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WTO committee discusses Bali outcome package

The Trade Negotiations Committee of the WTO convened on 3 June to review progress made in putting together a package of trade reform measures to be adopted by the WTO Ministerial Conference in Bali this December. At the meeting, developing-country members emphasized that the Bali outcome should have at its core issues of food security and development.

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South stress on food security, S&D, LDC issues for Bali

Developing-country members of the WTO have pinpointed food security and development issues as key elements to be addressed in the outcome of the trade body's Ministerial Conference in Bali this December.

by Kanaga Raja

GENEVA: Developing countries, at an informal meeting of the WTO Trade Negotiations Committee (TNC) on 3 June, stressed the importance of any potential package for the WTO's ninth Ministerial Conference (MC9) in Bali this December having at its core the issue of food security, and least developed country (LDC) and development issues.

They also underlined that more progress was needed on Section II of the draft consolidated negotiating text on trade facilitation (on special and differential treatment – S&D – provisions for developing-country and LDC members), and that the developed countries needed to demonstrate more flexibility on this front.

Developing countries voiced these views in their statements at the informal TNC meeting following a report by WTO Director-General Pascal Lamy in his capacity as TNC Chair.

In his report, Lamy urged WTO members to make substantive advances before the end of July if they are to have any chance of successfully delivering at Bali and preparing a post-Bali roadmap.

He said that the purpose of the TNC meeting was to report back to the membership on his recent consultations and contacts and to continue the review of progress on the three Bali potential deliverables of trade facilitation, agriculture and S&D/LDC issues.

At the last meeting (in April), said Lamy, "we collectively faced up to the reality that the pace of the substantive engagement to successfully deliver in Bali was wanting. In realization of the heavy responsibility that confronted us all, not only for Bali, but also for the future of the DDA [Doha Development Agenda] and the WTO's negotiating function, we all committed to a set of prescriptions – changing course; urgently engaging substantively; seeking necessary political will and flexibility from capitals and displaying mutual trust and realism."

Since the April meeting, the continuous intensive process in negotiating

groups has started to bear some incremental progress, Lamy maintained, but on the negotiating mode, "we are yet to see the kind of flexibilities that are needed in an endgame negotiation."

"We all know that process, however good, is not enough to deliver. It is substantive engagement that holds the key. And here time is turning against us. We are entering the red zone," he warned.

Lamy gave his assessment of the state of play on the three areas for Bali deliverables.

On agriculture, he said that intensive consultations have continued on the proposal by the G33 developing-country grouping concerning public stockholding for food security and domestic food aid, on the basis of the four questions posed by the chair of the agriculture negotiations to facilitate the search for convergence.

According to the TNC Chair, some progress has been made on elements of political convergence which have begun to surface such as willingness to work on declaration/communique language that would recognize in general terms that the policies and programmes mentioned in the first part of the G33 proposal could fall within the scope of "General Services" of Paragraph 2 of Annex 2 to the WTO Agreement on Agriculture, together with a political message on the role of public stockholding in developing countries.

On the amendment or interpretation of existing agriculture disciplines, Lamy said that the views on this issue span a range of different options, none of which is the subject of any consensus at this stage. The main concerns expressed regarding an amendment or interpretation have been: (i) the infeasibility of the "one-solution-fits-all" approach given the differences in the situations the proponents find themselves in, and (ii) the complexity of the issue which many see as only resolvable as part of a much broader agricultural negotiation, which cannot happen in the short time left before Bali.

According to Lamy, some members have indicated an openness to consider a mechanism/process that might provide for some additional flexibility for specific members on the basis that this would be time-limited, non-automatic, and create no or minimal trade or production distortions. Such flexibility should not be at the expense of economic reforms and transparency – notably through timely notifications – would be an important element in monitoring any flexibility. Some members also stressed that whatever the temporary solution, it should be an operational one and should not be a substitute for a broader solution.

So, said Lamy, “on the key outstanding issues raised by the proposal, we have made progress towards framing the debate appropriately. This is just at conceptual stage and let me stress that obviously none of this is agreed or even accepted as the possible avenue to solve this matter.”

On this point, what is needed is to explore further a possible landing strip working out the specifics. This will be the focus of the chair’s continuing consultations.

On the proposal by the G20 (another developing-country grouping) on export competition, Lamy said that the preliminary and varying reactions to this proposal indicate that a more in-depth exchange of views to seek to identify the way forward is urgently required and the chair of the agriculture negotiations will be working in this direction.

Further to the discussions held over the (separate) G20 proposal on tariff rate quota (TRQ) administration, “it seems to be in a reasonably good shape.”

Trade facilitation

On trade facilitation, Lamy reported that further progress has been made on improving the draft trade facilitation agreement through negotiations conducted by the four Friends of the Chair. This allowed members at the negotiating group meeting on 24 May to eliminate a further batch of square brackets (which indicate lack of agreement) from the text. It also produced convergence on other parts of the text that can hopefully be turned into consensus during the new phase of negotiations by the Friends of the Chair that has just begun.

“But the progress that is being made is still not enough to provide assurance that we are on track to produce a good result for MC9. What is needed now is

more signals of flexibility of the kind displayed at the Senior Officials’ meeting in May,” said Lamy. He added that the key issue is how to build consensus, especially on those areas which require a higher level of political intervention such as customs cooperation and transit, as well as on other issues such as pre-shipment inspection, customs brokers and consularization fees.

There is also the issue of Section II (of the draft trade facilitation agreement), which provides flexibility for developing countries to implement the binding disciplines in Section I, Lamy pointed out. He said that these flexibilities are about developing countries scheduling commitments under categories A, B and C, according to their ability to implement them, coupled with technical assistance based on needs assessments.

“The key now is to synergize both parts of the agreement so that the flexibilities in Section II are used constructively to move the substantive disciplines in Section I,” said Lamy. The previous week’s negotiations, he added, showed that the key in this area is not so much whether assistance is available, which it is, but rather finding a way to better link needs with available assistance.

“Members need to invest now in making the breakthroughs that we need to see before the end of July. No one can seriously expect that the many areas of disagreement that still exist in the text can be left until the autumn and can then be sorted out in time for Bali. We need to start removing less conflictual brackets now.”

In his view, there are three ways of removing brackets: agreement on substance, agreement to disagree, and papering over disagreement with ambiguous or with best-endeavour language. “Experience of GATT/WTO negotiations pleads, I believe, broadly, for the first two options.”

On S&D, the TNC Chair said that in the two meetings held so far on the monitoring mechanism and the Cancun agreement-specific proposals, positive advances have been made which could potentially translate into concrete progress in the coming weeks. Further such consultations are planned.

“We need to show similar progress in the six agreement-specific proposals, relating to the Sanitary and Phytosanitary Measures Agreement and the Import Licensing Procedures Agreement to present a credible development

package to Ministers in Bali.”

On LDC issues, Lamy noted that the LDC Group submitted their proposal on an LDC package for Bali which was circulated to delegations on 31 May. The package that the LDCs are proposing to form part of a Bali outcome includes essentially four areas: implementation of the Hong Kong DFQF (duty-free quota-free) decision; preferential rules of origin; cotton; and operationalization of the LDC services waiver.

Lamy said that this was the thrust of the message he had delivered to ministers in the previous week, both at a small gathering of trade ministers hosted by the Australian minister on the margins of the annual OECD ministerial meeting in Paris and during the bilateral meetings that he held.

In Paris, he said he had asked two questions of ministers: (i) whether they were all ready to ensure that by the end of July, the contours of landing zones would be in sight; and (ii) whether in particular the so-called “majors” were ready to be more flexible in their positions by moving more to the middle and not simply asking others to move where they were.

According to Lamy, the ministers expressed concern that the negotiations were not on a path that provided confidence of success in Bali. Ministers acknowledged that not making progress in Bali would have damaging implications for the future of the Doha Round and the credibility of the multilateral trading system. Therefore, something significant, substantive and credible had to be done as a building block for work after Bali to pursue the DDA.

Ministers acknowledged that holding up progress in one area over demands in another was not a productive approach. In order to unblock this situation, ministers instructed their negotiators in Geneva to test various options and explore landing zones in a more focused, intensified manner on a “without prejudice” basis in all three areas, added Lamy.

Double standards

A number of delegations spoke following the report by the TNC Chair.

According to trade diplomats, while the US, the EU and other developed countries wanted a trade facilitation agreement with new mandatory obligations on members to be signed and sealed at Bali, they were not willing to

engage in any serious negotiations on issues of importance to developing countries, arguing somewhat speciously that the food security and other issues, though already part of the 2008 draft agriculture modalities text and thus before them for five years, would involve changes to the Agreement on Agriculture and thus the balance of rights and obligations in the WTO rules.

In fact, one Third World diplomat noted, under the guise of the trade facilitation agreement, what is being sought to be done are changes and interpretations of Articles V, VIII and X of the General Agreement on Tariffs and Trade (GATT), and the imposition of procedures and practices of some major developed countries on others. There was an element of facetiousness in the argument that since developing countries were already voluntarily undertaking trade facilitation measures, the demandeurs (the US and the EU) need not pay a price for what would in any event fall into their lap in 5-10 years. This was a double standard to advance the neo-mercantilist greed of the transnational corporations.

According to trade officials, in the interventions at the TNC meeting, Morocco (on behalf of the African Group) said that there were some signs of hope, and that it saw an urgent need to press ahead. The credibility of the WTO as a forum for negotiations was at stake, and 40 days (to the end of July) was not much time. Some members are showing indications of flexibility and it hoped that these flexibilities will be translated soon into progress on the ground, it added.

On trade facilitation, it said that this is something on which there must be agreement in Bali and that it sees this as something that can stimulate the world economy, but members must be careful that they do not prejudge any outcomes. While some square brackets have been removed from the draft negotiating text, not enough has been removed. There needs to be an adequate amount of progress in Section II of the draft text and more flexibility needs to be seen on this front from the industrial countries, it said.

On agriculture, the African Group said that the question of food security was extremely important as well, and this should be a part of the Bali package. Also, the development issues must be at the core of any agreement, and any Bali package must include duty-free quota-free (DFQF) market access for LDC prod-

ucts and cotton. Also of importance is the extension of the transition period for LDCs under the TRIPS Agreement.

LDC proposal

Nepal (on behalf of the LDCs) referred to the LDC proposal submitted on 31 May, saying that while most developed countries have already come forward and are now offering 100% DFQF, there are still some that do not. Rules of origin are inextricably linked to the whole question of market access and there is a need for greater simplicity on that issue, it added.

[The LDC submission proposes a decision on the implementation of the DFQF decision taken by members at the Hong Kong Ministerial Conference in 2005, adoption of simple and flexible preferential rules of origin criteria to further enhance exports from LDCs, a submission in the area of cotton, covering both trade and development assistance aspects, and a submission on the operationalization of the LDC services waiver. (A footnote in the LDC proposal notes that two LDC members had expressed reservation on the proposed draft decision on implementation of DFQF.)]

On the services waiver for LDCs, Nepal said that even though it was agreed in principle at the Ministerial Conference in 2011 to extend this waiver, this has still not been operationalized, and it would like to see a "signalling conference" whereby governments could indicate those areas where they could extend preferential treatment to LDC services providers.

It also said that the S&D monitoring mechanism and the agreement-specific proposals are of great importance to the LDCs, as is the question of LDC accessions (to the WTO). It further called for the extension of the transition period for LDCs under the TRIPS Agreement. Without a package that would address LDC interests, it will be impossible to have a credible Bali outcome, which is essential for the credibility of the WTO, Nepal stressed.

Indonesia (on behalf of the G33) referred to the G33 proposal on food security and said that it would like something "meaningful, operational and useable" by all developing-country members. The G33 hopes to address some of the concerns of those who have a problem with this proposal as it is currently drafted. It said that it is prepared to show flexibil-

ity, and expressed hope that others can also show flexibility so that there can be an outcome in Bali. It is critical to ensure food security in developing countries and there is a need to deliver on this issue and on the rest of the development dimension in Bali and beyond.

Australia (on behalf of the Cairns Group of agricultural exporters) said that agreement on the issues of transparency in TRQ administration, food security and export competition should be possible at Bali if pragmatic and flexible positions are put forward. A solution should be able to be found for all these issues, and there is a need to intensify efforts to bring about convergence.

Speaking for itself, Australia underscored the need for a balanced package in Bali across these three issues, as well as the need for a substantive outcome. Something less than that would not be good for the credibility of the system. An agreement lacking substance cannot be put forward without expecting that the post-Bali work will be adversely affected, it added.

There are trade-offs between agriculture and trade facilitation, it said, adding that it thought that this would be something that should be able to be agreed. It welcomed the LDC proposal. What needs to be done is to start testing possible solutions and to identify the landing zones, and there is a need to move as quickly as possible, it added.

It said that progress on trade facilitation is not going fast enough, and there is a need for some engagement on this issue very soon. It was impressed by the fact that in Paris, it was widely acknowledged that food security is an important issue and this could be a way to find some kind of solution.

Oman (on behalf of the Arab Group) said that in order for any package to be credible, the development dimension must be included. It is also important that the accession of Yemen to the WTO be completed as soon as possible. In July, a discussion should begin on the post-Bali process, which is as important as any Bali package, it added.

Brazil (on behalf of the G20) said that the G20's proposal on export competition should not be seen as a surprise, in that this was something that was included in the Hong Kong Ministerial Declaration (of 2005). The deadline for elimination of agricultural export subsidies was meant to be 2013 and that was why it was important to get something this year.

The deadline for eliminating all forms of trade-distorting export competition in agriculture would be missed, it noted, adding that therefore it has shown a great deal of flexibility by putting forward this proposal, which calls for a portion of the subsidies to be cut as a downpayment. Its proposal addresses export subsidies and export financing and this is fundamentally less ambitious than the final fourth revision of the draft agriculture modalities text. The objective is to send a strong signal from Bali that this is an important downpayment, and then the issues of state trading enterprises and food aid can be tackled.

Noting that the issue applies to the 15 developed countries that subsidize their exports and not the 10 developing countries that do, Brazil said that in any event the developed countries have subsidies that are five times higher than those of the developing countries. It is working on language that would deal with cuts for developing countries and their subsidization of agricultural exports. Referring to countries that lay down a red line on this issue ahead of any discussion, it said that this does not seem to be a credible way forward. It was pleased with the reception that was given to the G20's TRQ administration proposal.

On behalf of itself, Brazil said that there is a need for a balanced package in Bali that includes trade facilitation, agriculture and the development/LDC issues. It is important that there is balance between Sections I (on commitments) and II (on S&D) of the draft negotiating text on trade facilitation. On export subsidies, it said that it cannot let 2013 pass in silence on this question. It also welcomed the LDC proposal.

Disappointed

Brunei (on behalf of the Association of South-East Asian Nations – ASEAN) said that it is disappointed that substantial progress has remained elusive. There is a need for a credible package before August, and convergence needs to be seen well before the Bali conference.

Benin (on behalf of the Cotton-4 grouping) agreed with the African and LDC Group statements, and said that it will soon be putting forward its proposal and is currently engaged with its partners in discussion. There needs to be progress on cotton, and this is a key subject for the work. It is also looking for a balanced approach. It did not think that

a package can be done in Bali without something on cotton.

The EU said that "Bali is widely seen in fact as our last chance to salvage the DDA. If we fail, it will then be extremely challenging to bring the negotiating function of the WTO back on track ... This is not the time for tactical games; we need to negotiate in goodwill and with the common objective of making substantial progress so that texts, with the necessary level of technical maturity in the three negotiation pillars, can actually be put forward to Ministers as soon as possible."

Regarding the specific negotiating areas, the EU said that a lot remains to be done and "we have little time to do it". It noted that in the recent meeting of the negotiating group on trade facilitation, members were not able to make the progress that they would have liked to see, although removing a little more than 50 brackets could be considered a start. "We should however not fool ourselves into thinking that minor drafting changes can replace a serious negotiation on the key issues in the text. A serious engagement has so far been lacking. I hope this will change in the coming days and few weeks."

Resolving Section II remains a priority and it is clear that there will not be any trade facilitation agreement without a proper Section II, said the EU. However, it added that there cannot be an agreement either without a robust and properly ambitious Section I (on commitments) – otherwise, the trade facilitation negotiations would not make sense and the agreement would not bring about the expected benefits.

"The overall impasse that we have witnessed during these last weeks seems to be directly associated with the difficulty to define the pace of progress between trade facilitation and the G33 proposal. It is clear that both of these issues will need to be resolved, if MC9 is to be a success."

The EU said it remains concerned by the situation and particularly by the decision of some members to add what it said is one more difficult element to the puzzle, which is very seriously overloading the boat to Bali and could easily sink it. The G20 proposal on export competition comes at a very bad time and it is extraordinarily unbalanced in a way that is difficult to comprehend, it added. It however remains ready to explore ways of emphasizing at MC9 the importance of addressing export competition issues

in the broader framework of agriculture negotiations.

Regarding the S&D issues, the EU said that there is a need to make sure that these issues can be resolved quickly once the political will is found to complete a package for MC9. On the LDC issues, it noted that the LDCs have circulated a new paper outlining a few possible requests for deliverables for MC9. It welcomed it and said that it is ready to start the necessary discussions quickly.

According to the EU, the core message on the current situation is very clear: the Bali package consisting of the already agreed three pillars (trade facilitation, agriculture and S&D/LDC issues) remains possible. However, time is short and significant progress is needed in all areas in the next weeks, in fact by the end of July.

Uruguay supported the G20 and Cairns Group statements.

Below expectations

China, associating itself with the statements of the G20, the G33 and the Asian Group of developing members, and supporting the intervention of the LDC Group, said, "Members' collective sense is that the limited progress achieved in all three pillars was far below our expectation for a successful Bali ministerial and we have only eight weeks left before the summer break. Bearing this in mind, we have no choice but to redouble our efforts to push forward the negotiations. Everyone must engage and demonstrate flexibilities."

On agriculture, it is clear that the G33 proposal on food security is a gateway issue for the Bali package, it said, adding that it is pleased to note that the Paris ministerial meeting shed some light on the possible path towards its solution. It called upon all members, major developed stakeholders in particular, to be pragmatic and creative in working together with the G33 for a landing zone acceptable to all so that the legitimate concerns of the G33 will be somehow accommodated. It also remained open to discussing both the proposals of the G20.

It believed that trade facilitation is another important component of the Bali package. While it was encouraged at the square brackets that were removed recently, it was concerned that there are still more than 500 brackets left, and with this slow pace, "we will not be able to clinch the deal by MC9. We hope that the text-based negotiation on trade facilitation

tion could progress at an expedited pace and substantially reduce brackets in the next few weeks."

On development, for China, a modest outcome encompassing the S&D monitoring mechanism and Cancun agreement-specific proposals, among others, is absolutely doable. It also welcomed the LDC proposal and remained constantly supportive of the LDCs' legitimate concerns.

It said that as its ministerial representative had stated in Paris, "despite the challenges in front of us, China does not believe that there is a 'Plan B' for this organization, and actually we have no route of retreat. We all know what is at stake here: the negotiating function of this organization, the confidence of the outside world in this system and, most importantly, the interests of each and every [one] of us, particularly the weak ones."

South Africa referred to its Trade Minister Rob Davies' attendance at the Paris meeting, saying that he had reaffirmed South Africa's commitment to working for a small package of deliverables in Bali. He, however, cautioned that there is still insufficient progress on the three pillars.

On trade facilitation, South Africa said that whilst there are still about 550 brackets left in the draft text, Minister Davies believed that a deal is doable. The issue at stake, however, is the level of ambition of the text. He argued that there are still a number of provisions that do not belong to the text and many where the proponents are seeking a level of ambition that is inappropriate. He argued that there are still areas where some members are simply seeking to impose their system of customs administration on others without any consideration of what is systemically appropriate.

South Africa said it has worked hard over the past 19 years to modernize its customs and made many reforms that will enable it to comply with a relatively high level of ambition. However, most of its neighbours in Africa will require a significant calibration of the level of ambition in Section I to allow all to participate in the new disciplines. Furthermore, whilst South Africa sees some real value in a trade facilitation agreement, it recognizes that the benefits of such an agreement are not even.

It noted that Minister Davies therefore had emphasized the need for balance within and between all three pillars.

It stressed that agriculture must remain a core element of the package for Bali, noting that there are currently three proposals on the table. Of these, the most harmful to developing countries and the greatest distortion in trade remains that of export subsidies. "And what is more, we all agreed to eliminate export subsidies this year – 2013 – in Hong Kong in December 2005. The G20 proposal does not call for the full implementation of this promise but only a step forward. This is the least we can do," said South Africa.

It further underlined that development and the LDC pillar is a litmus test for the multilateral trading system. "We cannot return from Bali without any meaningful delivery to the poorest members of this organization."

It also said that Bali is clearly not the end of the road. "In Bali, we will need to put in place the conditions for the full implementation of the Doha Development Mandate and put this institution back on the tracks of multilateralism – fairness, balanced rules, inclusiveness and its development orientation. This is our ambition for Bali."

Horizontal process

According to trade officials, Korea said that members are behind in terms of the Bali process. There is a need to begin a horizontal process of looking across the issues, it said, adding that time is of the essence.

Colombia said that members are facing an impasse that needs to be got around. The biggest players should sit down very soon and start talking about these issues horizontally.

Japan said that there is a need to abandon "hostage-taking" and to redouble efforts and accelerate the negotiations in trade facilitation to clean up the text. Real commitment should start to be shown to the negotiations.

Bangladesh, supporting the LDC statement, said that there was broad convergence at the Paris ministerial meeting on the LDC issues. It said that these issues are not new and that they come from the 2005 Hong Kong Ministerial Declaration. It also called for the LDC accession process to be intensified.

Argentina said it endorsed the G20 and Cairns Group statements. It said that it had shown flexibility on Section I of the trade facilitation negotiations, adding that it needs to see developed coun-

tries showing flexibility on Section II. Discussions on Sections I and II should take place at the same time. On development issues, it is willing to support anything that will help integration into the global trading system.

Noting that agriculture issues have always lagged behind, it said that both it and the G20 are prepared to be flexible. It is also prepared to be flexible on export competition, despite some having said that the introduction of the G20 proposal might jeopardize the Bali outcome. What would really jeopardize the credibility of the organization, it stressed, is if 2013 were to slip by without something being done on the question of export competition.

According to trade officials, the US said that one of the themes of the Paris ministerial meeting was that members should not delude themselves into questioning whether or not there would be trade facilitation. Most members are already doing this autonomously, bilaterally or regionally. The only question is whether the WTO will contribute to this and whether it will be done multilaterally. To do it in this way (multilaterally) is more efficient, and it also means that members would be able to marshal multilateral resources to help with technical assistance contributions, it added.

There were a number of interesting proposals that have come forward, to clear away what the US viewed as the "underbrush". It was concerned that some brackets have been reintroduced in the draft trade facilitation text, saying this was a step backwards. It had seen the least progress on some issues like customs cooperation and transit.

It was of the view that agriculture is an issue that is appropriate to be taken up and that this has already been given an enhanced place in the negotiations, in a way that non-agricultural market access (NAMA) and services are not.

The US said it is prepared to deal with things that are doable, and that is why it is prepared to engage on the G20's TRQ administration proposal. But there are other issues that would fundamentally disturb the balance of the single undertaking, and this is the problem with the G20's export competition proposal. It would cut into the balance in the Agreement on Agriculture and would affect those negotiations. It would also have an impact and cause disequilibrium vis-a-vis the NAMA and services negotiations, said the US.

On the G33's food stockholding proposal, it said that it would be the same thing here too. It would not be balanced as it was initially proposed, but the US had seen some helpful indications in Paris as to how this particular provision could be addressed.

It thanked the LDC Group for its proposal, saying that it has always seen the issue of DFQF as an element of the single undertaking, a broader Doha outcome. It said it is also trying to discern what the degree of support within the LDC Group is for this proposal because it is not a consensus proposal. The US claimed that many African countries have said that DFQF being offered to Asian LDCs would have a devastating impact on sub-Saharan Africa's textile and clothing industry.

Limited time

According to trade officials, India, in supporting the G20, G33 and LDC statements, said that time is limited. It pointed to the need for progress in the three areas as well as the need to work on all pillars. The message from the Paris ministerial meeting was that members need to intensify work across all these areas of negotiations. Members need to get down to negotiating solutions without prejudice or they will never get there by Bali. One possible solution would be to go to a horizontal process soon, and this can be in very small groups and be done in a modest manner, but people need to sit down and start talking horizontally.

India also said that without getting Bali right, the post-Bali process will be lacking in any real meaning, and to defer these issues post-Bali would be an admission of failure.

Switzerland said that it is prepared to engage on the LDC proposal. It sees engagement on the G33 proposal and the fact that there is an acknowledgement of the importance of food security across the membership. It however does not see a rewriting of the Agreement on Agriculture in time for Bali.

According to trade officials, Haiti expressed surprise at the DFQF proposal from the LDC Group, saying that there was not a consensus on this. It was impossible for Haiti to support this proposal in its current state. It would see its textile and clothing industry wiped out.

Canada said that time is remarkably short. On trade facilitation, it said this is a development issue and there are stud-

ies which show that an agreement along the lines of what is being suggested in the WTO could add 15% to the GDP of developing countries. Moreover, agriculture and development issues are also developmental in nature, so the overall package is a development package, it added.

Mauritius, supporting the African Group and G33 statements, said that any proposal that erodes preferences will be considered by it to be a red line.

Paraguay supported a trade facilitation deal as a landlocked country.

Egypt supported the African Group, Arab Group, Cotton-4 and LDC statements. It said that the trade facilitation negotiations are unbalanced with too much emphasis being placed on Section I of the draft negotiating text.

Barbados supported the African

Group statement.

Cuba said that the picture that is emerging is not very encouraging, adding that agriculture must be part of a Bali package. On trade facilitation, it is concerned when people say that Section II will only be applicable if binding commitments are seen in Section I. Any attempt to subsidize Section II in this way will lead to failure in Bali, it cautioned.

Lesotho, while endorsing the other elements of the LDC proposal, said that it could not join the consensus on DFQF.

Tanzania supported the LDC statement.

Jamaica (on behalf of the African, Caribbean and Pacific Group) said that it wanted a deal across the three pillars. It was important to find an ambitious result on agriculture in Bali, it added. (SUNS7597/7599) □

Say "No" to binding TF deal, urge NGOs

Civil society groups have come out against a WTO trade facilitation agreement, saying it would hurt more than help developing countries.

by Kanaga Raja

GENEVA: Nearly 190 civil society organizations from both developed and developing countries have called on members of the World Trade Organization (WTO) to abandon negotiations towards a binding agreement on trade facilitation (TF), one of the issues being pushed by the US and the European Union and being considered for possible delivery at the upcoming WTO Ministerial Conference in Bali this December.

In a letter dated 6 June sent to delegations in Geneva, the NGOs stressed that developing countries "should have the policy space to adopt, at their discretion, higher levels or standards and customs-related procedures as and when capacity exists to do so, taking into account their development context."

Commenting on the current state of play in the TF negotiations at the WTO, developing-country trade diplomats have noted that while the US, the EU and other developed countries are pushing strongly for a binding agreement in this area and for it to be sealed in Bali, they have not been willing to seriously engage in negotiations on the issues of great importance to the developing countries, such as on the G33 proposal on food security.

The letter from the civil society groups, organized by the Our World Is

Not for Sale (OWINFS) network, states that binding rules on TF should not be promoted either inside the WTO through the proposed agreement or through other avenues such as bilateral or regional free trade agreements (FTAs) or economic partnership agreements (EPAs).

The letter has been endorsed by some 23 international and regional NGO networks including the ACP Civil Society Forum, Africa Trade Network, Arab NGO Network for Development (ANND), Asian Peasants Coalition (APC), Development Alternatives with Women for a New Era (DAWN), IBON International, LDC Watch, Pax Romana – The International Catholic Movement for Intellectual and Cultural Affairs, and the Southern and Eastern African Trade Information and Negotiations Institute (SEATINI). A number of national civil society organizations from both developed and developing countries also endorsed the letter.

No evidence of benefits

In their letter, the groups underscore that there is no empirical evidence of benefits to developing countries from the proposed TF agreement.

Though the proponents of the TF

negotiations have argued that developing countries would benefit even more than developed countries from an agreement on trade facilitation, the letter from the NGOs said that "there is little empirical basis for this claim. Quite the contrary, the proposed binding agreement on trade facilitation is a key demand of the developed countries towards the [Bali] Ministerial, because it will serve the interests of their corporations."

It would be better to call it an "import-facilitating agreement", said the groups, which stress that a binding agreement on TF in the WTO would require developing countries to implement a set of rules reflective of the current trade facilitation practices of the developed countries.

"They would not address the urgent need to expand the productive and export capacities of the developing countries. Thus, while imports into developing countries would be facilitated by the new rules, it is difficult to imagine how exports from developing countries could be similarly facilitated."

In fact, the letter further said, trade facilitation rules in the WTO should be more accurately called "import-facilitating rules" for developing countries.

"Hence, a TF agreement would likely result in the further worsening of the trade balance in many developing countries, leading to balance of payment problems that often further increase indebtedness," it warned.

The letter further asserts that the proposed TF agreement follows a model of corporate-driven globalization focused on increasing the volume of trade, rather than achieving globally shared development goals through rules that facilitate countries' use of trade policy for their own development needs and in accordance with their levels of development.

"In fact, a trade facilitation agreement at the WTO would create new markets – in customs and shipment processing for multinational corporations. At the same time, it would likely lead to the further privatization of ports, customs operations, and shipment processing, which leaves little or no space for local operators, and which has already led to a loss of jobs, downward pressure on wages, and erosion of labour rights for public workers in these sectors."

The groups drew attention to the fact that while developed countries promote the proposed agreement as a "win-win", most of the costs of a TF agreement to developing countries are rarely included

in projected impact assessments. For example, there are significant implementation, regulatory, human resources and infrastructure costs associated with the proposed agreement, many of which are recurring costs, and would be siphoned from national budgets, diverting available resources from development needs.

"A potential trade facilitation deal is also expected to lead to irreplaceable loss of tariff revenue. Compared to developed countries, the share of customs revenue in the total tax collection is much higher in developing countries and least developed countries (LDCs)."

The letter cautioned that "foregone tariff revenue would have serious implications for national budgetary support for key development issues such as education, health, and poverty reduction. Reducing national budget support for addressing the Millennium Development Goals can in no way be referred to as a pro-development outcome."

Imbalanced text

In addition, the letter argues, the provisions of the proposed TF agreement, as they are being negotiated, would undermine the regulatory capacities of developing countries. The proposed rules would expand the opportunities of transnational corporations to lobby in national and local legislative processes. Furthermore, the rules that would be enforced through a TF agreement would provide ample grounds for challenging regulations, laws and procedures in member states.

According to the civil society groups, further eroding any claim to benefits for developing countries is the fact that there remain significant imbalances and incoherence within the text being negotiated.

"The new trade facilitation rules, being pushed by developed countries, have advanced significantly, and are set in binding language. Negotiations on technical assistance and capacity building, which are central to the original agreed trade facilitation negotiations mandate (2004), have been stalled by developed countries, and are currently framed in non-binding language."

Furthermore, the groups said that the needs-assessment exercises of developing countries for compliance with TF are likewise being utilized as a "compliance assessment" tool in order to pressure developing countries into accepting the trade facilitation agreement rather than to encourage developed countries

to increase their technical and particularly financial assistance.

While developing countries can benefit from more efficient and transparent trade procedures, the letter notes that unilateral voluntary implementation of non-binding customs-related guidelines and/or the Revised Kyoto Convention of the World Customs Organization, in accordance with national priorities and needs, is of a different nature and brings different implications compared to a binding TF agreement that could be enforced through the dispute settlement procedures of the WTO.

"Worse, the latter could lead to sectoral cross-retaliation among countries, the effects of which are expected to be more pernicious to the much smaller economies of developing countries and least developed countries."

Instead, the letter recommends that any discussions at the WTO should focus on "rectifying historical imbalances and asymmetries in the WTO", in order to provide more policy space for countries to implement solutions to the global economic crises.

"A starting point would be agreeing to the important proposal of the 'G33' group of 46 developing countries to allow developing countries to promote domestic food security, and delivering on the LDC package at the upcoming Ministerial."

In addition, the letter states, a real advancement on the special and differential treatment and implementation agenda issues, long advocated for by developing countries, is long overdue. (SUNS7601) □

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Development goals for 2030 putting business at the centre

Recommendations put forward by a UN-commissioned high-level panel on the post-2015 development agenda fall short of significantly tackling the real obstacles to poverty eradication and development.

by Roberto Bissio

MONTEVIDEO: "Eradicating extreme poverty from the face of the earth by 2030" should be "central" to a new development agenda, recommends a High-Level Panel (HLP) of eminent persons co-chaired by UK Prime Minister David Cameron and presidents Ellen Johnson Sirleaf of Liberia and Susilo Bambang Yudhoyono of Indonesia.

The initial reactions from civil society organizations were not enthusiastic. "Uninspiring" was a term frequently heard and one of the first comments published (by German development economist Gabriele Koehler) is titled "more of the same, just prettier."

One commentator argued that "this is not business as usual, but rather putting business at the centre."

Thus, for example, at the last hour, the second suggested anti-poverty indicator, which in the latest drafts had read "remove and prohibit all forms of discrimination related to tenure rights", was changed into "increase by x% the share of women and men, communities, and businesses with secure rights to land, property, and other assets".

Putting business as right holders at the same level with "women, men and communities" sounds pretty much like US presidential candidate Mitt Romney when he stated that "corporations are people", said an NGO activist.

The poverty eradication pledge adopts the very low \$1.25/day benchmark and echoes a similar commitment endorsed by the World Bank in its spring meeting last April.

The HLP acknowledges in its technical notes that "continuing on current growth trends, about 5% of people will be in extreme poverty by 2030." Since the error margin of those estimates is much higher than 5%, the "zero poverty in our generation" promise is not really a commitment but just a prediction of what is bound to happen anyhow. In itself, the HLP's poverty pledge does not require any action from governments or the international community.

Suggested development goals

The HLP report, which was released on 30 May, is structured in a main section and two annexes, one with 12 suggested goals and 54 targets to substitute the current eight Millennium Development Goals (MDGs) when they expire in 2015, and the other with technical notes and explanations about the proposed goals and objectives and the indicators that should measure them.

The HLP explains that those goals "similar to the MDGs are not binding in international law" and they would merely be "tools of communication, inspiration, policy formulation and resource mobilization."

While the UN is required to provide regular unified reporting on progress, accountability and peer review should mainly happen at regional level.

The list of suggested goals echoes the present MDGs with some rearrangements and editorial changes.

Food security and nutrition, currently merged with MDG 1 on poverty, is made into a separate goal. The current three health-related MDGs are merged into one.

Universal access to water and sanitation, currently part of the environmental goal, is made into a separate one, as well as "securing sustainable energy", while new goals are incorporated on "good governance" and "ensuring stable and peaceful societies".

Old Goal 8, on "global partnership", which captured responsibilities of developed countries, is now titled "creating a global enabling environment and catalyzing long-term finance."

The new formulation repeats the unmet (if not continually broken) promise of "an open, fair and development-friendly trading system" and adds one on "holding the increase in global average temperature below 2°C above pre-industrial levels, in line with international agreements".

It repeats the UN agreed language

on committing 0.7% of gross national product (GNP) as official development assistance (ODA) but excludes all mention of least developed countries, small island states and landlocked countries.

It also drops the promise to "deal comprehensively with the debt problems of developing countries" and instead makes it into an objective to "implement reforms to ensure stability of the global financial system and encourage stable, long-term private foreign investment" and also to "reduce illicit flows and tax evasion and increase stolen-asset recovery by \$x".

The use of "x" as a number to be negotiated appears 26 times in the 54 suggested targets and it indicates either a target to be defined nationally (as in "reduce violent deaths per 100,000 by x"), an area where further technical work is necessary to find appropriate indicators (as in "cover x% of people ... with social protection systems") or an issue on which a minimum global standard needs to be negotiated and agreed upon (as in "decrease the maternal mortality ratio to no more than x per 100,000").

Even when the panel "recommends that all these goals should be universal", such universality is understood as representing "a common aspiration for all countries" since almost all targets should be set at the national level.

A few targets are global, such as "doubling the share of renewable energy in the global energy mix", which would mean 30% of renewable sources by 2030 – below what would be required by the target of keeping global warming below 2°C.

"Money talked louder"

The document is titled "A New Global Partnership" and the 27-member panel claims that, in preparing it, "we heard voices ... from over 5000 civil society organizations working in about 120 countries" and "we also consulted the chief executive officers of 250 companies in 30 countries, with annual revenues exceeding \$8 trillion".

"Money certainly talked louder," an NGO representative commented, pointing to 30 occurrences of the terms "civil society" or "CSOs [civil society organizations]" in the text against 120 of the words "business", "corporations" or "companies", while "trade unions" and "workers" are mentioned only three times each and "governments" 80 times.

Business is explicitly mentioned as holder of equal rights as people in terms of land property (which would require constitutional changes in many countries); and in the gender equality goal, the rights of women that are mentioned explicitly are the rights to inherit property, sign a contract, register a business and open a bank account.

Sexual and reproductive rights are mentioned, but under the health goal, and this is the only mention of "rights" in relation to health or education.

Illicit tax flows and tax evasion are to be "reduced", with unspecified targets, but the only reforms envisaged in the global financial system are those aimed at "ensur[ing] stability" and "encourag[ing] stable, long-term private foreign investment."

The jobs goal includes an objective on "creating an enabling business environment and boosting entrepreneurship" but does not mention market failures, while the "good governance" goal includes "ensur[ing] officials can be held accountable" in order to reduce corruption and bribery. It says nothing, however, about accountability of corporations paying bribes.

The HLP suggestions fall behind already agreed principles, such as the Guiding Principles on Human Rights and Extreme Poverty adopted by the UN General Assembly unanimously in September 2012, where "as part of international cooperation", states commit to "conducting assessments of the extraterritorial impacts of laws, policies and practices". The principles establish that "business enterprises, have, at the very minimum, ... to avoid causing or contributing to adverse human rights impacts through their activities, products or services, and to deal with such impacts when they occur."

In a moment when, in the words of IMF Managing Director Christine Lagarde, "rising income inequality is a growing concern for policymakers around the world", the panel largely ignores the issue.

Recent IMF research, explained Madame Lagarde last 15 May, "has shown that prolonged periods of steadily rising output are associated with more equality in income distribution. In other words, more equal societies are more likely to achieve lasting growth".

Yet, what the HLP suggests lags behind this new Washington discourse and only talks about "equality of opportunity" but does not mention distribution

or redistribution.

Formally, the report of the HLP is now on the desk of the Secretary-General of the UN, who can use its suggestions or not and merge it with other input to prepare his own report to the General Assembly.

Politically, it might set the tone and the agenda of the debate around the so-

called "post-2015 development agenda", due to the high profile of the panel members and the intense mobilizations and debates that surrounded its preparation over the last 10 months. (SUNS7596) ▣

Roberto Bissio is the Executive Director of the Third World Institute based in Uruguay and coordinator of Social Watch.

Supportive global economic conditions crucial for SDGs

In the latest round of talks on crafting a set of global Sustainable Development Goals, which centred on such issues as food security and sustainable agriculture, developing countries underlined the need to take account of international economic factors and the importance of international cooperation in finance and technology provision.

by Bhumika Muchhala

NEW YORK: Developing countries stressed the importance of international economic factors and means of implementation in formulating the United Nations Sustainable Development Goals (SDGs).

The third session of the United Nations General Assembly Open Working Group (OWG) on Sustainable Development Goals took place on 22-24 May in New York. The thematic clusters were food security and nutrition, sustainable agriculture, desertification, land degradation and drought, as well as water and sanitation.

The opening statement of the developing-country Group of 77 and China (G77), delivered by Ambassador Peter Thomson of Fiji, focused on several key areas, including international trade rules and financing and investments in agriculture, which critically affect the ability of developing countries to achieve food security and sustainable agriculture practices.

One of the key outcomes of the UN Conference on Sustainable Development (Rio+20) held in Rio de Janeiro in June 2012, the OWG is tasked with preparing a set of SDGs.

The OWG meetings thus far have been based on interactive exchanges among the 30 groupings of member states, supported by expert panellists and background papers prepared by the UN Technical Support Team. A total of eight meetings of the OWG have been scheduled through to February 2014.

(The OWG was established on 22 January 2013 by the UN General Assembly in accordance with the Rio+20 man-

date. The member states have decided to use an innovative constituency-based system of representation that is new to limited-membership bodies of the General Assembly. This means that most of the seats in the OWG are shared by several countries, thereby increasing the level of participation.)

Rio+20 did not elaborate specific goals but stated that the SDGs should be limited in number, aspirational and easy to communicate. The goals should address in a balanced way all three dimensions of sustainable development (viz., economic, social and environmental) and be coherent with and integrated into the UN development agenda beyond 2015.

The G77's opening statement at the OWG's third session underscored the importance of linking international factors to an "enhanced global partnership", the critical role of means of implementation, together with national actions and efforts to be taken by countries at the national level.

The three-component approach is essential because the formulation of laudable goals at the national level will not be attainable unless structural factors, including international factors, are addressed. Similarly, developing countries require international cooperation in finance, technology transfer and capacity-building if they are expected to achieve the SDGs.

The G77 asserted that the OWG should discuss means of implementation of each of the topics as well as more concrete elements that could be part of a specific goal.

The Group also stressed that it is

critically important that countries adhere to the criteria agreed upon in Rio+20, namely that the SDGs must be “global in nature and universally applicable to all countries while taking into account different national realities, capacities and levels of development and respecting national policies and priorities.”

In Agenda 21, the plan of action that was an outcome of the Rio Earth Summit of 1992, nations acknowledged the need for “major adjustments in agricultural, environmental and macroeconomic policy, at both national and international levels, in developed as well as developing countries, to create the conditions for sustainable agriculture and rural development”. This statement is still relevant 21 years later and the international community cannot afford to postpone collective efforts any further, the G77 said.

(The other major outcome of the 1992 Summit was the Rio Declaration on Environment and Development with its 27 principles, including the principle of common but differentiated responsibilities.)

Skewed global trade rules

At the outset, the G77 affirmed that agriculture, which is broadly understood to include crop and livestock production, fisheries and forestry, is the most important sector in many developing countries and is central to the survival of millions of people, and at the core of national and regional aspirations to achieve food security and sustainability.

In this context, the Group said, it is to be stressed that agricultural subsidies and other trade distortions by developed countries have severely harmed the agricultural sector in developing countries, limiting the ability of this key sector to contribute meaningfully to poverty eradication, rural development and sustainable, sustained, inclusive and equitable economic growth. Elimination of such subsidies is a fundamental part of the global effort to promote agriculture and rural development and eradicate poverty and hunger, it said further.

Equally important is market access for developing-country agricultural products. In this regard, the G77 stressed the necessity of a timely conclusion of the Doha Round of multilateral trade negotiations, which must fully respect its development mandate and take into account the needs and priorities of developing countries. A successful outcome of the Doha Round will help to ensure

growth in global trade and create new market access opportunities for developing countries.

The Group also said that trade-related subsidies in developed countries act as disincentives to the transition to sustainable agricultural practices in developing countries, and must be modified to ensure an expansion of local food production. The Rome-based UN agencies, the Food and Agriculture Organization (FAO), World Food Programme (WFP) and International Fund for Agricultural Development (IFAD), with mandates and programmes to promote sustainable agricultural practices, should provide relevant technical support to enable developing countries to prioritize sustainable agricultural practices.

As long as current conditions prevail, it is difficult for developing-country agricultural producers to implement a paradigm shift towards sustainable agriculture, the G77 emphasized. Many developing countries, particularly the least developed countries that were once self-sufficient in food or were exporters of food, have become dependent on food imports as a result of significant distortions in developed countries’ farming sector as well as international trading rules, which are skewed against the developing countries.

Challenges to agricultural sustainability

The G77 said that the challenges facing agriculture in the next few decades are complex. With increased global population growth, there will be increased demand for food, feed, fuel and fibre.

While increasing food production is vital to meet these new demands, the Group held the strong view that the current practice of wasting one-third of food produced – 1.3 billion tonnes per year – is not sustainable and must change. Agriculture systems worldwide must become more productive and less wasteful.

Sustainable agricultural practices, including both production and consumption, must be pursued from a holistic and integrated perspective encompassing, at various scales, from the local to the international level, the economic, social and environmental dimensions of sustainable development.

Moreover, public financing and transfer of appropriate technology by developed countries are needed not only for the adoption of sustainable agricul-

ture but also to put in place the required infrastructure, communications and other enabling conditions.

The Group stressed that the increasing involvement of non-commercial actors in the market of food and food-related commodities, or the so-called financialization of the sector, has played a major role in the emergence of the problem of excessive food price volatility. This large inflow of speculative capital to commodities, particularly food and other agricultural commodities, contributed to a large extent to the worsening of food insecurity. Vulnerable populations in developing countries have had their economic and social right to food and nutrition threatened, reinforcing inequality and exacerbating poverty. It is imperative, therefore, that the root causes of excessive food price volatility, including structural causes, be addressed seriously.

The G77 registered its strong belief that commodity markets should operate in a properly regulated manner that avoids excessive volatility and speculative activities and serves the real needs of both producers and consumers.

Development role for the state

The G77 highlighted that most agricultural production in developing countries involves small land holdings, mainly producing for self-consumption and accounting for approximately 85% of the world’s farms. To support the economic viability of smallholder agriculture and thus reduce their vulnerability, policy actions are required to enhance access by smallholder producers, particularly women, indigenous people and people living in vulnerable situations, to credit, markets, secure land tenure and other services.

In terms of policy and investment choices at the national level, eliminating hunger involves investment in agriculture, rural development, decent work, social protection and equality of opportunity. Other enablers include sustainable agriculture, infrastructure, education, water, health, the empowerment of women and gender equality.

In this regard, the G77 asserted that the developmental role of the state is vital. The state needs to play a proactive developmental role in investing and building infrastructure conducive to sustainable agriculture, such as water supplies and rural roads that facilitate access to markets. It can also assist smallholder producers through developmen-

tal-friendly policies to enhance production capacities, and encourage efforts to diversify and increase the value-added of agricultural products.

On the topic of desertification, land degradation and drought (DLDD), the G77 emphasized that these issues represent a serious concern for developing countries. Addressing this phenomenon will enable countries to deal with several global policy challenges, such as food security and adaptation to climate change.

While parties to the UN Convention to Combat Desertification should fully support the implementation of that Convention, the promotion of exchange of knowledge on best practices and lessons learned from global and regional cooperation in combating desertification, land degradation and drought should be encouraged.

Sustainable development goals and targets on DLDD should address the drivers of DLDD. They should also look at the preventive and corrective aspects of DLDD. Sustainable land use by all and for all could be the goal, with targets on sustainable land and forest management, preservation, and regeneration or restoration of degraded lands.

Reiterating the Group's statements at the previous two OWG meetings, Ambassador Thomson stressed the importance of mobilizing and channelling adequate and predictable financial resources, in this case to help address the effects of desertification and improve the livelihoods of vulnerable people affected by them.

The Group supported commitment to achieve a land-degradation-neutral world in the context of sustainable development and the establishment of an intergovernmental scientific panel on desertification, land degradation and drought.

The water and sanitation challenge

The G77 also emphasized that it is of great concern that today, about 2.5 billion people still live without improved sanitation, and over 800 million people are without access to an improved water source, and many more remain without safe and sustainable water supply. The water challenge goes beyond access to water, sanitation and hygiene, it stressed. The vital importance of water to sustain habitat and species' survival

(continued on page 16)

The Role of China in Regional South-South Trade in the Asia-Pacific: Prospects for Industrialization of the Low-Income Countries

By Mehdi Shafaeddin

BASED on his proposed alternative theoretical framework for South-South trade as a vehicle for industrialization and development and refuting the "decoupling" thesis – that is, that East Asian countries are decoupled from the business cycle in developed countries – the author analyzes the merits and shortcomings of China's regional trade with its partners. Moreover, considering the growing weight of China in the global production network and international trade, he proposes policies for the industrialization and development of the partner countries in the context of strengthening China's role as a growth "pole". He suggests, inter alia, the need for industrial collaboration among the low-income countries of the region – which benefit less than others from the dynamics of the Chinese economy as a "hub"

– complemented by adjustment assistance by China and the newly industrializing economies (NIEs). He also proposes technological cooperation among China's trading partners which are currently involved in production sharing in a limited number of electrical and electronic products for export to third markets in developed countries. Such cooperation would be aimed at upgrading their industrial structure and reducing their vulnerability to changes in the economic strategy of China and to the business cycle in the developed countries.

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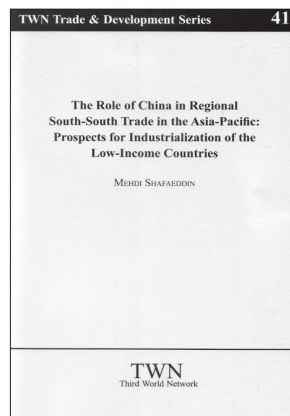
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EU-US deal could unleash a “corporate litigation boom”

By enabling companies to sue governments even for enacting public-interest policies, the proposed trade and investment pact between the EU and the US would facilitate a transatlantic corporate power grab, a paper by two watchdog groups cautions.

by Kanaga Raja

GENEVA: Investor-state dispute settlement under the proposed Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States would empower EU- and US-based corporations “to engage in litigious wars of attrition to limit the power of governments on both sides of the Atlantic”, Corporate Europe Observatory (CEO) and the Transnational Institute (TNI) have warned.

In a new briefing paper titled “A Transatlantic Corporate Bill of Rights” released in June, CEO and TNI said that the tremendous volume of transatlantic investment, with both partners accounting for more than half of foreign direct investment in each other’s economies, hints at the sheer scale of the risk of such litigation wars.

According to CEO and TNI, leaked draft versions of the EU negotiating mandate for the far-reaching free trade agreement with the US reveal the European Commission’s plans to enshrine more powers for corporations in the deal.

The Commission’s proposal for investor-state dispute settlement under TTIP would enable US companies investing in Europe to skirt European courts and directly challenge EU governments at international tribunals, whenever they find that laws in the area of public health, environmental or social protection interfere with their profits. EU companies investing abroad would have the same privilege in the US, said the briefing paper.

In a press release accompanying the briefing paper, Cecilia Olivet from TNI said: “It is only a matter of time before European and US taxpayers start paying the costs. Not only will our money go to pay for expensive lawsuits that compensate big business, but we will also pay as critical environmental and social regulations and policies are dismantled to clear the way for corporate profiteering.”

Pia Eberhardt of CEO, the report’s

author, said: “Politicians might think they are acting in the interests of ‘their’ investors overseas, but they are in fact exposing themselves to predatory legal action from corporations. It is high time that Parliaments on both sides of the Atlantic grasp the political and financial risks of investor-state dispute settlement and axe plans for this looming transatlantic corporate bill of rights.”

Investor-state disputes

The CEO-TNI report notes that as the main users of existing international investment treaties, US and European companies have driven the investor-state litigation boom of the past two decades.

By far the largest number of the 514 known disputes initiated by the end of 2012 were launched by US investors. They have filed 24% (123) of all cases. Next in line are investors from the Netherlands (50 cases), the UK (30) and Germany (27). Together, investors from EU member states have filed 40% of all known cases.

The US has faced over 20 investment claims under the investment chapter of the North American Free Trade Agreement (NAFTA), while 15 EU member states are known to have faced one or more investor-state challenges. The Czech Republic is the fifth most sued country in the world, the report says.

“EU and US companies have used these lawsuits to challenge green energy and medicine policies, anti-smoking legislation, bans on harmful chemicals, environmental restrictions on mining, health insurance policies, measures to improve the economic situation of minorities and many more. Now they are enthused about the prospect of an investment chapter in the EU-US free trade deal (TTIP), the biggest investment deal ever negotiated.”

The report highlights some “embellish” investor-state disputes such as

Vattenfall v. Germany, whereby in 2012, Swedish energy giant Vattenfall launched an investor-state lawsuit against Germany seeking 3.7 billion euros in compensation for lost profits related to two of its nuclear power plants. The case followed the German government’s decision to phase out nuclear energy after the Fukushima nuclear disaster.

Also cited was Philip Morris v. Uruguay and Australia: through bilateral investment treaties, US tobacco giant Philip Morris is suing Uruguay and Australia over their anti-smoking laws. The company argues that warning labels on cigarette packs and plain packaging prevent it from effectively displaying its trademark, causing a substantial loss of market share.

When Argentina froze utility rates (energy, water etc.) and devalued its currency in response to its 2001-02 financial crisis, it was hit by over 40 lawsuits from companies like CMS Energy (US) and Suez and Vivendi (France). By the end of 2008, awards against the country had totalled \$1.15 billion.

According to the report, in May 2013, Slovak and Cypriot investors sued Greece for the 2012 debt swap which Athens had to negotiate with its creditors to get bailout money from the EU and the International Monetary Fund (IMF).

On the basis of NAFTA, whose member states are the US, Canada and Mexico, US company Lone Pine Resources Inc. is demanding \$250 million in compensation from Canada. The ‘crime’: the Canadian province of Quebec had put a moratorium on “fracking”, addressing concerns about the environmental risks of this new technology to extract oil and gas from rocks.

The report notes that corporate lobby groups in both the EU and the US have pressured for the inclusion of investor-state arbitration in TTIP. The European employers’ federation, BusinessEurope, the US Chamber of Commerce, AmCham EU, the Transatlantic Business Council and other corporate lobby heavyweights all advocate such privileges for foreign investors.

“This is also part of a hope that an EU-US deal would set a global ‘gold standard’, a model for investment protection for other agreements around the world.”

The report asserts that if big busi-

ness has its way, TTIP's investment protection provisions will be even more slanted in favour of corporations than current EU and US practice.

US energy giant Chevron, too, is lobbying for an investment chapter which goes beyond the current US model treaty. Having been sued several times by Canadian companies under NAFTA, the US has twice revised its template for international investment treaties to better protect its policy space. Chevron wants a revival of some of these excessive investor rights such as the "umbrella clause" in TTIP, which would considerably expand a state's obligations.

The report notes that Chevron is currently engaged in a controversial legal battle with Ecuador. The company initiated arbitration to avoid paying \$18 billion to clean up oil-drilling-related contamination in the Amazonian rainforest, as ordered by Ecuadorian courts. "The case has been lambasted as 'egregious misuse' of investment arbitration to evade justice. No wonder Chevron dedicated its complete contribution to the US government's TTIP consultation to investment protection, 'one of our most important issues globally' as they put it."

In Europe, says the report, Chevron wants the "strongest possible protection" from government measures to "mitigate the risks associated with large-scale, capital intensive, and long term projects ... such as developing shale gas". Because of its health and environmental impacts, several EU governments have decided to put a break on shale gas development ("fracking").

"TTIP's proposed investment protection chapter would empower energy companies like Chevron to challenge such precautionary measures because it would oblige governments 'to refrain from undermining legitimate investment-backed expectations', as Chevron demands," the report further states, adding that the mere threat of a million-euro investor-state lawsuit could be enough to scare governments into submission and weaken or prevent fracking bans and strict regulation.

Eberhardt from CEO said, "Chevron's agenda shows what investor-state dispute settlement is all about. It's a power grab from corporations – to rein in democracy and policies to protect people and the planet."

The big business of arbitration

The CEO-TNI report also found that whenever policymakers in the EU and the US have set out to change international investment treaties in recent years, law firms and investment arbitrators together with industry associations have mounted fierce lobbying campaigns to counter reforms to better balance public and private interests.

"This is not surprising – investment arbitration is big business for them. The tabs racked up by elite law firms can be US\$1,000 per hour, per lawyer in investment treaty cases, with whole teams handling them. The private lawyers who decide these disputes, the arbitrators, also line their pockets, earning daily fees of US\$3,000 and more."

EU and US lawyers dominate the field, seeking out every opportunity to sue countries. Nineteen of the top 20 law firms representing claimants and/or defendants in such disputes are headquartered in Europe or the US, the large majority of them (14) US firms. Out of the 15 arbitrators who have decided 55% of the total investor-state disputes known today, 10 are from the EU or the US, the report said.

One of the usual arguments for investor-state arbitration – the need to grant legal security to attract foreign investors to countries with weak court systems – "turns to dust" in the context of TTIP, say CEO and TNI. They argue that if US and EU investors already make up more than half of foreign direct investment in each other's economies, then it is clear that investors seem to be happy enough with the rule of law on both sides of the Atlantic. This is confirmed by an internal European Commission report from 2011 stating that "it is arguable that an investment protection agreement with the US would be needed with regard to the rule of law."

The report notes that citizens and organized civil society, on the other hand, oppose investor-state dispute settlement, citing, for example, a statement by the Transatlantic Consumer Dialogue, supported by consumer groups from the EU and the US, as saying that TTIP "should not include investor-state dispute resolution. Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the

well-functioning domestic court systems and robust property rights protections in the United States and European Union."

According to the report, some EU member states also seem to question the need for investment protection clauses between two legal systems which are as sophisticated as in the EU and the US. Some fear a flood of claims from the US with its more aggressive legal culture. There are concerns that the US financial sector could attack policies to tackle Europe's economic crisis such as bailouts and debt restructuring.

On the other hand, member states such as Germany and the Netherlands, which support far-reaching investor rights, rather want to avoid pro-public-interest legal language which is more common in the US and which, in their view, would "dilute" investment protections.

"But the US government and the European Commission seem to be determined to use TTIP to empower foreign investors to bypass local courts and sue states directly at international tribunals when democratic decisions impede their expected profits."

The report finds that in leaked versions of its proposed negotiation mandate, the Commission made detailed suggestions for a "state-of-the-art investor-to-state dispute settlement mechanism" and investor rights which mirror the proposals from business lobby groups.

"The proposal will put many policies at risk and most likely create a chilling effect on governments looking to pass new rules to protect the environment and society," say CEO and TNI.

CEO and TNI stress that it is "high time that governments and parliaments on both sides of the Atlantic grasp the political and financial risks of investor-state dispute settlement and axe the plans for this looming transatlantic corporate bill of rights. The European Parliament in particular should put a leash on the Commission which is obviously disregarding MEPs' [Members of the European Parliament] call for 'major changes' in the international investment regime."

"Why on earth should legislators grant business such a powerful tool to rein in democracy and curb sound policies made in the interest of the public?" they ask. (SUNS7601) □

Africa a “net creditor” to rest of world, new data shows

Resource outflows from Africa far outweigh infusions of foreign aid into the continent, according to a new report.

by Carey L Biron

WASHINGTON: Over the past three decades, Africa has functioned as a “net creditor” to the rest of the world, the result of a cumulative outflow of nearly a trillion and a half dollars from the continent.

The new data, formally released on 29 May by the African Development Bank (AfDB) and Global Financial Integrity, a Washington-based watchdog group, stands in stark contrast to widely held images of Africa receiving massive amounts of foreign aid.

Foreign assistance levels are indeed high for Africa – following on a 2005 pledge among the Group of Eight (G8) rich countries, the continent receives more than \$50 billion a year, making it the world’s most aid-dependent region.

Yet according to the new joint report, the interplay of corruption, tax evasion, criminal activities and other factors resulted in a net outflow of some \$1.4 trillion between 1980 and 2009.

“In development circles we talk a lot about how much aid is going to Africa, and there’s this feeling among some in the West that after we’ve been giving this money for decades, it’s Africa’s fault if the continent’s countries still haven’t developed,” Clark Gascoigne, communications director at Global Financial Integrity (GFI), told Inter Press Service (IPS).

“In fact, our research shows that while the West has been giving money to Africa, far more is flowing out illicitly. Further, you can assume that illicit outflows from other regions would likely lead to high net resource transfers from other developing regions, as well.”

Natural resource management

In Africa, this trend appears to have particularly strengthened over the past decade, during which time some \$30.4 billion every year are thought to have illegally leaked from the continent. Of that, around 83% is thought to have come from North African countries alone.

Over the full three decades, perhaps counter-intuitively, dark-money outflows appear to have originated particularly in resource-rich countries, those most prominently engaged in oil, gas and other natural resource extraction. Some of the most notable include Nigeria, Libya, South Africa and Angola.

Such findings are bolstered by a new index, released in May by the Revenue Watch Institute (RWI), another watchdog group, that for the first time systematically correlated governments’ economic dependency on natural resources and low human development indicators.

The RWI index looked at 58 countries responsible for the vast majority of the world’s petroleum, copper and diamond extraction, and reported that the profits of their extractive sectors added up to more than \$2.6 trillion in 2010, far outweighing Western aid flows. Yet more than 80% of those countries had also failed to put in place satisfactory standards for openness in these sectors – and half hadn’t even taken basic steps in this regard.

“In resource-rich countries, the natural resource sector is usually the main source of illicit financial flows,” the AfDB-GFI study states, noting a finding by the International Monetary Fund (IMF) that Angola’s oil sector in 2002 failed to report around \$4 billion.

“These countries generally lack the good governance structures that would enable citizens to monitor the amount and use of revenues from the natural resource sector. Often, rents and royalties derived from resource management are not used to support the social and economic development of resource-rich countries but instead are embezzled or expended in unproductive ways through corruption and cronyism.”

The impacts of this mass leakage on both African public coffers and foreign development-focused aid are clear.

“The resource drain from Africa over the last 30 years – almost equivalent to Africa’s current gross domestic product – is holding back Africa’s lift-off,” Mthuli Ncube, chief economist and vice-president of the African Development Bank, said on 28 May.

“[But] the African continent is resource-rich. With good resource husbandry, Africa could be in a position to finance much of its own development.”

Role of the West

The new report, released on 29 May at the African Development Bank annual meetings in Morocco, does not look into country-specific drivers of these out-

flows.

Yet while it is clear that differing levels of strengthening of country-level regulatory mechanisms will be required to ensure that natural resource development in Africa benefits public sector aims, it is impossible to ignore the role of Western countries in this ongoing situation.

“While these figures are amazing, we have to recognize that they’re being directly facilitated by Western banks and tax havens that allow for the creation of anonymous shell companies, by Western governments that don’t share tax information and continue to lack adequate money-laundering enforcement,” GFI’s Gascoigne says.

“While the onus for change is on both national and international players alike, the Western countries can control the international component of this dynamic – the international financial structure.”

The AfDB and GFI analysts are encouraging strengthened alignment of financial policies between African countries and those countries that are “absorbing” these illicit flows.

The United States, for instance, continues to be the largest incorporator of shell companies in the world, while Gascoigne says there is also far more that Washington and other Western capitals can do on swapping tax information and refusing to tolerate bank and tax haven secrecy.

In this regard, many observers are eagerly awaiting the G8 summit slated to be held in the United Kingdom in mid-June. The first part of this year has seen unique international momentum build around issues of tax evasion and tax havens, energized particularly by depleted government coffers in the aftermath of the global economic crisis.

British Prime Minister David Cameron, who is hosting the upcoming summit, has taken on the issue of tax evasion as a key priority for his government’s G8 presidency this coming year. He has been widely praised for his recent leadership on the issue, particularly for pushing a new global standard under which governments would automatically share tax information.

European Union countries have now largely aligned themselves with the UK stance. But key to watch at the June summit will be whether the United States, Canada, Japan and Russia agree to sign on to a robust new initiative – or choose instead to stand in the way of greater reform.

“Curtailing these outflows should be paramount to policymakers in Africa and in the West because they drive and are, in turn, driven by a poor business

climate and poor overall governance, both of which hamper economic growth," GFI chief economist Dev Kar, formerly with the IMF, said on 28 May.

"The slower growth rate results in more aid dependency, with foreign taxpayer funds filling the shortfall in domestic revenue – to the extent that tax evasion is a part of illicit flows." (IPS) □

(continued from page 12)

and human existence was also acknowledged in the Muscat Declaration on Water, adopted by the First Ministerial Forum on Water of the G77 in 2009.

The Group was of the view that improving and promoting easy access to water and sanitation production, irrigation and hydro-energy production will lead to tremendous progress in the eradication of poverty and food insecurity, in accordance with the Millennium Development Goals and Integrated Water Resources Management.

In the context of formulating the SDGs, consideration must be given to equitable and universal access to safe drinking water, sanitation and hygiene,

while ground and surface water should be developed and managed sustainably in an integrated manner to satisfy human needs while respecting the fragilities of our ecosystem and its limitations. Also, in order to provide access to water, all states benefiting need to contribute to the costs involved in water infrastructure and maintenance.

OWG process and modalities

The G77 also expressed its concern that, while appreciating the healthy and productive nature of the discussion in the OWG, the outcome or conclusion of the first round of exchange may not have been captured in a manner that signals to members or could give guidance to them on possible elements that may form the basis for future thematic negotiations on the SDGs.

At the closure of the last meeting (17-19 April), a 15-page document of what comprised a compilation of the interventions made was circulated as a summary of discussions. While the Group appreciated this effort, it was worried that should this continue, members will find that come February 2014, too much time

will be spent deciphering these compilations. This will leave member states hard pressed for ample opportunity to engage each other in really meaningful negotiations, it cautioned.

The solution proposed by the G77 is to focus on ensuring that building blocks are created from now until the start of the drafting of the report, so that the best use of time is made. The Group thus proposed that an arrangement be made, for instance, for the OWG co-chairs, in addition to their summary, to also circulate a 6- or 7-bullet-point summary of what they perceive to be the general parameters of consensus of the members during the session. Subsequently, member states should have space and time to react to those bullet points in a constructive manner. Alternatively, members or groups of members could submit written positions on what they perceive to be their take on the broad areas of consensus.

The next session of the OWG is on 17-19 June. It will focus on the themes of employment and decent work for all, social protection, youth, education and culture, as well as health and population dynamics. (SUNS7592) □

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