents, according to many developing countries, have selectively chosen some elements in various WTO agreements while ignoring notification requirements in other areas such as services trade and intellectual property.

South Africa on behalf of the African Group of countries, India, China, the Africa, Caribbean and Pacific (ACP) Group, and the least-developed countries (LDCs) firmly opposed the draft proposal circulated by the US, the EU, Japan, Canada, Australia, New Zealand, Argentina, Costa Rica and Chinese Taipei calling for stringent notification require-

ments.

At the 11 April meeting of the WTO’s Council for Trade in Goods (CTG), the sponsors justified their proposal on grounds of “chronic low level of compliance with existing notification requirements under many WTO agreements.”

The four-page draft proposal originated in the trilateral US-EU-Japan initiative launched at the WTO’s eleventh Ministerial Conference (MC11) in Buenos Aires in December 2017. It was not agreed to at MC11.

The draft calls for a working group on notification obligations and procedures for developing recommendations in several WTO agreements. The agreements include the Agreement on Agriculture; Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement); Agreement on Subsidies and Countervailing Measures; Agreement on Safeguards; Understand-

ing on the Interpretation of Article XVII of the GATT 1994 (on state trading enterprises); Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement); Agreement on Import Licensing Procedures; Agreement on Rules of Origin; Agreement on Preshipment Inspection; Decision on Notification Procedures for Quantitative Restrictions; Agreement on Trade-Related Investment Measures; Agreement on the Application of Sanitary and Phytosanitary Measures; Agreement on Technical Barriers to Trade; and Agreement on Trade Facilitation, Section I.

The draft proposal has suggested that members can file "a counter-notification of another Member concerning notification obligations under the Agreements and Understandings" above.

Already, the US has filed several counter-notifications against India over New Delhi's subsidy payment programmes for rice, wheat and cotton. India has rejected these counter-notifications, saying that they were based on flawed assumptions by American trade lobbies.

The draft proposal also calls for "administrative measures" in case a member "fails to provide a required notification by the deadline provided under an Agreement." The measures, to come into force after a member fails to provide notifications within one year of the deadline, include the following:

(i) representatives of the member cannot be nominated to preside over WTO bodies;

(ii) questions posed by the member to another member during a Trade Policy Review need not be answered;

(iii) the member shall be assessed a charge by the secretariat at the rate of [x][5] percent of its normal assessed contribution to the WTO budget, to be effective in the following biennial budget cycle, that may be used for the purpose of providing members with technical assistance to fulfil notification obligations, including through the International Trade Centre;

(iv) the secretariat shall report annually to the CTG on the status of the member's notifications; and

(v) the member shall be subject to specific reporting at WTO General Council meetings.

The administrative measures will

also include naming and shaming provisions such as:

(i) the member shall be designated as a member with notification delay;

(ii) representatives of the member will be called upon in WTO formal meetings after all other members have taken the floor, and before any observers; and

(iii) when the member with notification delay takes the floor in the General Council, it will be identified as such.

The proposal is based on the "carrot and stick" approach, the EU Ambassador to the WTO Marc Vanheukelen had told several trade envoys at a closed-door meeting at the EU mission earlier in April, according to a trade envoy who asked not to be identified.

Under the proposal, the commencement of administrative measures "shall be deferred [for] a year ... for a developing country Member that has submitted information on the assistance and support for capacity building that the Member requires" on the basis of a request made to the WTO secretariat.

Further, the proposal has maintained that "when the administrative measures will be applied to any Member, the Director-General will notify the Ministers of those Members responsible for the WTO of the administrative measures being applied with respect to those Members."

The administrative measures, according to the proposal, shall cease to apply once a member complies with the required notification requirements.

"Extreme" proposal

During the CTG meeting, the US, the EU and other sponsors spoke on why the proposed notification requirements are essential to ensure smooth functioning of the WTO.

On behalf of the African Group, South Africa denounced the proposal, saying that "if this proposal is any indication of what some Members want the WTO to look like in the future, then the proponents need to demonstrate" the underlying rationale/purposes.

The African Group sought to know from the sponsors "what is the clearly defined problem they are seeking to address" and "what evidence and criteria" they adopted for covering only the 14 agreements above.

The sponsors were asked to substantiate through a case-by-case approach why they "think" each and every developing country should fall under arbitrary and strengthened oversight.

Further, the African Group pinned the sponsors to explain why there were more flexibilities in areas where developed countries had difficulties, such that the developed countries enjoy "reverse S&DT [special and differential treatment]".

"Without this context and evidence," said the African Group, "we do not see this proposal advancing any further."

The African Group said "the extremity of the proposal which seeks to regularize counter-notifications ... and introduces administrative measures ... is reminiscent of an era best left in the past."

The proposal "sits uncomfortably in a multilateral context, and we cannot support a submission that negatively impacts all Members in the African Group".

The proposed obligations "far exceed existing commitments" and were "in fact extreme in terms of the severity of punishment by relegating non-complying Members to a humiliating exercise of naming and shaming," the African Group maintained.

"This is not the WTO we signed up to and it is not the WTO we want in the future," it argued.

The developing countries faced enormous difficulties in compiling and collecting information, the African Group reminded members.

"The lack of proper institutional coordination is the primary reason why our Members continue to struggle with non-compliance," the African Group stated. Besides, there is an acute lack of "institutional memory in Ministries", it said, pointing out that "no matter how many workshops the WTO may provide, if there is not enough institutional memory or succession plans, or sufficient qualified human resources trained to study and analyze data according to the requirements of different notifications, a punitive measures approach will not help to address these challenges."

Such punitive challenges "will result in further marginalization of developing and least developed countries," the African Group pointed out.

Instead of punitive measures, a “more cooperative approach is required, where Members are incenti-ized for complying, rather than punished,” the African Group said. Such a cooperative approach “will go a long way in building trust that this organization so desperately needs”.

“Any potential reform in this area should begin with a comprehensive review of notification requirements in all WTO agreements by the respective committees to ensure they are not unnecessarily complex, burdensome or vague,” maintained the African Group.

The Group firmly made clear that it “is not in a position to support any transparency and notification measures that go beyond our existing obligations.”

It said it was willing to engage “within the parameters set by the Marrakesh Agreement, including the importance of respecting mandates, the principle of consensus and respecting the limited scope of the CTG to consider this substantive negotiating proposal.”

Lastly, it said the sponsors must realize that their proposal could not get any traction “so long as there is no clarity on the more fundamental and more urgent question on the future of the Appellate Body and Dispute Settlement Mechanism, which we view as an indispensable part of a proper functioning WTO system”.

Developing-country constraints

In another sharp intervention at the CTG meeting, India said it “strongly believes in transparency, as it is one of the pillars of the rule-based multilateral trading system and provides Members the information and clarity” on the laws and regulations, facts and figures as well as the trade measures taken by other members.

But the sponsors had failed to take into account “the actual difficulties being faced by the Members in compliance with the notification requirements”, said India. The constraints faced by developing countries included “human resources, institutional arrangements, infrastructure requirements and financial requirements”.

Further, the notification requirements involved “interpretational issues” that could not be merely resolved

through technical assistance, India said.

India said the sponsors sought “to address the issue of notification compliance by bringing two different aspects – one for the compliance with the existing notification obligations for goods and the administrative actions for non-compliance thereof, and second, one related to the need for expansion of the existing notification obligations.”

The proposal, according to India, sought “to cover the notification requirements for the past period, since the inception of the WTO.” “Given the capacity constraints developing country Members are facing and the fact that the past notifications would be of little relevance to trade today, any process of improving notification compliance should be restricted to present and future notifications”.

India also wanted to know from the sponsors why their proposal focused on the notification requirements under the agreements on sanitary and phytosanitary measures and on technical barriers to trade, “leaving out a number of other Agreements where such ad hoc notifications exist.”

In addition, India said it would oppose the administrative measures which went beyond what had been agreed under the WTO commitments.

“Hence the question of accepting such onerous conditions does not arise,” India flatly said.

Punitive measures and administrative actions, said India, were not the way to address the difficulties confronted by a large majority of developing countries which faced enormous capacity constraints for complying with timely notifications.

“In a nutshell, my delegation finds it difficult to agree to such a proposal which provides for penalties and administrative actions in case of default, rather than making an effort to understand the difficulties a large number of developing Members are facing, given the breadth and length of notification requirements under various agreements under the WTO and the capacity constraints of the Members,” the Indian representative said.

In its intervention, China said that “no member has fully fulfilled all the required notification obligations. Particularly on trade in services, developed

members have set very bad examples, using the GATS [General Agreement on Trade in Services] vague notification requirement as an excuse.”

Commenting on the proposed administrative measures for non-compliant members, China said that “it is not our preference and we don’t believe punishment could be an effective approach in WTO.”

“Even if such measures should be adopted, they should be limited to reminding, warning and minor reprimand,” China argued.

“We do not support the measures that would deprive members of their legitimate rights as a WTO member, and we disagree with the financial punitive approach, which we assume can incur negative incentives and may lead some members to give up in despair, like someone may smash a porcelain pot to pieces just because it’s cracked,” China maintained.

It is clear that unless developing countries stand firmly against the proposed transparency and notification requirements, which are the first salvo at redesigning the WTO as per the dictates of the US, the multilateral trade body could soon turn out to be the nodal watchdog of hyper-globalists. (SUNS8888) □

Third World Economics
is also available in Spanish.

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

For subscription details,
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Diversification crucial to reduce risks in commodity sector

A UN document explores ways for commodity-dependent developing countries to mitigate risks arising from the volatile sector, including by diversifying their production, exports and revenue sources.

by Kanaga Raja

GENEVA: Diversification, in addition to an effective risk management strategy, remains crucial for commodity-dependent developing countries in order to increase resilience and reduce macroeconomic risks related to the commodity sector.

This is one of the main conclusions highlighted by the UN Conference on Trade and Development (UNCTAD) in a Secretariat Note presented at the eleventh session of the Multi-year Expert Meeting on Commodities and Development held here on 15-16 April.

UNCTAD said that at the macro-level, in addition to strengthening risk management, reducing commodity dependence through diversification of production, exports and revenue sources remains the most straightforward way to increase macroeconomic resilience and mitigate risks related to international commodity markets.

Similarly, fighting poverty and raising the incomes of the most vulnerable groups of society, in line with the Sustainable Development Goals, is crucial to strengthen economic and social resilience at the micro-level, it added.

In her opening remarks at the expert meeting, Isabelle Durant, Deputy Secretary-General of UNCTAD, said 67%, or 91 out of 135 developing countries, depend on commodities, a situation that has sadly not shifted over the last two decades. The percentage is even higher among the least-developed countries (LDCs), with 80% of these countries falling within the commodity-dependent category. Heavy dependence on commodities makes these countries vulnerable to shocks and price fluctuations, she said.

Durant explained that the ongoing fall in commodity prices since they peaked at the start of the decade affects the ability of countries dependent on

these few products to ensure their socioeconomic development. The collapse of export revenues has affected not only state budgets but also those of households producing farm products such as cocoa, tea and coffee, she said.

Reduction of commodity price volatility through horizontal and vertical diversification is the most secure and safest way of reducing vulnerability, Durant said, adding that only export diversification and diversifying the economy can lead to sustainable development.

Highlighting some recent trends in the commodity markets, Janvier Nkurunziza, chief of the commodities branch at the UNCTAD Division on International Trade and Commodities, said that as in previous years, commodity prices were volatile in 2018. However, they generally followed a downward trend, with variations between commodities.

Overall, agricultural products witnessed falling prices, a trend that began when the most recent commodity boom ended in 2011, while mineral prices dropped after an upturn in 2016 and 2017 for ores such as gold, nickel and zinc.

However, the prices of crude oil and natural gas fuels were the exception in 2018, said Nkurunziza, with the price index for energy products increasing, particularly from its low level in 2016.

A range of risks

According to the UNCTAD Secretariat Note, commodity markets are volatile and therefore constitute a source of risk and uncertainty for those that depend on them. In this regard, risks emanating from the commodity sector affect all actors in the sector. These include governments of commodity-dependent developing countries, exporters, traders and commodity producers such as small-

holder farmers, all of whom can benefit from effective risk management.

The nature, scale and potential impacts of risks to which governments and various private sector actors are exposed vary. Therefore, the optimal choices of instruments and strategies for risk management can be expected to differ between and across different stakeholders.

According to UNCTAD, there are a range of instruments and strategies that can be used to mitigate risks emanating from the commodity sector. These include financial instruments to hedge commodity price risk, fiscal buffers to absorb shortfalls in commodity revenue, and commodity-linked bonds to reduce the risk of debt distress in the wake of commodity price shocks. Local commodity exchanges can also provide risk management services to commodity producers and traders. Further, index-based weather insurance schemes can help protect smallholder farmers from weather-related risks.

It is important to note that there is no panacea to risk management in commodity markets, said UNCTAD. In practice, governments, producers and traders of commodities need to evaluate costs and benefits of available risk management tools and calibrate their individual risk management approach accordingly.

Commodity markets feature a range of risks. Consumers and producers of commodities are subject to price risk, which refers to the uncertainty regarding future commodity prices. Uncertainty regarding agricultural yields or mining output gives rise to production risk. The delivery of commodities from producers or traders to consumers is subject to transportation risk. As in all areas of trade, counterparty risk also affects commodity transactions. Currency risk exists when commodity trade takes place across countries with different currencies and when transactions must be settled through currency conversions. Finally, weather and climate-related risks are increasingly impacting commodity markets.

Commodity-dependent developing countries are particularly affected due to the importance the commodity sector has for their economies. Therefore, said UNCTAD, for commodity-dependent developing countries to achieve sustainable development, the management of commodity price risk and weather-

lated risks seems particularly relevant. The former is particularly important for commodity producers and governments of commodity-dependent developing countries, while the latter poses a constant threat to the livelihoods of small-holder farmers.

According to UNCTAD, commodity prices are characterized by a high degree of volatility. For instance, between September 2008 and September 2018, the average spot price of Brent crude oil fluctuated between \$124.9 and \$30.8 per barrel. Similarly, the average monthly price of copper at the London Metal Exchange fluctuated between \$9,868 and \$3,072 per ton during the same period.

Agricultural prices have also been volatile. For example, between September 2008 and September 2018, the average monthly indicator price of the International Coffee Organization reached a high of 231 US cents per pound and a low of 98 cents per pound.

In terms of commodity groups, minerals, ores and metals have been the most volatile group, as measured by the coefficient of variation of monthly indices since 2000, followed by fuels, then food and agricultural raw materials.

Past initiatives to control commodity price volatility included the establishment of international commodity agreements for commodities such as sugar, coffee, cocoa and natural rubber in the 1960s and 1970s. A key objective of international commodity agreements was to stabilize commodity prices through export quotas and buffer stock interventions. However, these agreements were dismantled or ceased to intervene in the market in the 1980s and 1990s, in line with a global trend favouring price liberalization and the free play of market forces.

During the same period, many agricultural marketing boards and other agencies that aimed at stabilizing commodity prices at the national level were abolished or scaled back their activities.

Moreover, after its creation, the Common Fund for Commodities was poorly funded and unable to substantially help commodity-dependent developing countries to stabilize their commodities' prices as originally intended.

Price volatility creates uncertainty about future revenue from commodity sales and exports, said UNCTAD. For governments of commodity-dependent

developing countries, where public revenues depend to a large extent on commodity exports, this constitutes an enormous challenge. An accurate forecast of future revenue is essential for the financial planning of expenditures and investments. Consequently, in the presence of uncertainty due to price risk, there is a threat to the sustainability and continuity of public development programmes. This in turn creates a risk for the achievement of the Sustainable Development Goals in commodity-dependent developing countries.

Another key source of risk that affects particularly farmers in developing countries relates to environmental conditions, such as rainfall patterns. Small-holder farmers are especially vulnerable to unfavourable weather conditions and weather-related natural disasters that can threaten their revenue as well as food security. In the absence of insurance, weather-related shocks can have significant impacts on the livelihoods of farmers, their families and rural communities that are often highly dependent on agriculture.

Hedging instruments

According to UNCTAD, there are various financial instruments, also known as derivatives, which can be used to hedge commodity price risk. Broadly, these instruments consist of futures, forward contracts, options and swaps.

While about two-thirds of developing countries are commodity-dependent, the use of financial instruments to hedge commodity price risk is not widespread among governments. However, there are some cases where governments of commodity exporters or state-controlled companies have used financial instruments to manage commodity price risk.

For instance, the Mexican government has hedged its oil export-related revenue since 2000 and spent \$1.25 billion on put options in 2017 to lock in prices of oil exports for 2018. Another example is the Brazilian state-controlled oil company *Petroleo Brasileiro*, which spent \$445 million on put options to secure a minimum price of \$65 per barrel for part of its oil output in 2018. Ecuador engaged in an oil hedge involving put options and a swap in 1993 that resulted in costs of \$20 million, causing political turmoil that led to the end of the

country's oil hedge.

Financial instruments have also been used by commodity-importing countries to hedge against price risk. Panama has been hedging its oil imports through call options since 2009, in line with its National Strategy for Hydrocarbons Risk Hedging. Uruguay bought call options to hedge 6 million barrels of oil, corresponding to about half of its annual oil imports, over a period of 12 months starting in mid-2016.

"Like all insurance products, financial instruments carry costs, which need to be carefully weighed against their potential benefits," said UNCTAD.

UNCTAD said the purpose of financial instruments in the context of risk management is to mitigate exposure to price risk rather than to speculate on potential favourable price movements. Therefore, it seems that countries have had better experiences with financial instruments embedded within a clear risk management framework and used over a long time period.

Commodity exchanges

The UNCTAD Secretariat Note also looked at commodity exchanges, which are regulated market places where commodities, and often commodity derivatives, are traded.

Commodity exchanges fulfil several important functions, including price discovery, risk management and facilitation of commodity trade. Furthermore, many commodity exchanges make important physical infrastructure available, such as warehouses and cold storage facilities, that might not be in place otherwise.

UNCTAD said that in the context of risk management, commodity exchanges can help commodity producers and traders in commodity-dependent developing countries to manage price risk and other sources of uncertainty, such as counterparty risk and quality risk.

There are, however, many factors that can hinder the participation of commodity producers and traders in international commodity exchanges. For instance, smallholder farmers often do not have the information, technical skills or access to foreign currencies needed to participate in trading on foreign commodity exchanges. Also, traders and exporters based in developing countries might face regulatory, financial or other

obstacles that limit their abilities to access commodity exchanges outside their countries. Furthermore, market participants based in developing countries cannot directly benefit from physical infrastructure services such as warehouses from commodity exchanges that are based abroad.

Commodity exchanges in developing countries can play an important role in filling this infrastructure gap, said UNCTAD. The largest and most sophisticated commodity exchanges outside of developed countries are in emerging economies, it noted. These include the Brasil Bolsa Balcao in Brazil; the Rosario Board of Trade in Argentina; the Multi Commodity Exchange of India and the National Commodity and Derivatives Exchange in India; the Dalian Commodity Exchange, the Shanghai Futures Exchange and the Zhengzhou Commodity Exchange in China; the Bursa Malaysia; and the South African Futures Exchange.

According to UNCTAD, commodity exchanges can be effective and successful only if certain preconditions, including an appropriate regulatory and legal framework, and physical infrastructure needs are met. In this regard, commodity exchanges that are well designed and respond to the needs of potential users can lower the transaction costs of commodity trading and help commodity producers, traders and exporters to manage risks.

Precautionary saving

Commodity price-related risks can also be reduced by accumulating savings during periods of high commodity prices in order to enhance economic resilience and stabilize public finances during times of low prices.

In this regard, many resource-rich countries have established sovereign wealth funds, through which parts of commodity revenues are set aside. Commodity-funded sovereign wealth funds can have a range of policy objectives, including the stabilization of the budget in the wake of commodity price swings (stabilization funds), the accumulation and transfer of wealth to future generations (savings funds) or a combination of multiple objectives. For instance, the Norwegian Oil Fund, which is the largest commodity-linked sovereign wealth fund, with more than \$1 trillion worth of as-

sets under management, serves as a savings fund but also helps to finance the non-oil budget deficit.

In the context of risk management in commodity-dependent developing countries, both stabilization funds and savings funds can play a role, said UNCTAD. Stabilization funds help to shield the annual budget from shocks arising from volatility of commodity revenue. The existence of stabilization funds in resource-rich countries has been shown to reduce volatility of government spending. This strengthens the sustainability and continuity of public development programmes. Furthermore, stabilization funds can support the implementation of countercyclical fiscal policy rules.

The drop in commodity prices after the boom period of the 2000s has underscored the importance of an effective fiscal policy framework for commodity-dependent developing countries, said UNCTAD. This includes the provision of fiscal buffers, i.e., savings in the form of liquidity or liquid assets, to manage risks and uncertainties from commodity price shocks and volatility. Such fiscal buffers are not only a means of self-insurance against negative commodity price shocks but can also help to carry out countercyclical fiscal policy and limit the growth of external debt during times of falling commodity prices.

Commodity price fluctuations and shocks will always be a source of risk for the balance sheets of commodity-dependent developing countries. However, managing this risk through precautionary saving and a robust fiscal policy framework can limit the extent of negative impacts emanating from unfavourable developments on international commodity markets, said UNCTAD.

It noted that many commodity-dependent developing countries have accumulated significant amounts of external debt during and after the commodity price boom of the 2000s. These debts constitute a major source of risk for governments of commodity-dependent developing countries. In particular, when the budget depends to a large extent on commodity revenue, there is the risk that falling commodity prices increase the relative burden of debt service payments and thus shrink the government's policy space. For instance, debt service as a

share of gross national income fell, on average, for African commodity-dependent developing countries between 2000 and 2010 but has increased every year ever since.

One way to reduce this risk is to use debt instruments that are linked to commodity prices, said UNCTAD. There are several possible reasons why the market for commodity-linked bonds is underdeveloped, it added. For instance, as there is no existing liquid market for commodity-linked bonds, investors might be reluctant to buy these instruments or ask for high risk premiums. Also, governments of commodity-dependent developing countries might have concerns about potential political backlash due to rising debt payments during times of increasing commodity prices.

These real and perceived costs would need to be weighed against the potential benefits of commodity-linked bonds in the context of sovereign risk management and counter-cyclical fiscal policy in commodity-dependent economies, said UNCTAD.

Weather insurance

UNCTAD also said in order to cope with uninsured weather-related shocks, farmers often resort to a range of strategies that are inefficient as well as problematic from a development perspective and can have long-lasting negative effects. For instance, in the event of a crop failure caused by drought, some farmers could be forced to sell productive assets such as livestock or farm land, which diminishes their longer-term income opportunities. Furthermore, a farmer and a farmer's family can be pushed into poverty if the household's pre-shock income was close to the poverty threshold. Other disadvantageous shock-coping strategies consist of reducing spending in critical areas, such as education and health or decreasing food consumption. Such shock responses carry negative impacts for child development, health and educational attainment, which affect productivity and earnings potential over the long term.

Thus, there are numerous potential benefits that can be obtained through the

(continued on page 25)

The new World Bank presidency and the crisis of multilateralism

The World Bank has a new man at the helm, but will he bring with him a much-needed new approach to support sustainable development?

by Leo Baunach

The announcement in January that Jim Kim would step down as president of the World Bank came as a surprise. Less surprising was the news that followed: Kim was leaving the foremost multilateral development institution to join a private investment firm. It is a fitting act. Kim often seemed more interested in promoting private investments than in the basic mission of the World Bank to support development through low-interest loans to governments.

The new president, David Malpass, may present other challenges to the World Bank's mission as a Donald Trump nominee and a longstanding critic of international financial institutions. In his campaign for the position and during his early days at the Bank, Malpass has signalled that he will not attack the global policy consensus on sustainable development and climate change. However, the status quo was failing before Malpass took office. The Bank needs to be transformed to support sustainable development and a just transition to a zero-carbon, zero-poverty future.

There is a crisis of multilateralism, rooted in decades of rising inequality and the favouring of profits over people. If changes are not made, the crisis of multilateralism will worsen and the ground on which the Bank stands will disappear.

A trademark of Kim's presidency was the creation of the twin goals in 2013 to crystallize the purpose of the institution: ending extreme poverty and boosting shared prosperity. The goals are undeniably noble, but the devil is in the details.

Ending extreme poverty means that less than 3% of the world's people would live in extreme poverty by 2030. In 2015, the international extreme poverty line was revised upward to \$1.90 per day. Under criticism that the line failed to capture the reality of poverty, the Bank also created poverty lines based on country

income categories.

The Bank touts progress on reducing extreme poverty but there are several caveats. Most of the progress took place in China, hardly the bastion of policies promoted by the Bank. The extreme poverty line also obscures a lack of progress relative to the cost of living and freedom from hunger. Nonetheless, the goal has been thoroughly integrated into the rhetoric and thinking of the Bank.

Private sector vs. development goals?

The international community reached a consensus in 2015 on the Sustainable Development Goals, including Goal 10: "By 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average." This contrasts with the limited Bank definition that only seeks rising incomes for the bottom 40%.

Achievement of the Bank's goal could therefore coexist with a failure to reduce high income inequality levels, or even greater inequality. A 2017 report of the Bank's Independent Evaluation Group found that only 18% of projects had a "minimally well-articulated" plan to foster shared prosperity.

With increasing levels of in-work poverty, precarious work and untenable levels of income and wealth inequality, the Bank must refocus on shared prosperity. This includes a direct approach to raising incomes. The current preference is on "pre-distribution" measures such as education and health. These areas are human rights and important factors for growth unto themselves.

Reducing inequality and boosting shared prosperity will require tackling poverty wages, including through the strengthening of trade unions and centralized collective bargaining systems, coordinated wage increases and the reversal of labour market deregulation.

Unfortunately, recent policy discussions from the World Bank, including the *World Development Report 2019*, move in the opposite direction.

These divergences cannot be ignored. The goals and operations of the World Bank should be aligned with the global policy consensus and the reality facing millions of people. The Bank can start by systematically tracking the jobs outcomes of lending in low-income countries to ensure that there is a proven contribution to ending poverty and boosting shared prosperity.

One of the first challenges for the Malpass presidency will be the strong position taken by US Congressional representative Maxine Waters, chair of the House Financial Services Committee. The Committee has oversight of the US Treasury and Congress has extensive power over the allocation of money. In a 9 April hearing – coincidentally the first day for Malpass as Bank president – Waters criticized a programme called the Private Sector Window and threatened to prevent the allocation of money to the Bank if the programme is not ended or drastically reformed.

Donor governments periodically replenish the money available for lending by the International Development Association, the arm of the Bank that provides loans to low-income countries. The last round of replenishment raised \$75 billion. Of that, \$2.5 billion was allocated to be transferred out of the International Development Association and into the segments of the Bank that finance the private sector. This money is used to provide funding with highly advantageous terms to private actors operating in low-income countries. Waters described this approach as "subsidizing private firms selected without competition" and "likely to prioritize financial returns over positive development impacts".

The Private Sector Window is just one facet of a focus on private involvement in development at the World Bank. The Maximizing Finance for Development approach, also known as the "cascade" approach, seeks to reorient the Bank away from public investments that create the foundation for economic growth. Under this approach, the Bank helps countries reform to attract private investment, and Bank money is used to incentivize and subsidize investment.

Together with other international

organizations, the Bank supports making “infrastructure an asset class” in order to facilitate investment by institutional investors, such as pension funds, by bundling projects into securitized investment vehicles.

The promotion of private investment leads to more private operation on the ground. For infrastructure to be an asset and an attractive destination for private investors, it needs to produce revenue. This is often realized through public-private partnerships that hand operation of public assets to private businesses. Public-private partnerships have a long history of failure and can reduce access, such as through toll roads.

In his first week, all eyes were on David Malpass and on the topic of climate change. In the early days of the Trump administration, the US withdrew from the Paris climate accord and reversed an Obama-era policy to vote against most coal projects at the World

Bank and other development banks. Speaking to staff on his first day, Malpass reportedly mentioned climate twice as a task for the Bank. Time will tell if this truce will hold, and how Malpass will approach the relationship of China and the World Bank.

The leadership of international organizations increasingly understand that a crisis of multilateralism is occurring but are failing to offer effective policies to reduce inequality, combat climate change and create new rules for a fair global economy.

It remains to be seen if Malpass shares this concern about the rollback of multilateralism, and if he can lead the Bank on a rescue mission to support sustainable development before it is too late. □

Leo Baunach is the research officer for the Washington office of the International Trade Union Confederation. This article is reproduced from the Equal Times website (<http://www.equaltimes.org/the-new-world-bank-presidency-and>).

Privatization promotes collusion and corruption

Instead of privatization, a better-run public sector could be a superior means to realizing the public interest.

by Jomo Kwame Sundaram

At the risk of reiterating what should be obvious, the question of private or public ownership is distinct from the issue of competition or market forces. Despite the misleading claim that privatization promotes competition, it is competition policy, not privatization, that promotes competition.

Instead, privatization has typically been accompanied by collusion, which undermines competitive pricing. Formal and, more commonly, informal collusion is rife. Informal collusion is more likely among those involved in public or transparent bidding to provide privatized or contracted-out services.

Transparent institutions and arrangements, such as public auctions and open, competitive bidding for contracts, have often been compromised by secret, informal collusion. Typically, those with political connections and insider information are better able to secure lucrative contracts and such other business opportunities.

Contrary to claims, privatization it-

self does not ensure transparency and accountability, or address corruption. As it is rarely implemented on an arm's-length basis, it may also contribute to other problems, including new types of corruption.

Hence, privatization does not enhance efficiency except to augment profits. The public sector can be more efficiently run, as in some economies. Hence, the challenge is to ensure that the public sector is better run.

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

Ascertain problems to determine solutions

Correlation does not imply causation. An enterprise may be better run after privatization due to managerial reforms, behavioural changes or organizational improvements. But if such im-

provements could have been achieved without privatization, then one cannot conclude that privatization is needed to bring about desired reforms.

It is important to consider the organizational and managerial reforms, including incentive changes, which might be desirable to achieve superior outcomes. One should not assume that privatization is the answer regardless of the question or the problem at hand. After all, many state-owned enterprises (SOEs) were set up precisely because the private sector was believed to be unable or unwilling to provide certain services or goods.

In many instances, the problems of an SOE are not due to ownership per se, but rather to the absence of explicit, feasible or achievable objectives, or the existence of too many, often contradictory goals. In other cases, poor managerial and organizational systems, blocking flexibility, autonomy and needed reforms, as well as cultures supportive of them, may be the key problem.

Such reforms may well achieve desired objectives and goals or even do better at lower cost, thus proving to be the superior option.

Many SOEs have undoubtedly proven to be problematic and inefficient. However, privatization has not proved to be the universal panacea for the myriad problems of the public sector it has been touted as. As such, the superior option cannot be presumed *a priori*, but should instead be the outcome of careful consideration of the nature and roots of an organization's malaise.

SOE reform is often a superior option for a variety of reasons although there are no “one size fits all” solutions regardless of circumstances. Problems need to be analyzed in context and solutions cannot be assumed *a priori*.

It would be erroneous to presume that public ownership is always a problem. There may be other problems which are not going to go away without properly identifying and resolving them.

Desirable changes, resulting in improved performance and outcomes, may take place following the privatization of a particular SOE. But even this does not mean that privatization per se is responsible for these improvements unless state ownership itself has blocked needed changes, in which case there may well be compelling cases for privatization in such situations.

Another alternative, of course, is government or public procurement. Gen-

erally, public-private partnerships (PPPs) are much costlier than government procurement. With a competent government, government procurement is generally more efficient and much cheaper. Yet, international trade and investment agreements are eroding the rights of governments to pursue government procurement.

With a competent government and an incorruptible civil service, and competent accountable consultants doing good work, efficient government procurement has generally proved far more cost-effective than PPP alternatives. (IPS) □

Jomo Kwame Sundaram, a former economics professor, was Assistant Director-General for Economic and Social Development at the UN Food and Agriculture Organization (FAO), and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

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development of suitable insurance products. The experience with index-based weather insurance so far has shown that these schemes have an impact on the production decisions and risk-taking of previously uninsured farmers. Beyond helping farmers to manage weather risk, these schemes can also generate co-benefits in terms of facilitating access to credit, as insurance reduces the risk of default.

There are, however, also many operational issues that have surfaced. Most notably, low uptake has limited the impact of index-based solutions. Several reasons for low uptake of index-based weather insurance among farmers have been identified, said UNCTAD, including basis risk, credit constraints, missing regulatory framework, and lack of information, organizational capacity and trust. It has also been argued that smallholder farmers have difficulties paying insurance premiums.

The design of index-based insurance products needs to address these challenges to be scalable and sustainable, i.e., commercially viable beyond a pilot phase.

Going forward, said UNCTAD, the impacts of climate change could add to weather-related risks, which would reinforce the need for effective and accessible risk management tools to secure rural livelihoods, ensure food security and fight poverty. (SUNS8895) □

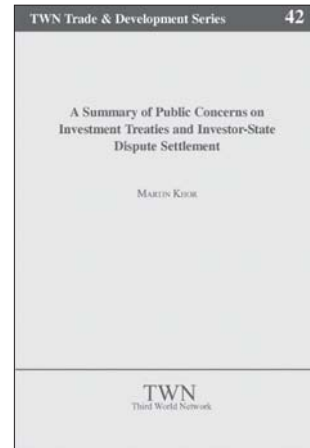
A Summary of Public Concerns on Investment Treaties and Investor-State Dispute Settlement

by Martin Khor

International investment agreements, specifically bilateral investment treaties and the investment chapters in free trade agreements, have come under the spotlight for what are seen as skewed provisions that grant excessive rights to foreign investors and foreign companies at the expense of national policymaking flexibility. Of particular concern is the investor-state dispute settlement framework embedded in many of these treaties, which enables foreign investors to sue host-country governments in opaque international tribunals.

The serious risks involved have prompted a rethink of investment pacts in developing and developed countries alike.

In place of the current lopsided system, calls are growing for agreements which would balance legitimate investor rights with the rights of the state to regulate investment and formulate policies in the public interest.



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All crises, the crisis (the industrial agri-food system is central to all of them)

Humankind is confronted with several simultaneous and potentially catastrophic crises that threaten life on earth as we know it. The common thread binding these “seven plagues”: industrial agriculture and the large corporations that profit from it.

by GRAIN

The crises that all of humanity is confronting, linked to the capitalist, extractivist and colonial model that now dominates most societies on the planet, have reached such a magnitude that they are no longer just being denounced by the same social movements that have been talking about them for 50 years; they are now found in the official reports of governments, international organizations and scientific organizations that have not been co-opted by corporate interests. A particular feature of all these crises is their close interconnection with the industrial agri-food system – indeed, they are all deeply and causally rooted in it.

The climate crisis

The Intergovernmental Panel on Climate Change (IPCC), in its recent report to the Conference of the Parties to the UN Framework Convention on Climate Change, states that unprecedented and far-reaching changes in all aspects of society are necessary if we are to limit global warming to 1.5°C instead of 2°C, as stipulated in the Paris Agreement. A UN News item on that report is very explicitly titled “Reducing global warming by 0.5°C: The difference between life and death.”¹

The existing global agri-food system, promoted by a powerful transnational food industry, is responsible for nearly half of human-produced greenhouse gas emissions (the figure ranges from 44% to 57%, according to research by GRAIN over the last decade).²

In our analysis of the impact of industrial meat and dairy production, we found that, as a group, the biggest five producers of these items are today responsible for a larger volume of annual greenhouse gas emissions than Exxon, Shell or BP, the emblematic oil companies that (for very good reason) continue to be targeted for their role in the climate crisis.³

Massive destruction of planetary biodiversity

There exists a scientific consensus that the earth is currently experiencing the sixth mass extinction of species and that, for the first time, it is being caused by a single species among the millions inhabiting this planet: human beings.

Here again, agroindustrial production takes centre stage: industrial monocultures are advancing, occupying immense areas and destroying forests at an accelerated rate.

According to a recent UN Food and Agriculture Organization (FAO) report, commercial agriculture and livestock production generated nearly 70% of deforestation in Latin America

in the first decade of the new millennium.⁴ From 1990 to 2005, 71% of the deforestation in Argentina, Bolivia, Brazil, Colombia, Paraguay, Peru and Venezuela was due to increased demand for forage crops, and 14% to other commercial crops. The FAO report reads: “Deforestation, chiefly caused by the conversion of forest land to agriculture and livestock areas, threatens not only the livelihoods of foresters, forest communities and indigenous peoples, but also the variety of life on our planet. Land-use changes result in a loss of valuable habitats, land degradation, soil erosion, a decrease in clean water, and the release of carbon into the atmosphere.”⁵

Soil destruction by industrial agriculture

Likewise, our planet’s soils are threatened by an accelerated process of desertification due to the imposition of an extractive agricultural model that does not consider soils as living organisms, but rather as an inert substrate for industrial agriculture. Soils are one of earth’s most astonishing ecosystems, in which a bewilderingly diverse array of plants, fungi, bacteria, insects and other living organisms – the majority of them invisible to the human eye – coexist in an unending process of creation and decomposition.

Agricultural industrialization, which began in Europe and North America and was later replicated with the Green Revolution in other parts of the world, began with the postulate that soil fertility could be maintained and improved using chemical fertilizers. The importance of soil organic matter was ignored or undervalued. Decades of industrializing agriculture and imposing industrial technical criteria on small-scale farming undermined the processes whereby soils obtain new organic matter and protect the organic matter they contain from being carried away by water or wind. The effects of chemical fertilizer application and non-renewal of organic matter were not noticed immediately, since soils possessed large quantities of stored organic matter. But as time passed and this organic matter was used up, the effect became more visible – with devastating consequences in some parts of the world.⁶

This conclusion is ratified by the most recent FAO report on the status of the world’s soils: “the overwhelming conclusion from the regional assessments is that the majority of the world’s soil resources are in only fair, poor or very poor condition. The most significant threats to soil function at the global scale are soil erosion, loss of [soil organic carbon] and nutrient imbalance.”⁷

The water crisis

“By the middle of this century,” wrote the United Nations in its 2003 report on the development of the world’s water resources, “at worst 7 billion people in sixty countries will be water-scarce, at best 2 billion people in forty-eight countries.”⁸

Agriculture (fundamentally industrial agriculture) consumes the lion’s share of the drinking water available to human beings. According to UN figures, “agriculture accounts for 70% of fresh-water withdrawals from rivers, lakes and aquifers – up to more than 90% in some developing countries.”⁹ It is crucial to understand that the use of water in industrial agriculture fundamentally interferes with the water cycle. Soil water retention decreases radically and the resulting runoff causes flooding, while industrial grain production for export essentially amounts to an export of millions of litres of water from producer to consumer countries. This situation causes a huge disequilibrium in the water cycle. In the 2004/2005 season, Argentina exported over 42.5 billion m³ of water in the form of grain.¹⁰

When water monopolization, privatization and widespread agrototoxin contamination are added, the result is a grave problem that can be solved only if this cycle of overuse, appropriation and contamination is broken. The human right to water, and its global recognition as an uncommodifiable public good, must be central to the work of social movements in the coming decades.

The agrototoxin-induced health and environmental crisis

The industrial model of food production is predicated on the massive use of agrototoxins, since the sale of these poisons is the main source of agribusiness revenues. The sale of Roundup (the herbicide whose active ingredient is glyphosate) accounts for 40% of Monsanto’s revenues, a larger share than it derives from selling Roundup-resistant soybeans.¹¹

Given this economic importance, it is understandable that the global rollout of agrototoxins had to be facilitated by turning the idea that there is no other way to farm into a matter of “common sense.” Not an easy task, given that agriculture was developed over a 10,000-year period during which agrototoxins were not available.

Be that as it may, the crisis caused by the massive contamination of soils, water and ecosystems, and the grave human health problems they cause, has been recognized at the global level. The 2017 report to the UN General Assembly by the Special Rapporteur on the Right to Food states: “Pesticides, which have been aggressively promoted, are a global human rights concern, and their use can have very detrimental consequences on the enjoyment of the right to food. Defined as any substance or mixture of substances of chemical and biological ingredients intended to repel, destroy or control any pest or regulate plant growth, pesticides are responsible for an estimated 200,000 acute poisoning deaths each year, 99 per cent of which occur in developing countries, where health, safety and environmental regulations are weaker and less strictly applied.”¹²

The same report also states: “The assertion promoted by the agrochemical industry that pesticides are necessary to achieve food security is not only inaccurate, but dangerously

misleading. In principle, there is adequate food to feed the world; inequitable production and distribution systems present major blockages that prevent those in need from accessing it.”

Destruction of agricultural biodiversity

The reports published by FAO in 1996 and 2012 paint a dire picture of the status of agricultural (or seed) biodiversity. Seeds are, of course, the only source of food for human beings, now and in the future, yet the 20th century saw the loss of 75% of the agricultural biodiversity created by peasants in ongoing interaction with nature over the last 10,000 years.¹³ Furthermore, FAO unequivocally named the main cause of this loss of biodiversity – industrial agriculture – in its 1996 report titled *The State of the World’s Plant Genetic Resources for Food and Agriculture*.

To this grave situation must be added the new threats to agricultural biodiversity represented by the corporate concentration of the world seed market and the enactment of seed laws that promote seed appropriation, criminalize heritage and native seeds, and facilitate the introduction of genetically manipulated seed. The result is that we are being exposed to a mass-scale experiment with unforeseeable consequences.

The world food crisis

The most recent UN report on the global status of food security and nutrition pulls no punches about the current situation either: “According to a joint study by various UN agencies, the number of persons suffering from hunger has increased during the last three years, setting the world back in this area by almost a decade; the situation is worsening in the majority of African subregions, improvements are slowing down ‘considerably’ in Asia, and it is worsening in South America.” The chilling figures indicate that 821 million people – one person in nine – suffered from hunger last year.¹⁴

The other side of the coin, also documented in this report, is the rise in obesity and excess weight among much of the world population: “Obesity in adults is increasing: more than one in eight, or 672 million, are obese.”

The ETC Group homed in on this issue in its report *Who Feeds Us?*: “At least 3.9 billion of us (52%) suffer from malnutrition. Beyond those who are hungry in the traditional sense, this number includes the many more who have sufficient calories but are suffering, often severely, from nutritional deficits and damage (lack of micronutrients, vitamins or protein) or from the ill health caused by overconsumption.”¹⁵

It is no small matter that over half the world population should suffer from nutritional problems. But here again, the key to understanding the reasons can be found at the root of the problem itself: an industrial agri-food system that no longer seeks to feed human beings, but rather to convert food into a commodity for the sole purpose of lining the pockets of large corporations.

Looking to the future

We now have a body of information sufficient to say with certainty that we can no longer continue along this doomed path. No one, as yet, appears to have done a study integrating

the fragmented information on these various crises, but there can be no doubt that they will interact synergistically, vastly increasing the damage and accelerating various processes of degradation and destruction that are already underway. Perhaps it will be too late to take effective, transformative measures by the time anyone manages to complete an analysis of the complexity of these multiple crises.

The reaction of governments, which are responsible for undertaking the necessary transformations, has not been remotely sufficient to confront, even in a fragmentary way (let alone comprehensively), the terminal civilizational crisis we face. The question that immediately arises when considering these “seven plagues” is: How can it be that the industrial agri-food system and the large corporations that profit from it sit at the centre of all these crises, and yet it never occurs to governments or international organizations to identify them, question them or demand that they be dismantled, so that we do not continue to rush headlong into an unprecedented catastrophe?

The fundamental issue is that the core of all these crises is a societal model revolving around accumulation, financial speculation, consumerism and a form of “development” that is actually impossible to achieve. Worse still, the subjection of governments to corporate interests means that they are continually proposing false solutions that will only exacerbate these ongoing crises.

However, there is room for optimism when we learn that the steps necessary to get on a different path are already being taken by local people around the world. We know from them that food sovereignty, peasant agroecology, the local production of healthy food, and the construction of mutual, non-patriarchal relations that are respectful of diversity are being put into action by thousands of communities, organizations and peoples. Sooner rather than later, these voices will be heard, and a better world will open up before us. □

GRAIN is a small international non-profit organization that works to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems. This article is reproduced from its website grain.org.

Notes

1. United Nations, “Reducir el calentamiento global en 0,5°C, la diferencia entre la vida y la muerte,” 8 October 2018, <https://news.un.org/es/story/2018/10/1443222>
2. GRAIN, “Alimentos y cambio climático: el eslabón olvidado,” 1 November 2011, <https://www.grain.org/e/4395>
3. GRAIN and IATP, “Emissions impossible: How big meat and dairy are heating up the planet,” <https://www.grain.org/article/entries/5976-emissions-impossible-how-big-meat-and-dairy-are-heating-up-the-planet>
4. EFEAgro, “La agricultura provocó el 70% de la deforestación en Latinoamérica,” 20 July 2016, <https://www.efeagro.com/noticia/agricultura-deforestacion-latinoamerica/>
5. FAO, *The State of the World's Forests 2018*, <http://www.fao.org/3/I9535EN/i9535en.pdf>
6. GRAIN, “Cuidar el suelo,” 18 October 2009, <https://www.grain.org/article/entries/1236-cuidar-el-suelo>
7. FAO, *Status of the World's Soil Resources 2015*, Technical Summary, <http://www.fao.org/3/a-i5126e.pdf>
8. UNESCO, *Water for People, Water for Life: The United Nations World Water Development Report*, Executive Summary, 2003, <https://unesdoc.unesco.org/ark:/48223/pf0000129556>
9. UNESCO, *The United Nations World Water Development Report 3, Water in a Changing World*, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/WWDR3_Facts_and_Figures.pdf
10. Walter Alberto Pengue, “Argentina: ‘Agua virtual,’ agronegocio sojero y cuestiones económico ambientales futuras,” 16 October 2016, <http://www.biodiversidadla.org/Documentos/Argentina-Agua-virtual-agronegocio-sojero-y-cuestiones-economico-ambientales-futuras>
11. Euronews, “What is Monsanto?,” 23 May 2016, <https://www.euronews.com/2016/05/23/five-facts-you-need-to-know-about-monsanto>
12. United Nations Human Rights Council, A/HRC/34/48, Report of the Special Rapporteur on the Right to Food, 24 January 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/017/85/PDF/G1701785.pdf?OpenElement>
13. FAO, “Crop biodiversity: use it or lose it; FAO launches 2nd State of the World's Plant Genetic Resources for Food and Agriculture report,” 26 October 2010, <http://www.fao.org/news/story/en/item/46803/icode/>
14. United Nations, “El hambre en el mundo afecta a 821 millones de personas,” 1 September 2018, <https://news.un.org/es/story/2018/09/1441302>
15. ETC Group, *Who Will Feed Us? The Peasant Food Web vs. the Industrial Food Chain*, <http://www.etcgroup.org/whowillfeedus>

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