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WTO misses trade facilitation deadline

The WTO has missed a 31 July deadline to adopt a protocol that would give effect to the Trade Facilitation Agreement reached at its ninth Ministerial Conference last December. This failure to meet the deadline came about after India insisted that the protocol not be approved without a separate, durable solution to the difficulties faced by developing countries holding public food stocks.

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WTO's 31 July "deadline" on TF protocol passes quietly

Differences among member states have resulted in the inability of the WTO to adopt, by 31 July as initially envisaged, a legal instrument that would give effect to a contentious trade facilitation accord.

by Kanaga Raja

GENEVA: The World Trade Organization missed the "31 July midnight deadline" for the adoption of the Protocol of Amendment that would have been put to the membership for a vote and made effective when a two-thirds majority is obtained, and the Trade Facilitation Agreement (TFA) made effective among them.

Several legal experts have questioned this interpretation of the TFA becoming part of Annex 1A of the Marrakesh Agreement.

In line with the earlier statement of the WTO General Council Chair on 25 July (when consensus was denied at the Council), WTO Director-General (D-G) Roberto Azevedo indicated that the missing of this deadline would result in this agenda item – report by the Chairman of the Preparatory Committee on Trade Facilitation – being closed without further action and the General Council meeting, suspended on 25 July, would be formally closed without a protocol being adopted.

Just a couple of hours or so before the midnight deadline, an informal heads-of-delegation meeting convened by Azevedo assembled, and he announced that it was immediately reverting to an informal meeting of the Trade Negotiations Committee (TNC).

Briefing members on the state of play since the suspension of the General Council meeting, the D-G reported that at present "there is no workable solution on the table" and that he did not have any indication that one would be forthcoming.

He further said that he did not have the necessary elements that would lead him to conclude that a breakthrough was possible. "We got closer – significantly closer – but not quite there."

"On the one side we have the firm conviction, shared by many [which in GATT/WTO euphemism or in plain English only meant more than one], that the decisions that ministers reached in Bali cannot be changed or amended in any way – and that those decisions have to be fully respected. And on the other side of the debate we have some who believe that those decisions leave unresolved concerns that need to be addressed in ways that, in the view of others, change the balance of what was agreed in Bali. These are the two sides," he said.

"We have not been able to find a solution that would allow us to bridge that gap. We tried everything we could. But it has not proved possible," Azevedo said. The fact that members did not have a conclusion meant that "we are entering a new phase in our work – a phase which strikes me as being full of uncertainties."

He maintained that this was not just another delay which could simply be ignored or accommodated into a new timetable, but would have consequences that were likely to be significant.

The D-G invited members to use the coming summer break "to think carefully about what the next steps might be", further urging them to "reflect long and hard on the ramifications of this setback".

The D-G, as TNC Chair, did not open the floor for statements.

Speaking to journalists after the meeting, Ambassador Michael Punke of the United States said: "We are obviously sad and disappointed that a very small handful of countries were unwilling to keep their commitments from the December conference in Bali and we agree with the Director-General that that action has put this institution on very uncertain ground."

Some trade observers have pointed out that fears over the WTO losing its credibility over this development are somewhat misplaced in that this was not the first time that the WTO had missed a deadline but just one in a long line of missed deadlines since the WTO came into being on 1 January 1995.

Trade observers further noted that many of these missed deadlines and unfulfilled obligations were over issues that were of importance to the developing countries and the fulfilment of the development mandate of the Doha Round negotiations, and that the vast majority of such missed deadlines were on account of the US and other developed countries withholding their consensus. (See the following article for some examples of the missed deadlines.)

India's stand

A Press Trust of India report in the *Economic Times* on 31 July said that India was sticking to its position on the issue of food security. It said that a series of meetings had been held by US Secretary of State John Kerry and Commerce Secretary Penny Pritzker with senior Indian officials, including Finance Minister Arun Jaitley and Commerce Minister Nirmala Sitharaman, to persuade the Indian government to dilute its tough stand on the Bali package.

(At a joint press conference on 31 July with Indian External Affairs Minister Sushma Swaraj, Kerry said: "Our feeling is obviously that the agreement that was reached in Bali is an agreement that importantly can provide for food security for India. We do not dismiss the concerns India has about large numbers of poor people who require some sort of food assurance and subsistence level. But we believe there is a way to provide for that that keeps faith with the WTO Bali agreement. And so, we are obviously encouraging our friends in India to try to find a path here where there is a compromise that meets both needs. And we think that is achievable, and we hope it is achievable.")

The PTI report quoted India's Commerce Minister Sitharaman (she is Ms. Sitharaman and not a Mr., as Washington-based media persist in reporting) as earlier telling reporters after her meeting with the US officials that India's stand "remains the same."

It further cited an Indian official as saying that India had suggested a way of action to break the deadlock and that it was for the developed countries to respond. The official was also reported to have said that the new formula was "on the broad contours" of India's stand, and that the Bali deal need not collapse even if the 31 July deadline was not met.

According to some reports that could get no official or citable confirmation, on 31 July night at the WTO, in some talks involving the US and India, the US and its supporters (despite Kerry's remarks in New Delhi) were even not agreeable to a time-bound dedicated work programme on other Bali decisions, nor a legal commitment in the General Council that pending a permanent solution to the food security issue, India's programmes for procuring food from resource-poor farmers for supply to poor consumers would be legal and not challenged.

Other media reports noted the threat (reported in some Indian papers citing dubious unnamed sources) that some of the TFA protagonists were considering ignoring India and concluding the agreement among themselves.

An Indian official was reported as ridiculing such reports, noting that the TFA protagonists were aiming at opening up markets of developing countries to exports of transnational corporations (to an extent equivalent to a 10% tariff cut, according to former WTO D-G Pascal Lamy), and efforts to create panic did not make any sense.

Veteran trade analyst and Editor Emeritus of the *South-North Development Monitor (SUNS)*, Chakravarthi Raghavan, noted that in 1985-86, in the era of a more powerful US and more popular president, Ronald Reagan, the US had held out similar threats – in this case, to launch GATT negotiations on services – only to quickly realize that such threats did not work with India, leading to the Punta del Este compromises.

Lack of forward movement

D-G Azevedo had met with the coordinators of some 17 groupings at the WTO on 31 July afternoon. On 29 July, he had met with the coordinators of some 15 groupings. Reportedly on both occasions, there had been no change in positions since the 25 July General Council meeting. Azevedo had also reportedly met with India on 29 July and again on 31 July.

The General Council had met on 25 July to discuss the TFA but later on the same day suspended its meeting due to a lack of consensus on the Protocol of Amendment.

In their interventions at that General Council meeting, many developing countries voiced concerns about the lack, in their view, of forward movement on issues of importance to them in the context of the Bali package.

India made a strong statement wherein it said that it was of the view that the TFA must be implemented only as part of a single undertaking including a permanent solution on food security.

"In order to fully understand and address the concerns of Members, my delegation is of the view that the adoption of the TF Protocol be postponed till a permanent solution on public stockholding for food security is found. In this context we have suggested a modification to the Protocol in the [Preparatory Committee on Trade Facilitation]. We stand by that proposal," said Indian Ambassador Anjali Prasad.

"The Bali outcomes were negotiated as a package and must be concluded as such. Timelines are important but we cannot afford to act in haste in the WTO ignoring the concerns expressed by Members," India added.

India then went on to suggest the following course of action: (1) Establish immediately an institutional mechanism such as a dedicated Special Session of the WTO Committee on Agriculture to find a permanent solution on public stockholding for food security. (2) There must be clear-cut procedures, timelines and outcomes under this institutional mechanism so as to arrive at a permanent solution by 31 December 2014. (3) A similar approach must be adopted on all other development and LDC (least developed country) issues. In this regard, India welcomed the submission of the collective request on services by the LDC group. (4) The progress of these accelerated discussions must be reviewed in October 2014 by the General Council.

"If WTO Members demonstrate the same energy and commitment on the other Bali issues as they have done on TF, we will not only be able to find a permanent solution on the issue of public stockholding for food security but will also be able to implement TF in the agreed timeframe as well as deliver favourable outcomes on all development and LDC issues," India had said.

India had received support from Bolivia, Cuba and Venezuela, who had said that they were now watching a TFA that was about to be implemented without there being progress in the other areas of the Doha Development Agenda, including the other nine Bali outcomes. This was why they would have difficulty joining a consensus on the Protocol of

Amendment while no progress had been made on the areas of interest to developing countries.

Meanwhile, in a statement issued on 31 July, US Trade Representative Michael Froman said: "The United States is fully committed to the multilateral trading system embodied in the WTO. But the WTO system relies on its Members to implement the commitments to which they have agreed."

"Geneva will be quiet for the next several weeks. This is a good time for all of us to reflect on these developments and to consider the implications going forward. We will consult with our trading partners on potential paths forward," he added. *(SUNS7856)* ❐

Misplaced claims of deadline sanctity for TFA

The failure to adopt the trade facilitation protocol by 31 July was only the latest instance in a long line of missed deadlines in WTO talks, many of which involved key issues of interest to developing countries.

by Chakravarthi Raghavan

GENEVA: The impasse at the WTO General Council over the adoption of a Protocol of Amendment to incorporate the Trade Facilitation Agreement (TFA) into Annex 1A of the Marrakesh Agreement, and much of the discussions thereon at the WTO, focused on the importance of meeting the deadline of 31 July included in the Bali Decision on the TFA and the WTO losing all credibility otherwise.

Missing the indicative deadline in the Bali Decision was represented by some WTO members as tantamount to "killing the Bali agreement" and as jeopardizing good faith and goodwill in the negotiations.

However, the inability to meet the deadline for the TF protocol was only one in a long line of missed deadlines from the inception of the WTO on 1 January 1995: those deadlines mandated by WTO Ministerial Conferences and which were thus "Ministerial political commitments", and those which were legally binding mandated deadlines set by the Marrakesh Agreement.

A review of the track record of the WTO negotiations under the Doha mandate reveals a long list of missed deadlines and unfulfilled obligations. Many of these are central to the demands of developing countries and the fulfilment of the development mandate under the Doha negotiations, and a vast majority of the missed deadlines came about because of the US and other developed countries withholding consensus.

The Preparatory Committee on Trade Facilitation was mandated by the Bali Ministerial Conference to draw up a Protocol of Amendment to insert the TFA into Annex 1A of the Marrakesh Agreement, thus making it part of WTO law and a covered agreement under the WTO Dispute Settlement Understanding. The Bali Decision provided that "the General Council shall meet no later than 31 July 2014 to ... adopt the Protocol drawn up by the Preparatory Committee..." The Preparatory Committee was established under the General Council and is open to all WTO members.

The General Council meeting held on 24-25 July heard a report on the TFA from the Chairman of the Preparatory Committee and the positions of several WTO members in regard to the Agreement. The discussion on the Protocol was subsequently suspended due to lack of consensus.

Several developing-country members, including India, South Africa, Bolivia, Cuba, Venezuela, Zimbabwe and the Solomon Islands, had taken the position that the TFA is not a standalone agreement and that its entry into force must be part of the single undertaking under the Doha negotiations.

In the meetings of the Preparatory Committee, these countries had asked that their position be reflected in the content of the Protocol, through inserting specific language subjecting the entry into force of the TFA to the conclusion of the single undertaking in the Doha Work Programme, as agreed upon in paragraph 47 of the Doha Ministerial Declaration. WTO members taking this position often highlight that they have difficulty joining a consensus on the Protocol while no progress has been made on the areas of interest to developing countries, including the elements of the Bali package where a permanent binding solution was not achieved at the Bali Ministerial Conference.

("According to Mr. Jayant Dasgupta, then Indian ambassador to the WTO, the agenda and format of the [Preparatory Committee] precluded any discussion of other parts of the Bali package, including the food security issue. The earliest this was possible in a comprehensive manner was at the General Council, negotiations on the other parts of the Bali package having been remitted to different bodies in the WTO.")

Some members have argued that a failure to meet the deadline of 31 July set in the Bali Decision would be considered a breach of the Bali mandate agreed by ministers and would put the credibility of the WTO at stake.

In his statement at the General Council session on 25 July, Deputy US Trade Representative Ambassador Michael Punke focused on the importance of keeping commitments and taking obligations seriously at the WTO. In regard to the outcomes of the Bali Ministerial Conference, the US Ambassador said that "there are specific commitments ... which we have made to each other, including the implementation deadlines for the Trade Facilitation Agreement. Today a small number of WTO Members are indicating that they may no longer stand by their commitments to implement the TFA". He added that the deadline of 31 July was "fixed and firm".

The US statement added: "We are extremely discouraged that a small handful of Members in this organization [WTO] are ready to walk away from their commitments at Bali, to kill the Bali agreement, to kill the power of that good faith and goodwill we all shared, to flip the lights in this building back to dark."

South Africa, in its statement to the General Council on 25 July, reminded WTO members that the "repeated failure to deliver meaningful outcomes on issues of interest to the poorest members ... can equally be characterized as harming the credibility of our organization".

Multiple misses

The years of the Doha Round saw multiple deadlines being missed and commitments unfulfilled, many of which are directly concerned with the development mandate under the Round.

The whole Doha Round, launched in 2001, was scheduled to be finalized by 1 January 2005. The Doha Ministerial Declaration provides that "the negotiations to be pursued under the terms of this declaration shall be concluded not later than 1 January 2005".

Soon after the Doha meet and declaration, the then EU Trade Commissioner Pascal Lamy told an informal meeting of Members of the European Parliament that he had bought Europe 10 years for changes to the EU's Common Agricultural Policy (CAP) as the Doha Work Programme could not be completed for at least 10 years. He also went to India to tell businessmen etc that the EU could not cut its agricultural subsidies since it needed to keep farmers on the land.

After missing the 2005 deadline, ministers at the WTO's Hong Kong Ministerial Conference agreed to "complete the Doha Work Programme fully and to conclude the negotiations launched at Doha successfully in 2006". This target was also missed.

In the area of agriculture, a priority issue for developing countries, the Doha Ministerial Declaration provided that "modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003". This deadline went unmet.

Later, at the Hong Kong Ministerial Conference (2005), ministers set the date of 30 April 2006 to complete disciplines on agricultural export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid, including appropriate provisions in favour of least-developed and net food-importing developing countries. This deadline was again missed.

During the post-Bali discussions held in the Committee on Agriculture, some WTO members attempted to discard the revised draft modalities for agriculture reached in 2008, which are the result of years of intensive negotiations. Except for the US, everyone was ready to accept or willing to work on the basis of the 2008 Rev.4 draft modalities text, which, among others, would update the Agreement on Agriculture such that procurement for public stockholding purposes from low-income or resource-poor farmers in developing countries would not be taken into account for AMS (Aggregate Measurement of Support) calculations.

At the 2005 Hong Kong Ministerial Conference, WTO members had agreed to the elimination of all forms of agricultural export subsidies by the end of 2013. The Hong Kong Ministerial Declaration provides that members "agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013". This is another deadline that remains unfulfilled.

Similarly, ministers agreed in the Hong Kong Ministerial Declaration that the modalities for non-agricultural market access (NAMA) were to be established no later than 30 April 2006, but this became another missed deadline.

Several deadlines were missed in regard to the issue of cotton. Ministers convening at the Hong Kong Ministerial Conference had reaffirmed commitment to ensure an explicit decision on cotton within the agriculture negotiations. They agreed to work through the Sub-Committee on Cotton ambitiously, expeditiously and specifically, and to eliminate all forms of export subsidies for cotton provided by developed countries in 2006.

In the area of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and public health, WTO members originally set themselves until 1 December 2007 to formally amend the TRIPS Agreement through ratifying the Protocol of Amendment of the TRIPS Agreement, adopted by the General Council on 6 December 2005. The amendment will formally be built into the TRIPS Agreement when two-thirds of the WTO's members have accepted the change.

The deadline has been extended four times. The latest General Council decision of 26 November 2013 extended the deadline to 31 December 2015.

Under the General Agreement on Trade in Services (GATS), Article X provides for a built-in negotiations mandate on emergency safeguard measures. Article X.1 of the GATS provides that: "There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement." This, in addition to the mandate to negotiate multilateral disciplines to avoid trade-distortive effects of subsidies (Article XV of the GATS), has not been fulfilled.

Several of the deadlines set in the Marrakesh Agreement in terms of mandated further work programmes have also been missed. For example, the end-1998 deadline set for completing a work programme on harmonization of MFN rules of origin remains unfulfilled. The work programme went on and on, and then some issues were referred to the General Council for decisions, where they remain bottled up without conclusion or even consideration.

Double standards

In the General Council session held on 25 July 2014, a member had sounded disappointment with the double standards and selective approach reflected by the narrative of some members when addressing the agreements undertaken in Bali compared to the agreements and commitments agreed over the course of the Doha Round negotiations before the Bali Ministerial Conference. This member noted that some commitments undertaken prior to Bali have been entirely unfulfilled, such as the elimination of cotton subsidies. This member added that several of the rulings by the WTO Dispute Settlement Body (DSB) have been ignored as well.

For example, the United States failed to comply with the ruling of the panel, the Appellate Body and the compliance panel in the case addressing measures affecting the cross-border supply of gambling and betting services (*US – Gambling*). The case had started with a request for consultations in March 2003. The panel report was issued in November 2004, while the Appellate Body report was issued in April 2005. The complainant – Antigua and Barbuda – requested authorization from the DSB, pursuant to Article 22.2 of the Dispute Settlement Understanding (DSU), to suspend the application to the US of concessions and related obligations of Antigua and Barbuda under the GATS and the TRIPS Agreement, and requested the DSB to authorize the suspension of concessions and obligations to the US in respect of intellectual property rights.

Similarly, the US failed to comply with the ruling of the Appellete Body in the case on measures affecting the production and sale of clove cigarettes (*US*

– *Clove Cigarettes*). Consequently, on 12 August 2013, Indonesia requested the authorization of the DSB to undertake remedial action through suspending concessions or other obligations pursuant to Article 22.2 of the DSU. (*SUNS7855*) ❒

This article was written with contributions from Kinda Mohamadieh.

Ten reasons for saying "no" to the North

India's insistence that the issue of food security stocks be resolved alongside agreement on trade facilitation can bring this and other neglected development concerns back to the centrestage of WTO negotiations.

by Ravi Kanth Devarakonda and Phil Harris

GENEVA/ROME: India's decisive stand not to adopt the Protocol of Amendment of the Trade Facilitation Agreement (TFA) unless credible rules were in place for the development issues of the South was met with "astonishment" and "dismay" by trade diplomats from the North, who described New Delhi's position as "hostage-taking" and "suicidal".

It obviously came as something of a shock for representatives of Northern interests that any party should have the brass neck to place the interests of its constituents on the negotiating table. After all, why should such banal issues as food security and poverty get in the way of a trade agenda heavily weighted in favour of the industrialized countries?

In fact, it was India's firm stand for permanent guarantees for public stockholding programmes for food security that turned this trade agenda upside down at the WTO, putting paid to the adoption of the Protocol of Amendment for implementation of the contested TFA for the time being.

On 31 July, India and the United States failed at the WTO to reach agreement on construction of a legally binding decision on a "permanent peace clause" that would further strengthen what was decided for public distribution programmes for food security in developing countries at the ninth Ministerial Conference in Bali, Indonesia, last year.

The Bali decision on food security was one of the nine non-binding best-endeavour outcomes agreed by trade ministers on agriculture and development.

For industrialized and leading economic tigers in the developing world, the TFA – which would harmonize customs procedures in the developing world on a par with the industrialized countries – is a major mechanism for market access into the developing and poorest countries.

The failure to reach agreement came during separate closed-door meetings held by WTO Director-General Roberto Azevedo with India and the United States in an attempt to break the impasse between the world's two largest democracies.

New Delhi was demanding nothing more than credible global trade rules to ensure that "development," including the challenges of poverty, in the countries of the South take precedence over the cut-throat mercantile business interests of the transnational corporations in the North.

Unfinished business

Trade diplomats from several developing and poorest countries in Africa, South America and Asia say India's "uncompromising" stance will force countries of the North to return to the negotiating table to address the neglected issues in the Bali package concerning agriculture and development.

These issues are at the heart of the unfinished business in the Doha Development Agenda (DDA) negotiations, the current round of trade negotiations aimed at further liberalizing trade.

"It is important to keep the battle alive and India has ensured that the big boys cannot simply walk away with the trade facilitation agreement without addressing the concerns on food security and other major issues," one African official said.

The industrialized countries and some rising economic tigers in the developing world are unhappy that they cannot now take home the TFA without addressing the problem raised by India and other developmental issues in the Doha Development Agenda negotiations.

Many developing and poor countries in Africa and elsewhere were opposed to the TFA but they were "arm-twisted" and "muzzled" by the leading superpowers over the last three months. African countries, for example, were forced to change their stand after pressure from the United States, the European Union and other countries.

The TFA was sold on false promises that it would add anywhere up to $1 trillion to the world economy.

During the Bali meeting last year, *The Economist* of London, for example, gave two different estimates – $64 billion and $400 billion – as gains from the TFA, while the International Chamber of Commerce gave an astronomical figure of $1 trillion without any rational basis.

"Those predicted gains [from the TFA] evaporate when one looks at the assumptions behind them, such as the assumption that all countries in the world would gain the same amount of income from a given increase in exports," said Timothy A. Wise and Jeronim Capaldo, two academics from the Global Environment and Development Institute at Tufts University in the US.

At one go, the TFA will provide market access for companies such as Apple, General Electric, Caterpillar, UPS, Pfizer, Samsung, Sony, Ericsson, eBay, Hyundai, Huawei and Lenovo to multiply their exports to the poorest countries.

It would drive away scarce resources for addressing bread-and-butter issues in the poor countries and direct them towards creating costly trade-related infrastructure for the sake of exporters in the industrialized world.

Here are 10 reasons why trade diplomats from the developing and poorest countries say India's stand will bolster their development agenda:

1. India's stand on food security brings agriculture, particularly the unfinished business in the DDA negotiations, back to centrestage.

2. The Doha trade negotiations were to have been concluded by 2005 but remain stalled because a major industrialized country put too many spanners in the negotiating wheel.

3. Major industrialized countries have been cherry-picking issues from the DDA which are of interest to them while giving short shrift to core "developmental" issues.

4. Issues agreed in the Doha negotiations, such as the "July package" agreed on 1 August 2004, the Hong Kong Ministerial Declaration of December 2005 and the un-bracketed understandings of the December 2008 Fourth Revised Draft Modalities for Agriculture, have all been pushed to the backburner because one major country does not want to live up to them.

5. The Fourth Revised Draft Modalities for Agriculture provided an explicit footnote to enable the developing countries to continue with their public stockholding programmes for food security. That footnote was the result of sustained negotiations and a compromise solution among key WTO members such as the United States, the European Union, India, Brazil, Australia and China, but the United States refused to accept the footnote because of opposition from its powerful farm lobbies.

6. Trade-distorting practices in cotton which are harming producers in Benin, Burkina Faso, Mali and Chad are supposed to be addressed "ambitiously", "expeditiously" and "specifically" by the distorting countries in the North. But cotton is now being swept under the carpet because a major industrialized country does not want to address the issue because of its farm programme.

7. Trade facilitation was one of the Doha issues but not the main item of the agenda at all. It was actually dropped from the Doha agenda in Cancun, Mexico, in 2003 and was brought back in 2004 due to pressure from the United States and the European Union. The core issues of the Doha agenda were agriculture, services and developmental flexibilities.

8. A major industrialized country which pocketed several gains during the negotiations refuses to engage in "give-and-take" negotiations based on the above mandates and has turned the Doha Round upside down.

9. Industrialized countries along with some developing countries have formed a coalition of countries willing to pursue what are called "plurilateral" negotiations, only to undermine the DDA negotiations which are multilateral and based on what is called a "single undertaking" (that is, nothing is agreed until everything is agreed). Currently, these countries are negotiating among themselves on services, expansion of information technology products

(continued on page 10)

US shelves move on "factoryless goods" manufacturers

The US has put off plans to redesignate US firms which offshore their manufacturing as "factoryless goods producers". ***Chakravarthi Raghavan*** **explains why this goes beyond a question of terminology and why it matters to developing countries.**

GENEVA: The United States appears to have shelved, at least for now, its move to reclassify US corporations offshoring their manufacturing as "factoryless goods" manufacturers.

This is perhaps the counterpart of the so-called "global value chains" theory that the World Trade Organization (WTO) and its economists have been promoting, a concept that they had unveiled in 2011 (see C. Raghavan, "WTO catching up with two-century-old manufacturing models", *TWE* No. 495). Most recently the Organization for Economic Cooperation and Development (OECD) and the WTO advocated this concept in a paper presented by them to a meeting of finance ministers of the G20 countries in Sydney.

According to a post on the Eyes on Trade blog by Global Trade Watch (GTW) (a division of US-based public interest organization Public Citizen), which had initially alerted US civil society groups to the US administration move, some 26,000 comments, many from labour groups and other civil society organizations, were filed in opposition to the "factoryless goods" proposal.

This large opposition appears to have induced the US administration to shelve the move for now.

Whether the US shelving of the move will have an impact on the Paris-based OECD, the rich men's club trying to become an international organization, and the WTO secretariat, which has been pushing the "global value chains" concept, remains to be seen.

The Trade Facilitation Agreement (TFA) promoted by the US and the EU in the WTO would, according to former WTO Director-General Pascal Lamy, result in the equivalent of a 10% tariff cut by developing countries. The developed countries, Lamy said in a recent speech in Australia, need do nothing to implement the TFA.

The costs of implementation of the TFA (including on some infrastructure expenditures outlined by the World Bank) have been estimated by UN development body UNCTAD at about $1-2 billion for developing countries as a group, which would have to divert that money from current social expenditures to comply with WTO obligations. This would be a bonanza for the developed countries, whose corporations would reap these benefits without the developed countries having to pay any price to developing countries at the WTO in the Doha Round!

Deceptive reclassification

GTW said in its post that the US administration proposal "to disguise offshoring" has been shelved after a groundswell of opposition.

The GTW post noted that in July, "we warned of an administration proposal to reclassify US corporations that offshore their manufacturing as 'factoryless goods' manufacturers."

"Calling Apple a 'manufacturer' – though its iPhones are made in Foxconn factories in China – defies common sense," GTW said.

"But why does it matter? Because it would mask the erosion of US manufacturing incentivized by offshoring-friendly policies, including a raft of unfair trade deals. The Orwellian proposal would undermine efforts to replace more-of-the-same policies with a fair trade model."

GTW said that "under the administration's proposal for reclassification (now shelved), reported US 'manufacturing' jobs and wages would balloon overnight, as brand managers and programmers would suddenly be counted as 'manufacturing' workers.

"The broad reclassification initiative would also deceptively deflate the large US manufacturing trade deficit. US imports of made-in-China iPhones would not be tallied as manufactured goods imports but as imports of Foxconn's 'services,' while iPhones exported from China to, say, Europe would actually be re-branded as 'US' manufacturing exports."

During an official period to comment on the proposal, Public Citizen, many labour groups and other allies invited people to send their comments to the administration. "The response was overwhelming," GTW said.

In short order, about 26,000 people filed comments in opposition to the "factoryless goods" proposal. The last time the administration tried to implement this proposal, it received 10 comments.

On 8 August, the administration responded. The following announcement appeared in the US Federal Register: "Given these initial research results and the large number of public comments submitted on the topic of FGPs [Factoryless Goods Producers], OMB [the Office of Management and Budget] here announces that the FGP recommendation will not be implemented in 2017."

GTW said that the voice of reason "contributed to a chorus that helped convince the administration to rethink the wisdom of categorizing firms that do not manufacture anything as US manufacturers. Advocacy, as it turns out, can work."

GTW added: "Thanks to the groundswell of public opposition (and the contributions of some clear-minded naysayers within the administration), the 'factoryless goods' proposal has been shelved. But it has not been dust-binned.

"OMB makes clear that the 'factoryless goods' fantasy will likely emerge again, albeit in a different form: 'Without the deadline imposed by the 2017 NAICS revisions, the relevant statistical agencies will now have the opportunity to complete the additional research, testing, and evaluation needed to determine the feasibility of developing methods for the consistent identification and classification of FGPs that are accurate and reliable. This process will also be informed by questions raised in public comments. Results of this research, testing, and evaluation could lead to a different FGP proposal for consideration or implementation.'

"As 'factoryless goods' proponents regroup and decide what to do next, we will remain vigilant. Future bouts of pressure will likely be needed to keep our data, and the policymaking that it informs, free of distortion. As we push to change our trade policies, we will need to keep pushing against efforts to simply change our numbers. But for now, kudos," said GTW.

Hapless developing countries, being pushed and pressured at the WTO to accept the TFA, perhaps need to thank US civil society activists for putting a spoke in the wheel of the march of the "global value chains" that would have relegated the developing world forever to be "hewers of wood and drawers of water". *(SUNS7864)* ❐

World Bank urged to rethink reforms to business-friendliness report

Civil society groups have called for an overhaul of the methodology behind an annual World Bank report which they say unduly promotes deregulatory policies.

by Carey L. Biron

WASHINGTON: Civil society groups from several continents are stepping up a campaign urging the World Bank to strengthen a series of changes currently being made to a major annual report on countries' business-friendliness.

The World Bank is in the final stages of a years-long update to its *Doing Business* report, one of the Washington-based development institution's most influential analyses yet one that has also become increasingly controversial. Critics now say the first round of changes, slated to go into effect in October, don't go far enough.

On 25 August, a coalition of 18 development groups, watchdog organizations and trade unions called on the World Bank Group to take "urgent action" to implement "significant changes" to the *Doing Business* reforms. In particular, they are asking the Bank to adhere more closely to detailed recommendations made last year by a Bank-commissioned external review panel chaired by Trevor Manuel, a former planning and finance minister for South Africa.

"It looks like the flaws found by the Independent Panel chaired by Trevor Manuel will be ignored and its recommendations are nowhere close to being implemented," Aldo Caliari, director of the Rethinking Bretton Woods Project at the Center of Concern, a Catholic think-tank here, told Inter Press Service (IPS). "This is in spite of a wide chorus of civil society organizations and shareholders that supported them."

While the World Bank's mission is to fight global poverty, Caliari and others dispute whether the *Doing Business* report's metrics are pertinent to poor communities. Others say they can be outright detrimental.

Both civil society investigations and the Manuel commission have suggested "how little relevance the areas and indicators have to the reforms that matter to small and medium companies in developing countries," Caliari says. "They seem far more oriented to support operations of large transnationals in those countries."

Outsized influence

Such concerns stem from the outsized influence that the *Doing Business* report has built up, particularly in the developing world, since it was introduced in 2003. Reportedly, the report is used by some 85% of global policymakers.

The core of the report remains a simple aggregated ranking of countries, known as the Ease of Doing Business index. While based on a complex series of business-friendliness metrics, the high profile of the index results has inevitably led governments to compete among one another to raise their country's ranking and, hopefully, strengthen foreign investment.

Yet a direct effect of this competition, critics say, is governments being pushed to adhere to a uniform set of policy recommendations. These include lowering taxes and wages and weakening overall industry regulation, thus potentially endangering the poor.

"[T]he report's role is to inform policy, not to outline a normative position, which the rankings do," the 18 groups wrote to World Bank Group President Jim Kim at the end of July. "*Doing Business* needs to become better aligned with moves towards greater country-owned and led development and an appreciation of the importance of a country's circumstances, stage of development and political choices."

In its report last June, the Manuel commission likewise urged the Bank to drop the ranking system entirely, noting that this constituted "the most important decision the Bank faces with regard to the *Doing Business* report."

In response, the Bank is reforming the methodology behind its ranking calculations. In part, this includes broadening its analysis to use data from two cities in most countries, rather than just one. More broadly, the new calculations will constitute an effort simultaneously to continue to offer a relative score for each country but also to decrease the importance of the specific ranking.

"This approach will provide users with additional information by showing the relative distances between economies in the ranking tables," an announcement on the changes stated in April. (The Bank was unable to provide additional comment by this story's deadline.)

"By highlighting where economies' scores are close, the new approach will reduce the importance of difference in rankings," the announcement continues. "And by revealing where distances between scores are relatively greater, it will give credit to governments that are reforming but not yet seeing changes in rankings."

Some development scholars have pushed against the Manuel commission's recommendations on the index, defending the need for the bank to maintain its aggregate rankings in some form.

"The *Doing Business* report isn't a research exercise – it's a policymaking tool. Because of the rankings it has a unique value, particularly for those countries that have a long way to go on economic reform," Scott Morris, a senior associate at the Center for Global Development, a think-tank here, told IPS after the Manuel commission's report was published.

"Internally, it gives government officials something simple and targeted to latch onto, much more than a 500-page report would do. It's a public relations exercise but with reasonably solid metrics behind it, and it's the joining of these two things that makes *Doing Business* valuable in the policy world."

Yet others warn that the rankings themselves continue to be problematic, even in their new form.

The reforms are "not satisfactory, as the rankings will continue to influence the policy agenda of many developing countries despite their methodological flaws," Tiago Stichelmans, a policy and networking analyst at the European Network on Debt and Development, told IPS in an e-mail.

"The problem of the rankings is the fact that they are based on regulatory measures in a single city (which is due to become two cities) for every country and are therefore irrelevant to many communities. The rankings also have a bias in favour of deregulatory measures that have limited impact on development."

Of course, many would support the idea of tracking country-by-country policies aimed at encouraging industry to help bolster development metrics. But Stichelmans says this would require major changes, including a move away from the report's current focus on reforms to the business environment.

"A shift from promoting low tax rates and labour deregulation to taxes paid, decent jobs created and [small and medium enterprises] supported would be a step in the right direction," he says.

Ideas from NGOs have included indicators on corruption and human rights due diligence, Stichelmans continues, "but this must be accompanied by a drastic overhaul."

For now, some of the newly announced changes are expected to be incorporated into the *Doing Business* report for 2015, slated to be released in late October. Other reforms, including some yet to be announced, will be introduced in future reports. *(IPS)* ❐

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and environmental goods even though these issues are being negotiated in the Doha Round.

10. Delay in the adoption of the trade facilitation protocol will pave the way for a healthy debate to reinvigorate the multilateral trading system which is being undermined by those who created it in 1948. The developing and poor countries want credible and balanced multilateral trading rules to replace what was agreed over 25 years ago in order to continue their "developmental" programmes with a human face.

Herein lies the crux of the issue – are the major powers of the North prepared to go along with a global trading system that puts the interests of the majority of the world's people before their own interests? *(IPS)* ❐

Cry for Argentina: Fiscal mismanagement, odious debt or pillage?

Argentina's debt travails highlight the urgency of having a sovereign debt restructuring system or, even better, international monetary reform that would preclude the need for such restructuring in the first place.

by Ellen Brown

SONOMA (UNITED STATES): Argentina has now taken the US to The Hague for blocking the country's 2005 settlement with the bulk of its creditors. The issue underscores the need for an international mechanism for nations to go bankrupt.

Better yet would be a sustainable global monetary scheme that avoids the need for sovereign bankruptcy.

Argentina was the richest country in Latin America before decades of neoliberal and IMF-imposed economic policies drowned it in debt. A severe crisis in 2001 plunged it into the largest sovereign debt default in history.

In 2005, it renegotiated its debt with most of its creditors at a 70% "haircut." But the opportunist "vulture funds," which had bought Argentine debt at distressed prices, held out for 100 cents on the dollar.

Paul Singer's Elliott Management has spent over a decade aggressively trying to force Argentina to pay down nearly $1.3 billion in sovereign debt. Elliott would get about $300 million for bonds that Argentina claims it picked up for $48 million. Where most creditors have accepted payment at a 70% loss, Elliott Management would thus get a 600% return.

In June 2014, the US Supreme Court declined to hear an appeal of a New York court's order blocking payment to the other creditors until the vulture funds had been paid. That action propelled Argentina into default for the second time in this century – and the eighth time since 1827.

On 7 August, Argentina asked the International Court of Justice in The Hague to take action against the United States over the dispute.

Who is at fault? The global financial press blames Argentina's own fiscal mismanagement, but Argentina maintains that it is willing and able to pay its other creditors. The fault lies rather with the vulture funds and the US court system, which insist on an extortionate payout even if it means jeopardizing the international resolution mechanism for insolvent countries. If creditors know that a few holdout vultures can trigger a default, they are unlikely to settle with other insolvent nations in the future.

Blame has also been laid at the feet of the International Monetary Fund (IMF) and the international banking system for failing to come up with a fair resolution mechanism for countries that go bankrupt. And at a more fundamental level, blame lies with a global debt-based monetary scheme that forces bankruptcy on some nations as a mathematical necessity. As in a game of musical chairs, some players must default.

Most money today comes into circulation in the form of bank credit or debt. Debt at interest always grows faster than the money supply, since more is always owed back than was created in the original loan. There is never enough money to go around without adding to the debt burden.

As economist Michael Hudson points out, the debt overhang grows exponentially until it becomes impossible to repay. The country is then forced to default.

Fiscal mismanagement or odious debt?

Besides impossibility of performance, there is another defence Argentina could raise in international court – that of "odious debt." Also known as illegitimate debt, this legal theory holds that national debt incurred by a regime for purposes that do not serve the best interests of the nation should not be enforceable.

The defence has been used successfully by a number of countries, including Ecuador in December 2008, when President Rafael Correa declared that its debt had been contracted by corrupt and despotic prior regimes. The odious-debt defence allowed Ecuador to reduce the sum owed by 70%.

In a compelling article on the Global Research website in November 2006, Adrian Salbuchi made a similar case for Argentina. He traced the country's problems back to 1976, when its foreign debt was just under $6 billion and represented only a small portion of the country's GDP. In that year:

"An illegal and de facto military-civilian regime ousted the constitutionally elected government of president María Isabel Martínez de Perón [and] named as economy minister, José Martinez de Hoz, who had close ties with, and the respect of, powerful international private banking interests.

"With the Junta's full backing, he systematically implemented a series of highly destructive, speculative, illegitimate – even illegal – economic and financial policies and legislation, which increased Public Debt almost eightfold to $46 billion in a few short years.

"This intimately tied-in to the interests of major international banking and oil circles which, at that time, needed to urgently recycle huge volumes of 'Petrodollars' generated by the 1973 and 1979 Oil Crises.

"Those capital inflows were not invested in industrial production or infrastructure, but rather were used to fuel speculation in local financial markets by local and international banks and traders who were able to take advantage of very high local interest rates in Argentine Pesos tied to stable and unrealistic medium-term US dollar exchange rates."

Salbuchi detailed Argentina's fall from there into what became a $200 billion debt trap. Large tranches of this debt, he maintained, were "odious debt" and should not have to be paid: "Making the Argentine State – i.e., the people of Argentina – weather the full brunt of this storm is tantamount to financial genocide and terrorism ... The people of Argentina are presently undergoing severe hardship with over 50% of the population submerged in poverty … Basic universal law gives the Argentine people the right to legitimately defend their interests against the various multinational and supranational players which, abusing the huge power that they wield, directly and/or indirectly imposed complex actions and strategies leading to the Public Debt problem."

Of President Nestor Kirchner's surprise 2006 payment of the full $10 billion owed to the IMF, Salbuchi wrote cynically: "This key institution was instrumental in promoting and auditing the macroeconomic policies of the Argentine Government for decades …

Many analysts consider that … the IMF was to Argentina what Arthur Andersen was to Enron, the difference being that Andersen was dissolved and closed down, whilst the IMF continues preaching its misconceived doctrines and exerts leverage … [T]he IMF's primary purpose is to exert political pressure on indebted governments, acting as a veritable coercing agency on behalf of major international banks."

Sovereign bankruptcy and the "Global Economic Reset"

Needless to say, the IMF was not closed down. Rather, it has gone on to become the international regulator of sovereign debt, which has reached crisis levels globally. Total debt, public and private, has grown by over 40% since 2007, to $100 trillion. The US national debt alone has grown from $10 trillion in 2008 to over $17.6 trillion today.

At the World Economic Forum in Davos in January 2014, IMF Managing Director Christine Lagarde spoke of the need for a global economic "reset."

National debts have to be "reset" or "readjusted" periodically so that creditors can keep collecting on their exponentially growing interest claims, in a global financial scheme based on credit created privately by banks and lent at interest. More interest-bearing debt must continually be incurred, until debt overwhelms the system and it again needs to be reset to keep the usury game going.

Sovereign debt (or national) in particular needs periodic "resets," because unlike for individuals and corporations, there is no legal mechanism for countries to go bankrupt. Individuals and corporations have assets that can be liquidated by a bankruptcy court and distributed equitably to creditors. But countries cannot be liquidated and sold off – except by IMF-style "structural readjustment," which can force the sale of national assets at firesale prices.

A Sovereign Debt Restructuring Mechanism (SDRM) was proposed by the IMF in the early 2000s, but it was quickly killed by Wall Street and the US Treasury. The IMF is working on a new version of the SDRM, but critics say it could be more destabilizing than the earlier version.

Meanwhile, the IMF has backed collective action clauses (CACs) designed to allow a country to negotiate with most of its creditors in a way that generally brings all of them into the net. But CACs can be challenged, and that is what happened in the case of the latest Argentine bankruptcy. According to Harvard Professor Jeffrey Frankel: "[T]he US court rulings' indulgence of a parochial instinct to enforce written contracts will undermine the possibility of negotiated restructuring in future debt crises."

We are back, he says, to square one.

Better than redesigning the sovereign bankruptcy mechanism might be to redesign the global monetary scheme in a way that avoids the continual need for a bankruptcy mechanism. A government does not need to borrow its money supply from private banks that create it as credit on their books.

A sovereign government can issue its own currency, debt-free. But that interesting topic must wait for a follow-up article. Stay tuned. *(IPS)* ❐

Ellen Brown can be found on her Web of Debt Blog (ellenbrown.com).

Did Argentina default or not? It's more than semantics

Apart from raising questions of whether Argentina has defaulted on its bond repayments, the country's debt dispute with vulture funds has also thrown light on "the most savage face of international financial capital."

by Fabiana Frayssinet

BUENOS AIRES: Argentina's supposed "default", an unprecedented case in the history of world capitalism, sets a legal, political and financial precedent that indicates the need for concrete measures regarding the fine line between legal, ethical business activities and criminal usury.

In the debate, the orthodox financial sectors say Argentina's failure to comply with US Judge Thomas Griesa's ruling means it has once again defaulted, while others argue that it has actually honoured its commitments and made its payments, and the fact that the funds have not reached the creditors is not the government's fault.

"Preventing someone from paying is not default," said President Cristina Fernandez in a 31 July nationally televised address, after a meeting with the so-called vulture funds – opportunistic investors who purchase the debt of heavily indebted countries at pennies to the dollar and then vigorously pursue full repayment in court – which failed to come up with a solution to the conflict.

"Now they invented a new term: 'selective default'. It doesn't exist. Preventing someone from taking our payments is not default. I told them they would have to invent a new word," she said with irony.

At a 30 July meeting in New York with Argentine officials, the mediator named by the US court, Daniel Pollack, rejected Argentina's offer to restructure the debt in the hands of "holdout" creditors – those who did not agree to the 2005 or 2010 debt swaps.

Since Argentina defaulted on nearly $100 billion in debt in late 2001, during the worst economic crisis in the country's history, 92.4% of the bonds have been restructured at a deep discount, with lower interest rates and at longer terms. But a group of hedge funds that refused to participate in the two debt restructurings sued for full payment of $1.3 billion in Argentine bonds in federal court in New York.

The offer made by Argentina in the 30 July negotiations was for the holdouts to restructure their debt in conditions similar to those accepted earlier by the vast majority of creditors – under late president Nestor Kirchner (2003-07) in 2005, and under his successor and widow Fernandez in 2010.

30 July was the deadline to pay $539 million in interest due on the discount bonds.

The Fernandez administration had deposited the funds with the bond trustee, the Bank of New York Mellon (BoNY Mellon). But Judge Griesa blocked the payments to the bondholders because the Argentine government ignored his order to also pay the hedge funds.

"Unfortunately, no agreement was reached and the Republic of Argentina will imminently be in default," Pollack said after the meeting in New York. "Default is not a mere 'technical' condition, but rather a real and painful event that will hurt real people."

In a 1 August court hearing, Argentina's representatives unsuccessfully demanded that Pollack be removed as mediator, because of his remarks.

Some credit rating agencies lowered the rating on Argentina's foreign currency bonds to "selective default", while the judge avoided using that term in the 1 August hearing but said it was clear that there had been no payments.

Argentine Economy Minister Axel Kicillof said, "Argentina is not in default, because it has already paid. The bondholders did not pick up their payments because of a ban put in place by Judge Griesa.

"They talk about technical default, selective default – some have called it Griesa default, Griefault. No one knows what to call it because it is new, because it doesn't exist, because no one would have thought that a judge could come along and say – after the payment – 'I'm going to order the banks to not meet their contracts.'"

"There is no default"

Alejandro Drucaroff, a lawyer who specializes in banks and finance, pointed out to Inter Press Service (IPS) that the debt swaps accepted by the vast majority of creditors "involved major discounts of capital and interest and very long terms for repayment." But he also stressed that Argentina has punctually met all of its payments.

Some of the holdouts – the 7.6% of the creditors who refused to accept the swaps that offered about 35 cents on the dollar – sold their bonds to hedge funds, two of which later sued in federal court in New York for full payment of $1.3 billion in bonds, roughly 1% of the total debt.

The vulture funds acquired the bonds in 2008 at 20-30% of their nominal value. In 2012, Judge Griesa ordered Argentina to pay the bonds at full face value, plus interest and fees – some $1.5 billion.

On 16 June, the US Supreme Court rejected an appeal by the Argentine government, thus upholding the earlier ruling, which banned Argentina from making payments on the restructured debt unless it also paid the holdouts.

"That ban, which has no legal basis and goes beyond the judge's legal authority, has no practical effect because Argentina met its payments anyway," Drucaroff said.

But after BoNY Mellon was "warned" by Griesa that transferring the money to bondholders would violate his ruling, the bank held on to the funds.

"Griesa does not have the authority to keep Argentina from paying its debts to third parties not involved in the trial. Nor does he have authority over funds that aren't from the US – he can't embargo them," Drucaroff argued.

"There is no default; what this is, is an absolutely unprecedented legal situation," the lawyer added.

"BoNY should be held accountable by the 92.4% of creditors and by Argentina for failing to comply with its function," he said.

"It could argue that it acted the way it did because it could be found guilty of contempt of court as a result of Griesa's ruling – and in my opinion, in that case Griesa would also be responsible for preventing the money from reaching the creditors."

According to University of Buenos Aires economist Fernanda Vallejos, the wording in the contracts makes it clear that a default would only occur "if Argentina didn't pay." "However, the country not only has the will and the capacity to pay, but it has already paid and will continue to do so," she added.

That, in her view, is independent of the credit rating agencies, "which in their eagerness to pave the way for the vulture funds to do business, because of the payment of default insurance, invent terms like 'selective default', which have nothing to do with reality or with Argentina's financial solvency."

The problem, the Argentine government says, is not the $1.5 billion that the judge and the plaintiff are demanding payment of, but the fact that the debt would skyrocket if the bondholders that accepted a discount sued for repayment at full value as well.

The government said the debt could climb as high as $500 billion in that case, which would throw the country back into a crisis similar to the one that triggered the 2001 default in the first place.

Political analyst Alejandro Horowicz said: "A plunge in our foreign reserves of that magnitude would not only affect international trade but would make the fixed exchange rate impossible to control and hence the rest of the reserves would face the same fate and would end up fleeing in a vain attempt to curb the stampede in the price of the dollar."

Vallejos warned that the US court ruling discouraged any process of debt restructuring by favouring "a small minority who represent the most savage face of international financial capital."

"Who would accept a restructuring like Argentina's if by bringing legal action in the courts of any country you can get that level of returns and repayment at full face value?" she asked.

The economist said an international regulatory framework is needed "that would preserve debt restructuring processes and put limits on the complete deregulation of the financial markets which trod roughshod over states and subjugate people."

Vulture funds are already under scrutiny from governments and international bodies, among which there is a growing consensus that they should be reined in.

Nearly all of them "were involved in the latest international financial crisis [which broke out in 2008] by means of a range of speculative manoeuvres that in many cases were actually illegal," Drucaroff said.

"In theory a large part of the 'formal' financial system rejects them and sees them as running counter to business 'ethics'. But no concrete step has been taken to curtail their activities which, to a large extent, are carried out through tax havens," he said.

An area in which the question of whether Argentina defaulted or not is just one tip of the iceberg. *(IPS)* ❐

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Carlos Lopes, reflecting the new thinking unfolding across Africa, commented: "It's not a matter of choosing between state and market as if these were two opposites. That discussion is over. Everybody agrees now that there is a role for the state and there is a role for the market. There are regulations that are necessary. The US, Europe, Japan have done it. The moment they get in crisis, what do they do? They intervene in the banks and so on."

However, trade negotiators from the industrialized world are still preaching the virtues of free trade to anyone who will listen, and arm-twisting those who won't. Some of the highest-profile deals currently being pursued include regional free trade agreements such as the United States' proposed Trans-Pacific Partnership Agreement (TPPA) encompassing 12 Pacific Rim nations, the European Union's EPAs with dozens of developing countries in Africa and elsewhere, and the 50-country Trade In Services Agreement (TISA).

The claim that these will help developing countries is a common refrain. But more and more, Africans aren't buying it. Many Africans seem to be waking up to a simple idea: that free market policies are not etched in stone. There is an alternative, and African countries should be able to use industrial policies to develop just as the rich countries did. ❐

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The global land rush

Institutional investors are buying up farmland throughout the world, contributing to the corporate consolidation of agriculture in developed and developing countries alike.

by Anuradha Mittal

OAKLAND (UNITED STATES): The first years of the 21st century will be remembered for a global land rush of nearly unprecedented scale.

An estimated 500 million acres, an area eight times the size of Britain, was reported bought or leased across the developing world between 2000 and 2011, often at the expense of local food security and land rights.

When the price of food spiked in 2008, pushing the number of hungry people in the world to over one billion, it spiked the interest of investors as well, and within a year foreign land deals in the developing world rose by a staggering 200%.

Today, enthusiasm for agriculture borders on speculative mania. Driven by everything from rising food prices to growing demand for biofuel, the financial sector is taking an interest in farmland as never before.

The Oakland Institute has reported since 2011 how a new generation of institutional investors – including hedge funds, private equity, pension funds and university endowments – is eager to capitalize on global farmland as a new and highly desirable asset class.

But the thing most consistently missed about this global land rush is that it is precisely that – global.

Although media coverage tends to focus on land grabs in low-income countries, the opposite side of the same coin is a new rush for US farmland, manifesting itself in rising interest from investors and surging land prices, as giants like the pension fund TIAA-CREF commit billions to buy agricultural land.

One industry leader estimates that $10 billion in institutional capital is looking for access to US farmland, but that figure could easily rise as investors seek to ride out uncertain financial times by placing their money in the perceived safety of agriculture.

In the next 20 years, as the US experiences an unprecedented crisis of retiring farmers, there will be ample opportunity for these actors to expand their holdings as an estimated 400 million acres changes generational hands. And yet, the domestic face of this still unfolding land rush remains largely unseen.

For all their size and ambition, virtually nothing is known about these new investors and their business practices. Who do they buy land from? What do they grow? How do they manage their properties? In an industry not known for its transparency, none of these questions have a satisfactory answer.

Getting a discussion going

For more than six years the Oakland Institute has been at the forefront of exposing the murky nature of land deals in the developing world. The challenge today is to begin a more holistic discussion that places transfer of land in both the developed and developing worlds along the same continuous spectrum.

Driven by the same structural factors and perpetrated by many of the same investors, the corporate consolidation of agriculture is being felt just as strongly in Iowa and California as it is in the Philippines and Mozambique.

"Down on the Farm", a new report from the Oakland Institute, aims to increase awareness of the overlapping global and national factors enabling the new American land rush, while at the same time introducing the motives and practices of some of the most powerful players involved in it: UBS Agrivest, a subsidiary of the biggest bank in Switzerland; the Hancock Agricultural Investment Group (HAIG), a subsidiary of the biggest insurance company in Canada; and the Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF), one of the largest pension funds in the world.

Only by studying the motives and practices of these actors today does it become possible to begin building policies and institutions that help ensure farmers, and not absentee investors, are the future of our food system.

Nothing is more crucial than beginning this discussion today. The issue may seem small for a variety of reasons – because institutional investors only own an apparently tiny 1% of all US farmland, or because farmers are still the biggest buyers of farmland across the country. But to take either of these views is to become dangerously blind to the long-term trends threatening our agricultural heritage.

Consider the fact that investors believe that there is roughly $1.8 trillion worth of farmland across the United States. Of this, between $300 and $500 billion is considered to be of "institutional quality," a combination of factors relating to size, water access, soil quality and location that determine the investment appeal of a property.

This makes domestic farmland a huge and largely untapped asset class. Some of the biggest actors in the financial sector have already sought to exploit this opportunity by making equity investments in farmland.

Frequently, these buyers enter the market with so much capital that their funds are practically limitless compared with the resources of most farmers.

Although they have made an impressive foothold, this is the beginning, not the end, of a land rush that could literally change who owns the country and our food and agricultural systems. Not only is there space in the market for institutional investors to expand, but there are also major financial incentives for them to do so.

If action is not taken, then a perfect storm of global and national trends could converge to permanently shift farm ownership from family businesses to institutional investors and other consolidated corporate operations. *(IPS Columnist Service)* ❐

Anuradha Mittal is the Executive Director of the Oakland Institute based in Oakland, California, USA.

Africa's free trade hangover

African governments are rethinking the virtues of free trade and the free market, writes *Rick Rowden*.

After 30 years in which the virtues of the free market went largely unchallenged, a quiet revolution is making its way across Africa. Many governments are increasingly ready to toss out the orthodoxy and rethink the importance of the role of the state in national development. African leaders are worrying that the free trade model has left their economies overly dependent on raw commodity exports and that growth has often produced very few higher-paid manufacturing jobs and has been accompanied by rising inequality.

Now, from Nigeria to South Africa to Uganda, there are strong domestic movements increasingly mobilizing against free trade deals. Leaders and activists are scorning bilateral investment treaties with rich countries, focusing instead on regional integration and formulating more serious industrialization strategies. Top trade ministers and central bank governors are openly pondering the benefits of increased trade protection, public development banks and more expansionary monetary policies – steps that would have been considered heresies just a decade ago.

This might seem a surprising conclusion given recent news in the region. On 10 July, after 11 years of intense negotiations, the 15 nations of the Economic Community of West African States (ECOWAS) finally agreed to sign an Economic Partnership Agreement (EPA) with the European Union. It will allow the African countries 100% access to the European market, except for rice and sugar, while the EU countries will have 75% access to their markets over a 20-year period. For many observers, the concluding of this long-awaited deal will simply come as a further sign of "business as usual." But a closer look shows a broader uneasiness building across the continent.

In fact, the EPA faced serious opposition from a number of quarters, leaving the outcome in doubt as late as March, when Nigeria came out against it. Then, several other ECOWAS states followed Nigeria's example in April. The EU had to apply serious pressure in order to get its African partners to sign. Those measures included threats to cut off existing preferential market access for ECOWAS members that are dependent on selling their agricultural commodities to Europe, such as Ghana and Ivory Coast.

Many, including the Africa Progress Panel led by former UN Secretary-General Kofi Annan, have long worried that an EU-ECOWAS deal could hinder the region's efforts to industrialize and build its own manufacturing base if African markets are flooded with European goods. Others point out that the deal threatens regional economic integration. These groups are now calling on national parliaments not to ratify the agreement.

There is similar opposition to trade deals with industrialized nations elsewhere in Africa and the developing world. At the World Trade Organization (WTO) talks, African countries have joined with the BRICS (the grouping of Brazil, Russia, India, China and South Africa) and others to oppose further negotiations because they increasingly see the WTO game as rigged: After all countries agree to lower formal tariffs and quotas at the border, the rich countries use a host of other expensive and sophisticated "behind-the-border" tricks called non-tariff barriers (product quality controls, sanitary and phytosanitary requirements, rules of origin, etc.) to, in effect, continue blocking imports from developing countries. Few developing countries have the capacity to do the same to imports from rich countries, so in practice, only one side actually liberalizes.

Loss of "policy space"

The free market approach also blocks developing countries from using a host of government measures to build up domestic industries over time, such as trade protection, subsidized commercial credit, tax incentives, and public support for research and development. Developing countries in the UN General Assembly and elsewhere are criticizing their loss of "policy space," their legal rights to adopt industrial policies in the future, and blame this loss of space for the failure of African countries to develop successfully. Rich countries used various forms of these during their own periods of industrialization, but such "state intervention" is now deemed contrary to the free market approach. Decades of International Monetary Fund (IMF) and World Bank loan conditions and WTO membership requirements increasingly outlaw the use of these industrial policies.

Working together, the coalition of developing countries and the powerful BRICS has managed to block nearly all of the rich countries' consensus agreements at the WTO level. Stymied, rich countries are now resorting to smaller regional and bilateral free trade agreements and bilateral investment treaties (BITs) to press developing countries to liberalize their economies and give up even more of their rights to implement industrial policies over the long term – in return for being allowed to export more of their primary commodities to wealthy markets today. But many in Africa are tired of only exporting raw materials. As Nkosazana Clarice Dlamini-Zuma, chairperson of the African Union Commission, put it: "Industrialization is not a luxury for Africa, but a necessity for its long-term survival."

In recent years, this viewpoint has been expressed at the highest levels of annual trade and finance ministry meetings and on the top of the policy agenda for regional institutions, such as the African Union, the United Nations Economic Commission for Africa and the African Development Bank. The debate has moved away from asking if developing countries should adopt industrial policies towards asking how best to implement them, as demonstrated by Nigeria in February when it launched two major new programmes to boost manufacturing and national economic development.

The swelling backlash against the free trade approach has also extended to attitudes towards foreign direct investment (FDI) and BITs. Many developing countries now reject the latter as interfering with their domestic laws and regulations and compelling them to take disputes with foreign investors out of their national courts and into private international tribunals.

Countries such as Ecuador and Venezuela have terminated their previous BITs over such concerns. India-US talks about an agreement have bogged down over the dispute-settlement mechanism. And now Brazil, notable for its refusal to negotiate any BITs, is drafting a model for FDI treaties that may serve as an alternative template for developing countries. Accepting the frameworks put forward by negotiators from rich countries will no longer be the only option.

Most dramatically, South Africa declared last November that it would no longer sign any further BITs based on the conclusions of a 3-year review. (Ironically, it found that, in any case, South Africa receives more FDI from countries with which it does not have BITs than from those with which it does.)

South Africa's BIT review astutely noted a key insight that had long been understood by all of the rich countries: that benefits to host countries from FDI are not automatic, and realizing benefits requires regulations that balance effective protection of investors' rights with other measures that ensure FDI "supports national development, establishes beneficial linkages to the national economy, augments domestic financial resources, fosters enterprise development, and enhances the technology, skill, and knowledge base of the economy." Therefore, there is a growing sense that signing BITs and free trade agreements that seek to remove such regulations may not be the best way to go. Similarly, in June, Uganda announced it would no longer sign double-taxation avoidance agreements until a new framework can be drafted to ensure that such agreements support the country's interests, preventing their abuse through capital flight or tax evasion.

Policy rethink

Other direct challenges to free market norms on monetary and financial policy are also being openly discussed. In a radical departure from the standard IMF view, the executive secretary of the Economic Commission for Africa, Carlos Lopes, recently told a meeting of African central bank governors that monetary policy must be more consistent with the continent's structural transformation agenda. In other words, rather than blindly adopting the IMF's priority of very low inflation, Lopes suggested the central bankers consider more expansionary policies for higher public investment, particularly for supporting their manufacturing sectors – moves that traditionally have set IMF officials' hair on fire.

The need for effective exchange rate management is also being raised at the highest levels, citing the experiences of China and others who have demonstrated how it can be used to influence competitiveness of goods and services on international markets. And there is also talk of bringing back public development banks to provide the kind of long-term, low-interest commercial credit that big foreign banks will not provide.

Additionally, new research has bolstered the case for Africans to prioritize regional commerce over traditional African-European trade flows, because it shows that Africans buy more manufactured goods from one another than from others. This has important implications for identifying which trading partners can be most helpful in supporting increased manufactured exports. Such data led Stephen Karingi, also of the Economic Commission for Africa, to call for "a rethink of trade and integration priorities" and to urge that policy be led more by an African agenda. Regarding proposed agreements with countries beyond the continent, he said: "We should not hesitate to have our trade agreements, be they with industrialized or emerging economies, re-designed, re-negotiated, and re-sequenced."

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