

Divisions beset run-up to MC12

Whether the coming 12th WTO Ministerial Conference (MC12) will yield substantive decisions in a range of key areas remains uncertain. Ahead of the 30 November opening, pronounced differences among WTO member states are hindering agreement on issues from agriculture trade to a COVID-19 intellectual property rights waiver.

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Doha agriculture chair's textual suggestions inimical to South's interests

Draft decisions for MC12 drawn up by the chair of the WTO agriculture negotiations have not secured agreement among member states, with developing-country interests said to be especially hard hit under the proposed texts.

by *D. Ravi Kanth*

GENEVA: The chair of the Doha agriculture negotiations at the WTO has proposed draft textual suggestions on domestic support, public stockholding programmes for food security, market access and transparency, but they failed to garner consensus among the eight countries that are currently engaged in closed-door meetings, said people familiar with the development.

Over the past several days, the chair, Ambassador Gloria Abraham Peralta from Costa Rica, has held closed-door meetings with the United States, the European Union, Canada, Australia, Brazil, China, India and South Africa on the proposed agriculture "deliverables" to be decided on at the WTO's 12th Ministerial Conference (MC12) in Geneva on 30 November-3 December.

The draft textual suggestions circulated among the eight countries in the week of 1 November have apparently sparked off protests from various WTO members which are being excluded from the consultations.

It appears that the Group of 10 (G10) farm-defensive countries led by Switzerland and the G33 coalition of developing countries led by Indonesia, as well as other groups, have complained about the small-group consultations, said people familiar with the discussions.

Developing-country interests targeted

The chair's textual suggestions, seen by the *South-North Development Monitor (SUNS)*, apparently failed to garner consensus among the eight countries over one issue or another, said people familiar with the development.

A cursory glance at the suggestions

seems to demonstrate that the interests of the developing countries in the domestic support pillar are being particularly targeted, said people familiar with the discussions.

The very first paragraph of the textual suggestions on domestic support states that "Members shall negotiate modalities [by MC13] with a view to reducing substantially and permanently overall entitlements under domestic support categories that have trade distorting effects or effects on production under Article 6 of the Agreement on Agriculture within a timeframe to be decided by Members [and guided by a goal to reduce such entitlements by [x% by 20yy]]."

Interestingly, the above formulation appears to bear the imprint of the Cairns Group of farm-exporting countries led by Australia.

More disturbingly, even though the negotiations are being conducted under the Doha Trade Negotiations Committee (TNC), the chair's suggestions appear to be diametrically opposed to the Doha Development Agenda (DDA), especially as set out in the fourth revised draft agriculture modalities text issued by the then agriculture chair, Ambassador Crawford Falconer from New Zealand, in 2008.

Under the textual suggestions, "all categories of support under Article 6 shall be addressed on the understanding that they will not be treated equally. The negotiations shall take into account the potential distorting effects on trade and production of each category of support and also address AMS [Aggregate Measurement of Support] above de minimis with the aim of reducing subsidy concentration."

Effectively, the developing countries

could suffer the most in terms of their specific entitlements under Article 6.2 of the WTO's Agreement on Agriculture (AoA) as well as their *de minimis* provision of 10% in product support and 10% in non-product support, said people familiar with the discussions.

Under Article 6.2 of the AoA, the developing countries are exempted from any reduction commitments in their input and investment subsidies in agriculture. This particular Article, which refers to the so-called "Development Box" for the developing countries, states: "In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS."

The developing countries could also come "under the hammer" on their *de minimis* support which is currently under 10% for both product and non-product support under Article 6.4(b) of the AoA.

For the developing countries, the *de minimis* percentage under this paragraph shall be 10%.

Apparently, China, which has only 8.5% *de minimis* support, is likely to be the main target given its huge volume of agriculture production of close to \$2 trillion, said an analyst who asked not to be quoted.

The chair's textual suggestions have also not touched on the hundreds of billions of dollars of "Green Box" subsidies provided by the US, the EU and other developed countries. According to several studies, these subsidies also have a distorting effect on farm trade.

With regard to public stockholding programmes for food security (PSH), the chair's draft textual suggestions do not

come up with the mandated permanent solution as demanded by the G33. Instead, they propose that WTO members "shall continue to pursue negotiations and make all concerted efforts to agree and adopt" a permanent solution.

"In the interim," the textual suggestions propose, "Members agree to extend the Interim Solution established by the Ministerial Decision of 7 December 2013 (WT/MIN(13)/38 – WT/L/913) and the General Council Decision of 27 November 2014 (WT/L/939) to public stockholding programmes for food security purposes of least developed countries enacted after 7 December 2013 provided the conditions in the Decisions are satisfied.

"Alternative 1: [Members also agree to extend the Interim Solution to programmes of other developing country Members enacted after 7 December 2013 for a [X] year period following the entry into force of this Decision, provided the conditions in the above mentioned Decisions as well as those in this Decision are satisfied.]

"Alternative 2: [Developing countries which do not have programmes covered under the Interim Solution as of 7 December 2013 may also have recourse to the Interim Solution for PSH programmes enacted after that date for a [X] year period following the entry into force of this Decision, provided the conditions in the above mentioned Decisions as well as those in this Decision are satisfied.]"

The first alternative implies that all

developing countries can avail of the December 2013 Bali Ministerial decision, which was further clarified by the WTO General Council in November 2014, for all new programmes, while the second alternative is that those which did not have access to the Bali decision can now have access to the Bali decision, said people familiar with the development.

Under the textual suggestions in the area of market access, "Members agree to reinvigorate comprehensive negotiations on agricultural market access with a view to substantially and progressively improving market access opportunities. Technical discussions on all elements of the market access pillar shall feed into these negotiations to facilitate enhanced participation of all Members and the adoption of informed decisions."

Members' responses

The EU appeared to be unhappy with the language on market access, while Australia, Brazil and Canada seemed unhappy over the interim decision on PSH.

India raised sharp reservations over the suggestion to consider an interim decision while not addressing the permanent solution for PSH, said people familiar with the development.

China seemed to be concerned over the language in the textual suggestions on domestic support, while South Africa appeared to be concerned over reviewing Article 6.2 of the AoA. (SUNS9458)

EU and allies adopt "diversionary" tactics on TRIPS waiver

Agreement on a suspension of WTO intellectual property rules in order to boost production of COVID-19 medical products remains elusive.

by D. Ravi Kanth

GENEVA: Notwithstanding the groundswell of international support for a TRIPS waiver, a handful of countries led by the European Union seem to be adopting "diversionary" tactics in finalizing the waiver as part of the WTO's

response to the COVID-19 pandemic at the 12th Ministerial Conference, said people familiar with the development.

At an informal meeting of the WTO's TRIPS Council on 5 November, the participants echoed divergent positions

on how a breakthrough on the proposed waiver must be accomplished, said participants who asked not to be quoted.

Sixty-four WTO members have proposed a waiver suspending provisions in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) relating to copyrights, industrial designs, patents and protection of undisclosed information in order to ramp up production of COVID-19 vaccines, therapeutics and diagnostics.

During closed-door bilateral/small-group consultations held in the past two weeks between the EU, the United States, India and South Africa among others, the core issues relating to the waiver appear to have been skirted without any engagement, while seemingly less important issues appear to have been discussed, including the EU's own proposal relating to the use of compulsory licences, said people familiar with the discussions.

Issues concerning the likely dispute settlement proceedings that could arise from the implementation of the waiver also seem to have figured in the consultations. There is currently no clarity on how the moratorium on initiation of dispute proceedings in the WTO's Dispute Settlement Body will be factored in the final outcome, said people familiar with the development. Also, it is not clear whether the moratorium would apply only to COVID-19 vaccines or to diagnostics and therapeutics as well.

The 64 co-sponsors of the TRIPS waiver proposal have proposed that "members shall not challenge any measures taken in conformity with the provision of the waivers contained in this Decision under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994, or through the WTO's Dispute Settlement Mechanism."

Consultations ongoing

From the statements made at the 5 November TRIPS Council meeting by some of the proponents of the waiver as well as those not disposed towards it, it appears that some progress has been made. However, the members from the opposing sides did not mention what that progress would constitute, said people familiar with the proceedings at the meeting.

If the bilateral/small-group consultations are to be credible, then the

participants must share with the wider WTO membership the contents of their proceedings. Otherwise, the developing countries could suffer yet another loss in the global trade negotiations when a "take-it-or-leave-it" outcome is foisted on them at MC12, said people who asked not to be quoted.

The chair of the TRIPS Council, Ambassador Dagfinn Sorli from Norway, reported that many members have stuck to their positions. He also said several countries reported that they were actively engaged in frank and candid bilateral discussions in a solution-oriented framework. Members asked for additional time for their consultations, the chair said, suggesting that he would prepare his status report to the WTO General Council, which is scheduled to meet on 22-23 November, once there is more clarity on the ongoing discussions.

In his report to the Doha Trade Negotiations Committee (TNC) meeting on 25 October, the chair had said that "the co-sponsors of the revised waiver proposal once again indicated their flexibility towards considering the EU proposal as a complementary approach, but emphasized that – in their view – a TRIPS waiver was a central and necessary element in the WTO's response to the pandemic."

The chair said "they urged Members to end the binary view of the two proposals as alternatives, and suggested that we work with the General Council chair and the facilitator, Ambassador Walker, to ensure that the ongoing TRIPS waiver discussions are also recognized in the facilitator's process on the WTO's response to the pandemic."

The chair, who is from Norway, a member of the Ottawa Group of countries led by Canada, said "other members, while welcoming the increased engagement in the small-group consultations, said they remained unconvinced that a waiver would be an appropriate or effective tool to scale up production or ensure equitable distribution of vaccine doses around the world." These other members (which were not named), according to the chair, "highlighted the broader Trade and Health initiative as the right tool to address the supply chain bottlenecks that the pandemic response was facing."

Sorli said "some urged convergence on the basis of the EU proposal aimed at

clarifying, or improving the functioning of, existing TRIPS flexibilities."

The chair said "while it was clear that discussions had not bridged the persisting disagreement on the fundamental approaches underlying the different proposals, all delegations remained willing to continue discussions on the proposals in the various formats we had used in the past."

The chair said that "in light of this situation, the TRIPS Council decided to keep the agenda items related to these discussions open, in order to permit Members to continue exploring common ground, and with a view to resuming the Council meeting when Members might be closer to reaching consensus on a recommendation."

No breakthroughs

At the 5 November TRIPS Council meeting, South Africa apparently said that there are no breakthroughs that can be reported at this juncture, adding that useful conversations are taking place and that the resolve of the co-sponsors with regard to the waiver remains intact.

South Africa indicated that it will intensify engagement in all configurations with a view to finding solutions. It expressed "a great deal of disappointment" over the continued refusal by a very small minority of members to even engage in the text-based negotiations.

Notwithstanding the disappointment, South Africa suggested that some modest progress is being made in the bilateral/small-group consultations, adding that it remains optimistic and that the window is open for only a few weeks before MC12. It cautioned that if members do not agree on a decision soon, then history will judge the WTO most unfavourably.

South Africa said another encouraging development is that members have apparently moved from their "ideological" positions with regard to the role of intellectual property rights.

It indicated its willingness to engage with all proposals with a view to seeking an outcome that truly responds to the need to ramp up and diversify production of vaccines and other COVID-19-related medical products in developing countries.

South Africa said the final solution

must include the use of all policy instruments within the WTO toolbox, taking into account the constraints faced especially by developing countries for which the solution is designed. It concluded that members cannot see an MC12 outcome that does not address the TRIPS waiver proposal in a serious manner.

In a similar vein, India warned that without an outcome on the TRIPS waiver proposal, there will not be a credible WTO response to the pandemic.

India expressed regret that, despite the various outreach efforts in the past months, a few members continue to show a lack of enthusiasm in engaging on the TRIPS waiver text.

Without naming these members, Pakistan severely criticized “a couple of delegations” for not allowing the discussion on the TRIPS waiver to move forward. It said that while things get stalled at the WTO, the pandemic, however, is not stopping.

Given the little time left before MC12, Pakistan said, members are fast approaching the point where either the waiver gets adopted and incorporated into the WTO as a response to the pandemic, or WTO members prepare themselves to face the world without having delivered any response.

Pakistan said the political will and the evidence is there to find a solution and members must use all their skills to find the landing zone that brings all elements together in the respective texts and other complementary proposals.

Sri Lanka said that improving the use of the compulsory licensing system, as proposed by the EU, can benefit members, but that other existing intellectual property rights regimes that are also hindering equitable access to vaccines and other medical products must be addressed.

Nigeria said it is pleased to hear about the “growing consensus” among members around the idea that manufacturing companies ready to produce vaccines can be put in a position to do so without the risk of infringing on intellectual property rights.

Nigeria stressed that this can be fully achieved if members agree on a TRIPS waiver – the only realistic way to ensure an equitable distribution of vaccines and to scale up vaccine production in developing countries.

Nigeria said that while the EU’s proposal to improve and facilitate the use of TRIPS flexibilities, particularly the compulsory licensing system, is a positive step, it is insufficient to address a global pandemic of this level because the system remains non-transparent and does not contribute to the global commitment of ensuring that vaccines and COVID-related tools are readily accessible in a timely and cost-efficient manner.

India warned that without an outcome on the TRIPS waiver proposal, there will not be a credible WTO response to the pandemic.

The EU touted its proposal, arguing that it is pragmatic, targeted and effective in responding to the current needs while keeping the necessary incentives for innovation.

Responding to the concerns raised by Nigeria, the EU said that its proposal provides for tools that can be used in times of a pandemic and that it can contribute to overcoming potential intellectual-property-related obstacles.

As regards the work between now and the next TRIPS Council meeting, the EU said bilateral exchanges should be given priority and that sufficient time should be granted for these exchanges to take place in a transparent manner.

Switzerland maintained that members’ views widely diverge on the fundamental point of the role and significance of intellectual property in the fight against the pandemic.

The United Kingdom called on members to make use of all policy options available to access COVID-19 goods through flexibilities or legitimate tools to access pharmaceutical products.

The United States spoke about the consultations held by US Trade Representative (USTR) Katherine Tai in the capital as well as bilaterally with members in Geneva, but did not divulge their contents. It said it will continue to engage with members and look for areas of convergence that can lead to a solution ahead of MC12.

China said that it is ready to work with all parties to enhance vaccine accessibility and affordability in developing countries. It said it remains engaged with members in all forms of consultations and discussions in order to achieve a meaningful result.

Australia said that it looks forward to building on the shared understanding that intellectual property should not pose a barrier to vaccine access and to securing a positive outcome at MC12, which will require both ambition and compromise for members.

Australia said it supports the waiver and underlined its availability to work closely with all members to find common ground in the lead-up to MC12. “We’ve been pleased to hear from some of those members with the strongest views on this issue that they have been engaged in bilateral consultations with a solutions-orientated mindset,” Australia added.

Non-violation and situation complaints

Also at the TRIPS Council meeting, the WTO members agreed on a draft ministerial decision on non-violation and situation complaints (NVSCs), which is expected to be adopted at MC12.

Under the draft decision, the TRIPS Council would be asked to continue its discussions on this issue and to make recommendations to the 13th WTO Ministerial Conference. In the meantime, members would refrain from bringing such cases to the dispute settlement system.

This “moratorium” has been extended several times, from one Ministerial Conference to the next. NVSCs refer to whether and under what conditions members can bring WTO dispute complaints where they consider that another member’s action, or a particular situation, has deprived them of an expected advantage under the TRIPS Agreement, even though no obligation under the Agreement has been violated. (SUNS9455)

Asymmetries aplenty in revised draft fisheries text

A revised version of a proposed WTO agreement regulating fisheries subsidies is seen as leaning towards the interests of major developed countries and subsidizers at the expense of most developing countries.

by D. Ravi Kanth

GENEVA: The chair of the Doha fisheries subsidies negotiations on 8 November issued his second revised draft text, which appears to have tilted the playing field in favour of the big subsidizers to continue with their industrial-scale fishing while bringing about differentiation among developing countries in availing of special and differential treatment (S&DT), said people engaged in the negotiations.

The text has brought to the centrestage of the negotiations the specific demands of the United States such as on forced labour and differentiation among developing countries.

Ahead of the WTO's 12th Ministerial Conference (MC12), the eight-page draft text issued by the chair, Ambassador Santiago Wills from Colombia, appears to have perpetuated the existing asymmetries, said people who asked not to be quoted.

The specific carve-outs allegedly being provided to the big subsidizers – China, the European Union, the US, Japan, Canada, South Korea and Chinese Taipei among others – would enable them to continue with their industrial-scale fishing that is largely responsible for the depletion of global fish stocks over the past several decades.

At the same time, the chair has sought to bring about differentiation among developing countries in availing of S&DT on a best-endeavour framework.

The developing countries now have a hard battle to wage in the next two weeks as well as at MC12 over fisheries subsidies.

The chair seems to have turned a blind eye to the “polluter pays” principle as well as the principle of “common but differentiated responsibilities” enshrined in the Paris Agreement on climate change.

The chair's textual proposals also

seem to have set aside the mandate that trade ministers had agreed to at MC11 in Buenos Aires in 2017. That mandate, based on the United Nations Sustainable Development Goal (SDG) 14.6, called for “comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU [illegal, unreported and unregulated] fishing while recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.”

Chair's remarks

In his opening remarks at a meeting of the Doha Rules negotiating body on 8 November where the text was introduced, Wills claimed that “the biggest substantive changes are with regard to special and differential treatment for developing and least developed countries, including an exemption from the main discipline on subsidies contributing to overcapacity and overfishing.”

The chair said that the S&DT provided to developing countries with a higher share of global catch would also benefit from a transitional period which was already contained in the older text.

“No specific duration of this transition period is suggested in the revised text – rather this question is represented in the text by a negotiable X number of years, to reflect the fact that some developing country Members are seeking transition of up to 25 years, while some other Members consider that any transition period should last for only a few years.”

Barring the citing of the transition period of 25 years that has to be

negotiated with countries like the US, the EU and Brazil, the chair appears to have turned a deaf ear to India's proposal by not including it in the second revised draft text, said a trade official who asked not to be quoted.

The chair highlighted that “the text takes a big step in a direction sought by these Members by including an exemption from the main discipline on subsidies contributing to overcapacity and overfishing.”

In that particular provision, the exemption applies to subsidies:

- “1. Of least-developed country Members;
- “2. Of developing country Members whose annual share of the global volume of marine capture production does not exceed a certain threshold. This is known as the ‘de minimis approach.’ In this draft, that threshold is suggested at 0.7%, but subject to negotiations. This is a change from the previous text because it removes the time limit on the exception as long as the member falls under the de minimis criteria.
- “3. And in respect of developing country Members’ low income, resource-poor or livelihood fishing and fishing-related activities up to 12 nautical miles from shore.”

Surprisingly, the chair appears to remain silent on the specific carve-outs being provided to the big subsidizers to continue with their industrial-scale fishing, said several trade envoys who asked not to be quoted.

It seems to have become a ritual at the WTO to demonstrate that the intergovernmental body actually serves the interests of the developing countries when, in reality, it has consistently undermined their specific needs and the policy space needed for sustainably developing their marine sectors, said a trade envoy who asked not to be quoted.

Main elements

The second revised draft text contains language on 11 proposed articles on: (1) scope; (2) definitions; (3) subsidies contributing to IUU fishing; (4) subsidies regarding overfished stocks; (5) subsidies contributing to overcapacity and overfishing (OC&OF); (6) specific provisions for least-developed country (LDC) members; (7) technical assistance and capacity building; (8) notifications

and transparency; (9) institutional arrangements; (10) dispute settlement; and (11) final provisions.

Of the 11, agreement on four articles – disciplines concerning the IUU pillar (Article 3), the overfished stocks pillar (Article 4), the OC&OF pillar (Article 5), and notification and transparency provisions (Article 8, which covers forced labour and enhanced notification and transparency procedures) – is crucial for any outcome at MC12.

Up until now, most of the negotiating battles were waged around the proposed language in Article 5 concerning the OC&OF pillar. It includes a list of prohibited subsidies that contribute to overcapacity and overfishing. The prohibited subsidies in Article 5.1 include: “(a) subsidies to construction, acquisition, modernization, renovation or upgrading of vessels; (b) subsidies to the purchase of machines and equipment for vessels (including fishing gear and engine, fish-processing machinery, fish-finding technology, refrigerators, or machinery for sorting or cleaning fish); (c) subsidies to the purchase/costs of fuel, ice, or bait; (d) subsidies to costs of personnel, social charges, or insurance; (e) income support of vessels or operators or the workers they employ; (f) price support of fish caught; (g) subsidies to at-sea support; (h) subsidies covering operating losses of vessels or fishing or fishing-related activities; and (i) [subsidies contingent upon, or tied to, actual or anticipated fishing or fishing-related activities in areas beyond the subsidizing Member’s jurisdiction (whether solely or as one of several other conditions).]”

A footnote attached to Article 5.1(i) above states: “The mere fact that a subsidy is granted or maintained to vessels or operators that may be engaged in fishing or fishing related activities in areas beyond the subsidizing Member’s jurisdiction shall not for that reason alone be considered to be contingent upon, or tied to, such fishing or fishing related activities.”

Apparently, Article 5.1(i), which is currently in square brackets, was introduced to take on board the specific demands of the EU and China, said a person familiar with the negotiations.

In an apparent attempt to exempt the big subsidizers from these prohibitions, Article 5.1.1 states that a subsidy “is not inconsistent with Article 5.1 if the subsidizing Member demonstrates that

measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.”

According to some experts, it is easy for the big subsidizers to circumvent this condition.

As regards the S&DT provisions set out in Article 5.4, the chair has proposed the following language:

“(a) [A developing country Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities [within its EEZ and the area of competence of a relevant RFMO/A] for a maximum of [X] years after the entry into force of this [Instrument]. A developing country Member intending to invoke this provision shall inform the [Committee] in writing before the date of entry into force of this [Instrument].]

“(b) In addition, a developing country Member may grant or maintain the subsidies referred to in Article 5.1 to fishing and fishing related activities:

“(i) [if its annual share of the global volume of marine capture production does not exceed [0.7%] as per the most recent published FAO data];

“(ii) for low income, resource-poor and livelihood fishing or fishing related activities up to [12] nautical miles measured from the baselines.

“(c) While applying Article 5.4, a Member shall endeavour to ensure that its subsidies do not contribute to overcapacity or overfishing.”

According to a footnote in the text, “a member remains exempted until its share exceeds the threshold for three consecutive years. It shall be re-included in 5.4 (b) when its share of the global volume of marine capture production falls back to the threshold for three consecutive years.”

However, comparing the exemption being provided to the big subsidizers in Article 5.1.1 – which is set out in “shall” language – with the S&DT provisions – which are anchored on a “may” framework – appears to reveal the asymmetries in the second revised draft text, said people familiar with the text.

As regards countries such as India and Indonesia which have a higher share of global fish catch and would also benefit from a transitional period which was already contained in the older text, “no specific duration of this transition period

is suggested in the revised text – rather this question is represented in the text by a negotiable X number of years, to reflect the fact that some developing country Members are seeking transition periods of up to 25 years, while some other Members consider that any transition periods should last for only a few years,” the chair said.

According to a trade envoy who spoke on condition of anonymity, the so-called de minimis threshold of 0.7% appears to be flawed because it does not reflect the subsidy component.

“We are disappointed with the second revised draft text as it has not adequately addressed the imbalances,” said the envoy.

As regards the S&DT provisions which are included on a best-endeavour framework, the draft text seems to have brought the issue of differentiation into play by treating the African, Caribbean and Pacific (ACP) Group of countries on a special footing while forcing India, Indonesia and several other large developing countries to negotiate on several S&DT provisions in Article 5.4.

Forced labour

The chair acknowledged that “the revised text includes language in brackets in the provisions on the prohibition of subsidies contributing to Illegal, Unreported and Unregulated fishing and in transparency and notification, aimed at addressing the issue of forced labour in certain fishing activities.”

In the text, the issue of forced labour, which was introduced by the United States after the Biden administration came into office, is included in Article 8.2(b) which states: “[any vessels and operators for which the Member has information that reasonably indicates the use of forced labour, along with relevant information to the extent possible; and]”

The chair seems to have paved the way for the entry into the WTO framework of the controversial trade and labour issues that were overwhelmingly rejected at the WTO’s 3rd Ministerial Conference in Seattle in 1999, said several people who preferred not to be quoted.

With the entry of the issue of forced labour – a new issue that is not part of the mandate of the fisheries subsidies negotiations – into the negotiations at the WTO, the chair seems to have proved that the WTO system can be twisted and

turned in favour of the concerns raised by the major industrialized countries, said trade envoys who asked not to be quoted.

Furthermore, the second revised draft text seems to have brushed aside the Indian proposal that is based on the “polluter pays” principle as well as the

principle of “common but differentiated responsibilities” contained in the Paris Agreement on climate change.

WTO Director-General Ngozi Okonjo-Iweala, in meetings with Indian officials in New Delhi in October, had apparently assured that their proposal

would be included in the second revised draft text while suggesting that India must undertake the advocacy campaign, said a New Delhi-based official who asked not to be quoted. (SUNS9456)

Discussions on fundamental WTO reforms fail to garner consensus

Talks on reforms to the institutional operations of the WTO have not made much headway thus far.

by D. Ravi Kanth

GENEVA: Attempts to bring fundamental changes to the World Trade Organization’s negotiating, monitoring and deliberative, and dispute settlement functions apparently failed to garner consensus during small-group consultations held by the WTO General Council chair in early November, said people familiar with the development.

The chair, Ambassador Dacio Castillo from Honduras, has been holding consultations on the proposed outcome document for the upcoming 12th WTO Ministerial Conference, in which the proposed WTO reforms are one of the main components.

The language on WTO reforms in the draft outcome document, put forward at an informal meeting of the Doha Trade Negotiations Committee (TNC) on 25 October, states that “to respond to emerging opportunities, address the challenges that the WTO is facing and ensure its sound working in all its functions, Ministers [commit] [agree] to undertake necessary reforms of the WTO, and instruct officials to take this work forward with the view to presenting reports periodically. Ministers undertake to review progress regularly and take appropriate decisions by the next Ministerial Conference.”

Subsequently, the European Union and Brazil floated an unofficial document

titled “Mandate of the Working Group on institutional improvements to the functioning of the WTO.” Their document, which has not yet been formally circulated among the members, has apparently proposed fundamental reforms that appear to advance the Northern trade agenda to transform the WTO in all the three pillars (i.e., negotiating, monitoring and deliberative, and dispute settlement) of its architecture, said people familiar with the development.

The MC12 decision proposed by the EU-Brazil, seen by the *South-North Development Monitor (SUNS)*, states, in its chapeau:

- “a. having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;
- “b. recognizing the urgent need for a review of the operation of the World Trade Organization, in all of its three functions including in order to have a fully functioning dispute settlement system;
- “c. emphasizing that an effective WTO provides benefits to all Members at all levels of development; and
- “d. considering that such a review needs to be led by Members and concentrate on institutional issues relating to the functioning of the Organization.”

The draft ministerial decision calls

for establishing “a Working Group under the auspices of the General Council to consider institutional improvements to the functioning of the WTO.” It says that the Working Group “should serve as a forum for discussion and to issue recommendations around the institutional aspects of WTO reform that are of systemic interest.” It adds that the Working Group “shall prepare a recommendation on the following issues, among others, sufficiently in advance of MC13.”

In short, the EU-Brazil proposal seeks a decision at MC13. However, WTO reforms are not part of the Doha Development Agenda (DDA), and without concluding the DDA negotiations, new issues such as WTO reforms cannot be pursued at the WTO, said an analyst who asked not to be quoted. Unless MC12 decides unanimously that the DDA negotiations are to be terminated once and for all, there is no legal justification for pursuing such new issues, the analyst said.

The EU and Brazil suggested that the “participants to the Working Group shall include Ambassadors and, to the extent possible, senior officials based in capitals.” The draft ministerial decision called for the Working Group to meet on a monthly basis. “Subgroups may be established on individual topics. After an initial phase in which Members will present contributions to the discussion, the Working Group will engage in text-based negotiations no later than January 2023. The Working Group will issue recommendations sufficiently in advance of MC13.”

Reform issues

Under the EU-Brazil proposal, the issues to be reviewed by the Working Group include:

- (1) Monitoring and deliberative

- function:
- Improving the WTO's monitoring role;
 - Improving the effectiveness of WTO Committees;
 - Discussing arrangements on relations with stakeholders;
 - Enhancing cooperation between the WTO and other international organizations.
- (2) Negotiating function
- Considering how to revitalize the WTO's negotiating function;
 - Facilitating inclusiveness and participation by developing countries, particularly noting the challenges faced by those with small delegations.
- (3) Dispute settlement function
- Considering areas where reforms of WTO dispute settlement are needed and identifying solutions to allow a fully functioning and improved dispute settlement system.

With regard to the monitoring and deliberative function, Egypt, Pakistan, South Africa and Sri Lanka had said in their proposal on 3 November: "We acknowledge the importance of transparency, but references to future work on transparency should not include additional cumbersome obligations."

As noted in the proposal submitted by Cuba, India and the African Group on 4 December 2020, any work in this area must be in the provision of capacity building to developing countries.

Transparency and inclusiveness must also permeate the entire functioning of the WTO including in convening of meetings (i.e., scheduling of meetings, inclusiveness through fair and equitable geographical and regional representation by delegations at the meetings), Ministerial Conferences and work of the WTO secretariat, they added.

Strict requirements to publish information on trade measures taken during a pandemic must take due regard of limited institutional capacities that developing and least-developed countries have during such periods. Further, members should encourage transparency of contractual terms, as opaque conditions in licensing arrangements have greatly contributed to vaccine inequity, they said.

Significantly, it will be a litmus test if MC12 is to be held based on "fair and equitable geographical and regional representation by delegations at the

meeting," said people familiar with the ongoing developments concerning the current heavily restricted in-person meetings at the WTO.

As regards collaboration with other international organizations and stakeholders, Egypt, Pakistan, South Africa and Sri Lanka had said that "several proposals with respect to collaboration go substantially beyond the function of the WTO Secretariat as well as risk undermining the Member-driven character of the WTO."

The four countries had cautioned that "it is crucial that as a rules-based organization, WTO Secretariat's role is limited to the various agreements within the WTO and is not expanded to addressing matters beyond its competency. The Member-driven nature of the WTO should be safeguarded."

Regarding the EU-Brazil proposal on the negotiating function of the WTO, it is an open secret that the US, the EU and other industrialized countries, as well as their new ally Brazil, want to bring about differentiation among developing countries in availing of special and

differential treatment and to terminate the principle of consensus-based decision-making in arbitrarily pursuing plurilateral trade negotiations, said people familiar with the development.

Effectively, the EU-Brazil proposal also seeks to bring the private sector and international organizations into the operations of an intergovernmental trade body, which could have damaging consequences.

The EU and Brazil, according to people familiar with the General Council chair's small-group consultations, stood exposed when one member asked about the credibility of undertaking WTO reforms when one leg of the WTO system, namely, the two-stage dispute settlement process, has been made dysfunctional.

Apparently, the draft ministerial decision failed to garner consensus during the consultations as the EU and Brazil failed to address the questions raised by some members, and it remains to be seen whether it will be tossed up at MC12, said people familiar with the developments on the outcome document. (SUNS9457)

US stymies LDCs' proposed interim decision at WTO

A proposal to extend trade privileges to WTO members newly exiting the "least developed country" category has met with a cool response from the US.

by D. Ravi Kanth

GENEVA: The United States on 5 November apparently adopted a "stonewalling" approach over a best-endeavour interim arrangement proposed by the least-developed countries (LDCs) to be agreed at the WTO's 12th Ministerial Conference, said people familiar with the development.

After toning down their earlier demands tabled last year, the LDC Group have proposed an interim decision that seeks to defend the necessity of establishing a smooth transition mechanism in the

WTO to address the immediate challenges of countries which have graduated from the LDC classification.

The LDCs' proposal now highlights two main elements. In the first part, on unilateral market access or duty-free, quota-free market access (DFQF), the preference-granting members are requested in the best-endeavour approach to establish procedures to extend and gradually phase out their preferential market access schemes, to be considered for a period of six to nine years after the

effective date of graduation for any LDC, instead of 12 years as in the LDCs' original proposal.

In the second part, the LDCs propose to reach an agreement between MC12 and MC13 (which is envisioned to be held in 2023) by instructing the Sub-Committee for LDCs to prepare a package of support measures regarding WTO provisions for graduated LDCs and to report to the WTO General Council at its first meeting in 2023. The LDCs say that the interim arrangement will provide sufficient time to finalize the negotiations by MC13.

The chair of the General Council, Ambassador Dacio Castillo from Honduras, held an informal open-ended meeting on 5 November to discuss the LDC proposal, among other issues.

According to the LDCs which spoke at the meeting, their main idea is

to propose a partial outcome at MC12 which would cover the DFQF question and establish a set of clear principles for a package of support measures to be negotiated post-MC12. In exchange, the LDC Group suggested that it is willing to show some flexibility on the 12-year duration period (at least for DFQF) and is ready to discuss the scope of support measures under WTO provisions to be extended in favour of all LDCs after their graduation.

Many members which intervened at the meeting strongly supported the LDC Group's proposal.

However, the US, which appears to have adopted rather "frosty" positions on the proposals tabled by the LDCs so far, said it has not studied the proposal and that it needs time to review it.

As the US had been provided with the

LDC proposal a long time back for review, Washington's stance that it needs time to assess the proposal failed to convince the poorest countries at the meeting, said people familiar with the development.

On its part, the European Union, which provides preferential market access to the LDCs under the "Everything But Arms" initiative, has already extended the scheme for at least three years for graduated LDCs without making any further classification on the development status of the graduated countries.

However, Brussels has now raised queries at the General Council about the criteria adopted for seeking an extension of six to nine years for unilateral market access, and is pushing for further differentiation among graduating LDCs, said people familiar with the development. (SUNS9455)

US, EU could bring carbon tariffs to WTO to address climate change

The contentious topic of carbon tariffs may end up on the WTO agenda if developed-country proponents have their way.

by D. Ravi Kanth

GENEVA: Under the seeming pretext of addressing climate change, the United States and the European Union could push the issue of carbon tariffs into the global trading system, posing the biggest challenge yet for developing countries at the upcoming 12th WTO Ministerial Conference.

On the same day that the UN Climate Change Conference (COP 26) got underway in Glasgow on 31 October, the US and the EU reached a bilateral agreement ostensibly to end a tariff war triggered by the Trump administration's decision to impose tariffs on European steel and aluminium products. The bilateral agreement includes several elements, particularly the idea of bringing the issue of carbon tariffs into global trade.

"This marks a milestone in renewed

EU-US partnership," the European Commission President Ursula von der Leyen remarked in a joint appearance with US President Joseph Biden in Rome on 31 October.

According to a White House fact sheet issued after the Rome meeting, the two sides said that they have reached an "agreement to cooperate on trade remedies and customs matters and development of additional actions."

According to the fact sheet, "both sides agreed to expand their coordination involving both trade remedies and customs matters, and to meet regularly to consult and develop additional actions to address non-market capacity in these sectors."

The trans-Atlantic climate/trade agenda highlighted "negotiations of global steel and aluminum arrangements

that restore market-oriented conditions and address carbon intensity."

Without explicitly mentioning carbon tariffs, it says that "the US and EU resolved to negotiate future arrangements for trade in the steel and aluminum sector that take account of both global non-market excess capacity as well as the carbon intensity of these industries."

Further, "the US and EU agreed to form a technical working group to enhance their cooperation and facilitate negotiations on these arrangements, and will invite like-minded economies to participate in the arrangements."

The "like-minded economies" are drawn from the Ottawa Group of countries led by Canada at the WTO and other developed countries that are likely to join forces with the US and the EU to bring this issue to the WTO on the grounds of combating climate change.

The issue may come under the ongoing initiative concerning trade and environmental sustainability structured discussions (TESSD) being coordinated by Australia.

WTO Director-General Ngozi Okonjo-Iweala has already lent her support for considering carbon tariffs to address climate change. Writing in the *Financial Times* on 14 October, she argued that fears among developing countries

that carbon border adjustment measures – tariffs or equivalent measures – would lead to protectionism seem somewhat misplaced.

“This is no argument against carbon pricing,” she said, suggesting that “the most straightforward solution would be a global carbon price aligned with the Paris Agreement. This would help achieve our collective climate goals, and bring stability and fairness for cross-border business. Unfortunately, we are not yet there. Leaders gathering in Glasgow at COP 26 should make solving this problem a priority.”

In an article in the *Wall Street Journal* on 2 November titled “Tariffs to tackle climate change gain momentum – the idea could reshape industries,” reporters Yuka Hayashi and Jacob M. Schlesinger cautioned that “the proposals come with risks, including undermining world trade rules and triggering trade disputes.”

Commenting on the US-EU bilateral deal, the two reporters wrote that “governments in the US, Europe and other developed nations are embarking on a climate change experiment: using tariffs on trade to cut carbon emissions. The idea has the potential to rewrite the rules of global commerce.”

Carbon tariffs are the basis for carbon border adjustment measures which aim to impose customs duties on imported steel or aluminum products that are allegedly produced with higher carbon emissions.

UNCTAD's concerns

In its *Trade and Development Report 2021 (TDR)*, where issues concerning trade and environment figured prominently, the United Nations Conference on Trade and Development (UNCTAD) cautioned developing countries about the escalating dangers of carbon border adjustment mechanisms (CBAMs).

The *TDR* drew attention to the TESSD talks where the participants are expected to submit a report to the trade ministers at MC12.

The *TDR* said that some developed countries including the EU are considering establishing a CBAM which entails taxing imported goods at a rate commensurate with the amount of carbon emitted (CO₂ emissions) in their production. This is done to avoid “carbon leakage”.

The developed countries argue that since more carbon-intensive goods are produced in countries outside the

Organization for Economic Cooperation and Development (OECD) and shipped into the OECD countries, CBAMs will help in reducing global carbon emissions.

The *TDR* however says that given the interconnectedness of the global economy and fragmented production processes, carbon emissions in developing countries are largely generated to produce goods consumed in other countries.

The “growing interconnectedness in the global economy” makes it impossible to disentangle high-carbon and low-carbon emitters in global value chains.

It is well documented that the excessive push by the North in the past two decades to form global value chains (GVCs) has led to outsourcing of many carbon-emitting production activities to developing countries, while associated low-carbon pre-production and post-production activities have been retained in the Northern countries. The comparative energy efficiency in the North is therefore closely linked to the energy inefficiency in the South.

According to data published by the OECD, “of the total global CO₂ emitted in 2015, around 27% is linked to international trade, mainly in seven industries, namely, Mining and extraction of energy producing products; Textiles, wearing apparel, leather and related products; Chemicals and non-metallic mineral products; Basic metals and fabricated metal products; Computers, electronic and electrical equipment; Machinery and equipment; and Motor vehicles, trailers and semi-trailers.”

These, says the *TDR*, are also the industries with a high proportion of their trade in GVCs.

According to the *TDR*, from the analysis based on the OECD dataset, three interesting observations emerge:

1. The share of non-OECD countries in global CO₂ emissions embodied in global domestic final demand and in global gross exports is 57% and 69% respectively.
2. However, removing China's share (25%) from non-OECD aggregates, it is seen that the share of non-OECD countries (32%) in CO₂ emissions embodied in global final demand is lower than that of the OECD countries (43%).
3. Similarly, the share of non-OECD countries (minus China) in CO₂ emissions embodied in global gross exports is almost half of that in the OECD countries, i.e., only 16% as compared with 31%.

“Most of the developed countries like Australia, Canada, European Union, Germany, Japan, and the United States have higher CO₂ emissions per capita compared to developing countries like China, India, Indonesia, and Malaysia,” according to the *TDR*.

Also, “CO₂ emissions in gross exports of OECD countries to non-OECD countries have grown much faster than CO₂ emissions in their imports from non-OECD countries in the period 2005-2015.”

The report stressed that this trend indicates that the “growing interconnectedness in the global economy” makes it impossible to disentangle high-carbon and low-carbon emitters in global value chains.

The *TDR* said that notwithstanding the legal challenges that are bound to arise from the implementation of CBAMs, the underlying principle on which these mechanisms are based is “to impose on developing countries the environmental standards that developed countries are choosing.”

In short, the CBAMs and other similar trading schemes strike at the heart of the core principle of “common but differentiated responsibilities” enshrined in the Paris Agreement on climate change.

“Should the revenues from these mechanisms be used in developed countries, rather than invested in climate adaptation in developing countries, they would turn basic principles of climate finance on their head,” the *TDR* warned. (SUNS9452)

Bleak prospects for the least-developed countries

The challenges facing the world's least developed countries are many and formidable, point out *Anis Chowdhury* and *Jomo Kwame Sundaram*.

“The outlook for LDCs is grim.” The latest United Nations assessment of prospects for the least-developed countries (LDCs) notes recent setbacks without finding any silver lining on the horizon.

Promises unkept

Half a century ago, LDCs were first officially recognized by a UN General Assembly resolution. It built on research, analysis and advocacy by the UN Conference on Trade and Development (UNCTAD). The landmark 1971 declaration drew attention to LDCs' unique challenges and pledged support from the international community.

The UN has convened four LDC conferences since, with each adopting a 10-year programme of action for national governments and “development partners”. But actual progress has been disappointing, with only seven countries “graduating”. The list of LDCs has grown to 46 as more “qualify” to “join”.

With the fifth conference due in Doha in January 2022, some critical soul-searching is urgently needed for efforts not to disappoint yet again.

The failure of development partners to meet their commitments has been a major longstanding problem. Only six of 29 Organization for Economic Cooperation and Development (OECD) partners have kept their promise to give at least 0.15% of their national incomes as aid to LDCs.

As the 1969 UN definition of official development assistance (ODA) has been compromised, the UN report unsurprisingly laments declining aid “concessionality”. New OECD aid reporting rules mean its numbers do not reliably measure additional sustainable development finance.

Systemic incoherence

The UN uses three criteria – income, human assets and vulnerability – to classify LDCs. Although nominally part of the UN system, the World Bank and International Monetary Fund do not recognize LDCs. Instead, the Bank uses only income to classify countries, with only low-income countries eligible for concessional loans from both Bank and Fund. Thus, “middle-income” LDCs – so classified due to poor human assets and/or high vulnerability – are left out.

When the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was adopted in 1995, LDCs were given more time to comply: first, until November 2005, extended to July 2013, then July 2021, and most recently, July 2034. But such ad-hoc postponements undermine LDCs' long-term planning.

Instead of the current “case-by-case” approach, LDCs need more predictability. The grace period should be while a country remains an LDC, say, plus a further 12 years after graduation, as proposed by Chad. The 12-year grace period should also apply to other “international support measures”, including all types of special and differential treatment.

LDCs account for only 0.13% of global trade. But despite touting trade liberalization as necessary for development, OECD countries have not given LDCs much access to their own markets.

Allowing more meaningful “duty-free, quota-free” (DFQF) access is thus crucial to LDCs. Helpful 97% DFQF access for LDCs to developed-country markets was agreed to at the 2005 World Trade Organization (WTO) ministerial meeting in Hong Kong. But most LDC exports are

concentrated in a few tariff lines, such as agricultural products and textiles, still subject to constant renegotiation.

Tariff reduction alone is no panacea, as non-tariff measures have posed barriers to LDC exports. Regulatory standards – such as “sanitary and phytosanitary” requirements – and “rules of origin” clauses limit LDC eligibility for preferences. Even when requirements are met, onerous procedures can still frustrate access.

Also, preferential arrangements – like the European Union's “Everything But Arms” initiative and the US “Generalized System of Preferences” (GSP) – have often been arbitrarily implemented. Needing frequent Congressional approval makes the GSP unpredictable, ever subject to capricious new conditions. Thus, some US lawmakers are demanding that GSP renewal – which expired on 31 December 2020 – should be subject to conditions such as particular human rights, rule of law, labour or environmental regulation priorities.

Despite the lofty 2000 Millennium Declaration, OECD countries have conceded little since. After the African walkout at the 1999 Seattle WTO ministerial, the promise of a “Development Round” brought developing countries back to the negotiating table. Launched in Doha after 9/11, “with much rhetoric about ... global unity”, there was little enthusiasm among rich countries.

Still pushing developing countries to open their markets more, rich countries demanded they lower tariffs to nearly zero in sectors never previously covered by multilateral trade agreements, including agriculture and services.

Refusing to recognize tariffs as poor countries' means to protect their farmers and ensure food security, OECD demands ignore their own heavy subsidization of food agriculture. Also, LDC protection of their modern services sectors – still in “infancy” – is deemed necessary to withstand transnational competition.

OECD countries became more protectionist after the 2008-09 global financial crisis, later pursuing bilateral, regional and plurilateral “free trade” agreements. In December 2015, the *Financial Times* gleefully proclaimed “the Doha Round had finally died a merciful death” after long being comatose.

Despite DFQF market access, “margins of preference” (MoP) for LDC

products have been squeezed by other developing countries' exports. MoP refer to the difference between preferential rates for LDCs and other rates. These may refer to "most favoured nation" (MFN) rates available to all countries or preferential rates available to some.

Meanwhile, tariffs have fallen with MFN liberalization, in some cases to zero. Tariff cuts have deprived LDCs of important revenue.

"Aid for Trade" (A4T) – purportedly to promote exports – has never tried to compensate developing countries for lost tariff revenue. Moreover, A4T conditionalities make them less developmental.

A4T is often used for trade policy capacity building – typically focused on encouraging LDCs to open their markets more, as desired by rich countries – rather than enhancing LDCs' productive capacities and capabilities.

Even if market barriers are reduced,

most LDCs still lack the infrastructure and support services to export much more. OECD countries demand LDC trade liberalization even before they have developed sufficient productive capacities.

Hence, even "graduate" LDCs fail to become internationally competitive.

International solidarity critical

While the LDCs' lot remains dismal, new challenges have emerged. For many LDCs, global warming poses an existential threat. The pandemic has also worsened their lot. Inadequate international fiscal support and the high costs of containing the pandemic meant 2020 saw LDCs' worst growth since the 1980s' lost decade.

The UN report acknowledges that even the meagre progress "painstakingly achieved on several dimensions of development, notably on the fronts of

poverty, hunger, education and health," has been reversed.

Besides emerging challenges, the LDC conference must also address the roots of the LDCs' condition. LDCs' development trajectories and options are shaped by the global environment. Besides foreign trade, concessional international financing is key to LDC progress.

The latest UN LDC report proposes new "international support measures", but recent trends suggest they are unlikely to materialize. (IPS)

Anis Chowdhury, Adjunct Professor at Western Sydney University (Australia), held senior UN positions in New York and Bangkok. **Jomo Kwame Sundaram**, a former economics professor, was UN Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

The World Bank and IMF are using flawed logic in their quest to do away with the informal sector

The international financial institutions' focus on eliminating the informal sector frames informality as a cause rather than a symptom of a weak economy.

by Mike Rogan, Max Gallien and Vanessa van den Boogaard

Many low- and middle-income countries face a myriad of challenges. But policies that can address them are few and far between. The challenges include high and rising inequality, budget crises and the ongoing pandemic.

In a set of recent outputs, the World Bank and the International Monetary Fund (IMF) presented an approach that they argue can tackle all three crises at the same time: fighting informal economies.

Their arguments are premised on the

claim that informality undermines efforts to both slow the spread of the pandemic and boost economic growth. They also believe that abolishing informality will lead to more tax revenues.

However, based on our organizations' extensive research into informality and taxation, we argue that their analysis is fundamentally flawed in its understanding of both the causes and consequences of informality. This is not a mere academic issue. Their reports endorse policies that

will fail to deliver on their promises of higher growth and tax income. Blaming informal workers, rather than the structural conditions that leave them with no option but informal work, effectively blames the victims of global inequality while wondering why they're not picking themselves up by their bootstraps.

In addition, what's put forward as pro-poor interventions in the reports in fact risk actively increasing inequality and further disadvantaging vulnerable populations.

Blame the symptoms or the structures?

Recent flagship reports and accompanying commentary by both the IMF and the World Bank demonstrate a somewhat flippant approach to causality. They do this by framing informality as a cause rather than a symptom of a weak or faltering economy.

The authors of both reports start off on safe ground. They observe that countries with high levels of income inequality also generally have high rates of informal employment (informality).

They also correctly note that they can't demonstrate causality and that there is no "one size fits all" policy approach.

But the reports then go on to abandon their own caveats when they get to the analysis or policy recommendations.

Demonstrating a similar logic, one World Bank blog, for instance, insinuates that an increase in unemployment in Peru is the result of informality, rather than the COVID pandemic.

This is not just a harmless analytical sleight of hand or benign semantic error. The result is that the bulk of the policy recommendations that stem from this analysis aim to eliminate the informal economy. They suggest that by simply removing informality, inequality would then decrease.

The World Bank's odd approach to causality allows it to frame any policy that cracks down on informality as also addressing inequality, while largely ignoring a wider set of targeted interventions that aim to improve the livelihoods, security, stability and earnings of the most vulnerable workers.

Informality and taxes

The second fundamental flaw in the reports' analysis relates to the assumption that eliminating informality will automatically increase tax revenues. This relies on the idea that tax evasion is "at the core of informality". This is then baked into key concepts and measurements.

However, this simply does not match the reality of either informality or taxation in much of the Global South.

Tax evasion does indeed exist, including in a subset of the informal economy. But the analysis still mischaracterizes the majority of the sector. Critically, it conflates deliberate evasion with the non-payment of taxes by workers who would typically be far below any tax thresholds.

Indeed, much employment in the informal sector is comprised of survivalist own-account operators. These are likely to be earning too little to be 'evading' tax in any substantial way.

In emerging and developing countries, direct measures of informal employment show that 78.1% of all economic units are own-account workers

in the informal sector. This is even higher in African countries at 87.3%. By contrast, only 4.4% are informal sector employers.

As a further indication of limited tax liability, the share of the working poor in informal employment ranges from 50.4% to about 98% in developing and emerging countries (at \$3.10 PPP per capita per day).

Informal workers do pay taxes – notwithstanding these low levels of earnings. The regressive way in which the informal sector is already (over)taxed is well documented. For instance, a 2013 World Bank study of informal micro-enterprises in Uganda found that 70% were below the national business tax but still paid a substantial share of their profits to local authorities. The poorest paid the highest share of profits.

Carrot and stick

Based on their flawed premises, these analyses further assume that the informal economy can be eliminated by lowering taxes for formal enterprises (the carrot) while increasing taxes for unregistered or informal businesses (the stick). For example, the World Bank argues that it is necessary to "streamline tax regulation to lower the cost of operating formally and increase the cost of operating informally".

But this understanding of the root causes of informality and the benefits of formalization is ungrounded. It also leads to policies that don't raise much tax revenue, while actively distracting from policies that can help those in informal employment.

This often happens in two ways. First, policy interventions to better "include informal economies in the tax net" – or formalize them – are often sold with bold promises about the potential public revenue that they can generate. This suggests that informality is hiding a "goldmine" for public coffers.

But many informal workers aren't eligible for national taxation due to very low incomes. The risk, therefore, is that not a lot of revenue is actually brought in – all while adding further financial burdens on the poorest groups in society.

Critically, they may serve as distractions from taxing economic actors

that could bring in significant revenue. These include politically connected businesses or unregistered independent professionals such as lawyers and dentists.

Second, focusing on taxation risks crowding out meaningful support that people in informal work require. There are real and complex challenges faced by people in informal economies: they range from harassment by authorities to unsafe working spaces to low incomes and a lack of access to finance or social safety nets.

Focusing primarily on eliminating informality risks creating an impression that formalization can happen simply by getting people on tax registers or lowering the "costs of formality". This ignores the question of what the benefits of formality are and how accessible they are. And it risks drawing attention away from the wide and complex set of reforms that are needed to support people both in informal work, and vulnerable work more widely.

A more productive way forward

The policy recommendations that follow from this reasoning won't be helpful in addressing inequality. In fact, they may actually increase it by not addressing the underlying issues that lead to informality and informal employment.

Indeed, the suggestion that redistributive policies are bad for the poor in the informal economy but that heavier taxation is good for them, is a puzzling, at best, and deeply cynical, at worst, conclusion of the reports.

Rather than focusing on eliminating the informal economy, influential international actors like the World Bank and the IMF and domestic policymakers would have a greater impact on inequality by focusing on progressive taxation and the expansion of social protection for the poor, regardless of employment status.

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