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US says it doesn't recognize Doha talks anymore

The US has reportedly said, at a WTO meeting on 11 April, that it no longer recognizes the WTO's Doha Round negotiations. It is apparently setting its sights instead on talks outside the multilateral framework, such as the ongoing deliberations on a plurilateral Trade in Services Agreement, which are being targeted for a yearend conclusion but which have so far largely sidelined issues of interest to developing-country participants.

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131 Jalan Macalister
10400 Penang, Malaysia
Tel: (60-4) 2266728/2266159
Fax: (60-4) 2264505
Email: twn@twnetwork.org
Website: www.twn.my

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No more NAMA or Doha talks at WTO, says US

The US has, at a WTO meeting on non-agricultural market access (NAMA), stated that it no longer recognizes the Doha Round negotiations under which framework the NAMA talks have been conducted.

by D. Ravi Kanth

GENEVA: The United States has sharpened its efforts at the World Trade Organization against any talks on any of the outstanding issues of the Doha Work Programme, with a remark that it no longer recognizes the Doha talks.

The US stance came loud and clear at an informal meeting on 11 April of the negotiating group on non-agricultural market access (NAMA), several negotiators told the *South-North Development Monitor (SUNS)*.

At the meeting, convened by NAMA negotiating group chair, Ambassador Remigi Winzap of Switzerland, a large majority of developing and even some industrialized countries urged the kickstart of the talks to address the outstanding issues revolving around tariff reduction commitments and non-tariff barriers (NTBs) on manufactured goods, several NAMA negotiators told *SUNS*.

The United States, however, continued to adopt its "shock and awe" trade doctrine by maintaining that there cannot be any Doha negotiations on industrial goods because at the WTO's tenth Ministerial Conference, held in Nairobi in December, the member states for the first time did not reaffirm the Doha negotiations, according to a NAMA negotiator from West Asia.

The US said categorically that Washington doesn't recognize the Doha negotiations any longer, according to a negotiator present in the room.

Washington maintained that it doesn't see any merit in conducting the NAMA negotiations at the WTO as it secured maximum gains in slashing industrial tariffs outside the trade body.

"The US was questioning the utility of the multilateral process," the negotiator said, adding that it was very disturbing to witness the world's largest economy creating hurdles at every juncture in all outstanding areas of the Doha negotiations.

The developing countries – China, India, Brazil, South Africa, Ecuador, Bolivia and Egypt, among others – rejected the unilateral US position, reiterating that members remain solidly committed to finishing the NAMA negotiations based on the Doha Work Programme at the WTO, participants told *SUNS*.

The starkly differing positions on how to restart the Doha negotiations for market access in industrial goods came into the open.

The unilateral approach of the US on the one side, in contrast to the multilateral approach of the developing and some industrialized countries in tackling the outstanding Doha NAMA issues, is bound to cause an inordinate delay at the WTO, a negotiator from South America told *SUNS*.

Chair's report

At the informal open-ended meeting, the chair of the NAMA negotiations, Ambassador Winzap, provided an account of his consultations with over 30 countries. In his two-page intervention, he said "members still appear to be in search of how to pick up on the [NAMA] negotiating pillar after Nairobi".

"In my discussions," the chair said, "I sensed nonetheless a general constructive attitude and willingness to start moving on different negotiating issues, both for substantive and systemic reasons."

"I did not perceive a going back into trenches but rather an openness by most members to look at issues with fresh eyes," Winzap opined.

The chair divided the membership into three categories in terms of their immediate NAMA priorities.

The first group, according to the chair, "supported by the largest group of members, would like to continue working on NAMA issues (tariffs and NTBs) in parallel with other remaining Doha issues."

Members in this group, which includes many developing countries and even some industrialized countries, stated that NAMA negotiations must be pursued as per paragraph 31 of the Nairobi Ministerial Declaration. That paragraph refers to "a strong commitment of all Members to advance negotiations on the remaining Doha issues", including on NAMA, a subject specifi-

cally mentioned along with other specified outstanding issues in the paragraph.

Many members see value in "NAMA work to balance potential progress in other areas," the chair acknowledged in his statement. "I have heard this both from members with offensive and defensive interests in NAMA."

Although the chair did not name the countries, the first group includes largely a majority of developing and some industrialized countries such as the European Union, Japan and Norway.

The second, "very significantly smaller group of members", said Winzap, "does not necessarily see the comparative advantage of WTO as a forum for market access negotiations anymore, and therefore is lukewarm at best to the prospect of pursuing work on NAMA market access for the time being."

Given the interventions made by the US at the meeting, it is pretty clear that the chair was referring here to the US and "one or two more members," NAMA negotiators maintained.

The third group, according to Winzap, contains "a few members" who are "either indifferent towards further work on NAMA issues at this stage, or they are defensive as for them the existing 'policy space' of members should be maintained, notably in support of industrialization in the context of a difficult macroeconomic environment."

The chair appears to have clubbed in this third category a group of countries such as South Africa and its allies in the Southern African Customs Union (SACU).

In its intervention at the meeting, South Africa maintained that it had made a huge contribution in the previous Uruguay Round as a developed country. The South African official said that it will need policy space to continue with its industrialization given the massive macroeconomic difficulties it is facing, a participant told *SUNS*.

Non-recognition

The US struck a discordant note by pronouncing that for the first time in the history of the Doha negotiations over the past 15 years, members did not reaffirm the continuation of the negotiations.

Washington suggested that it doesn't recognize the Doha negotiations, thereby opening many possibilities, said a participant after the meeting.

The US also maintained that it wants real market access, arguing that while it cut its applied tariffs, others are only removing "water" between bound and applied tariffs, the participant maintained.

India reminded members that the Doha Ministerial Declaration of November 2001 provided an explicit mandate for continuance of negotiations on market access for non-agricultural products.

The Doha work programme maintains in paragraph 16: "We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without *a priori* exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations."

India also drew attention to paragraph 50 of the Doha work programme, which says: "The negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed countries embodied in: Part IV of the GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of Least-Developed Countries; and all other relevant WTO provisions."

India said there is no way members can shy away from these commitments. India argued that special and differential treatment and less than full reciprocity in the final commitments between the developed and developing countries remain at the core of the NAMA agenda.

New Delhi argued that the Doha negotiations are emphasized in the Nairobi Ministerial Declaration, saying that the best way to kickstart work is on the basis of the third version of the revised draft modalities of 2008, NAMA negotiators told *SUNS*.

Several developing countries including China, India, South Africa, Ecuador, Bolivia and Egypt called for the continuation of the Doha framework with the special and differential treatment flexibilities.

Brazil, Argentina and a few agriculture exporting countries emphasized pursuing agriculture first.

Significantly, the EU, Japan and China suggested that they are prepared to consider any approach, including sectorals, plurilaterals or simply lowering the level of ambition to continue with the NAMA negotiations under the multilateral framework.

Reduced ambition

"From what I have heard, the general ambition level seems clearly reduced compared to the discussions we had a year ago," the chair maintained.

"Indeed, several members do not consider ambitious market access outcomes as a realistic prospect anymore and rather suggest trying to improve predictability on NAMA, notably by increasing bindings or reducing water between bound and applied tariff rates," Winzap maintained.

Under such a scenario, he said, "balance may require trade-offs between different negotiating areas."

In crux, there is overwhelming demand for restarting the NAMA negotiations to explore what can be achieved by the WTO's eleventh Ministerial Conference. But one country, the US, is again sticking to its aggressive "shock and awe" trade doctrine by insisting on its "my way or the highway" approach in the NAMA negotiations as it did in other areas, a West Asian negotiator maintained. *(SUNS8220)* ❐

TiSA plurilateral accord by yearend?

A plurilateral pact to free up trade in services is being targeted for conclusion by year's end, but the negotiations have made scant progress thus far on areas of interest to developing countries.

by D. Ravi Kanth

GENEVA: After turning their backs on restarting the Doha services negotiations at the WTO, trade envoys of the United States, the European Union and Australia among others have decided to accelerate negotiations towards a plurilateral deal called the Trade in Services Agreement (TiSA) by the end of this year, several trade envoys told the *South-North Development Monitor (SUNS)*.

However, the 23 countries which are pursuing the plurilateral TiSA outside the WTO are largely focusing on several capital-intensive services sectors such as finance, telecommunications, e-commerce, and in particular data flows and ending forced data localization for all sectors.

Areas of interest for developing countries such as movement of natural persons under Mode 4, ambitious commitments in domestic regulation to ensure that market access in Mode 4 is not impeded by barriers, and liberalization of maritime, air and road transport services are being given short shrift due to opposition from the US, a TiSA envoy told *SUNS*.

The EU too remains opposed to ambitious market access commitments in Mode 4 and liberalization of health services among other sectors, the envoy suggested.

Significantly, the US, which is the principal driver for concluding TiSA by end-2016, seemed determined to hollow out the WTO by torpedoing the Doha services negotiations which can be easily concluded on the basis of work done till now, according to a non-TiSA envoy.

The 23 members negotiating TiSA are Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Turkey and the US.

The differing emphases between the major TiSA drivers – the US, the EU and Australia – on the one side, and the developing countries such as Mexico, Turkey and Pakistan who want ambitious outcomes in transport (road) and Mode 4 on the other side, were evident at the 17th round of the TiSA negotiations.

Australia, which hosted the weeklong meetings that began on 10 April at its mission in Geneva, spoke about satisfactory progress that was made in stabilizing texts of the core agreement, including telecommunications, e-commerce and finance.

Australia also brought up the urgency of submitting revised offers for market access by 6 May.

A review of those offers will take place at the TiSA ministers' meeting on 1 June in Paris on the margins of the annual Organization for Economic Cooperation and Development (OECD) meeting.

GATS-consistent?

Given the opaque manner in which the TiSA negotiations are being conducted, it is difficult to know how far the text is stabilized.

Although the core text of TiSA is claimed to be based on the provisions of the WTO's General Agreement on Trade in Services (GATS), there are serious doubts and questions as to whether it would fully comply with Article V of the GATS dealing with "economic integration," said a developing-country trade envoy.

For TiSA to be "multilateralized" as per the demands of the EU and a few other members and thus valid by coming under the rubric of economic integration in terms of GATS Article V, it has to fulfil two major conditions, among others.

The two conditions are that TiSA has: (a) substantial sectoral coverage (the condition is understood in terms of number of sectors, volume of trade affected and modes of supply – in order to meet this condition, agreements should not provide for *a priori* exclusion of any mode of supply); and (b) absence or elimination of substantially all discrimination, in the sense of Article XVII (national treatment), between or among the parties to the agreement.

Given the stark asymmetries in the level of ambition in sectors such as finance, telecommunications, e-commerce, delivery services and distribution services, which are dominated by the US and the EU, on the one side, and transport (maritime, air and road) and Mode 4 on the other side, it seems highly unlikely that TiSA can remain consistent with Article V, according to a trade envoy familiar with trade in services.

At the meeting at the Australian mission, TiSA envoys reviewed the progress made in regard to domestic regulation and transparency in licensing procedures in telecommunications, in e-commerce, particularly on data flows and forced data localization for all sectors, and financial services.

Despite strong demands from developing countries for ambitious outcomes in domestic regulation which will determine the final market access flows in Mode 4, the TiSA domestic regulation provisions are being sufficiently weakened and compare poorly with a draft domestic regulation text drawn up by a former Singapore official in 2009, according to a TiSA envoy.

At the same time, the level of ambition as well as transparency provisions in telecommunications and e-commerce, which are priority areas for the US, are quite high and closely reflect the Trans-Pacific Partnership Agreement, the envoy suggested.

Basically, the US is seeking TiSA commitments on cloud computing, complete freedom for cross-border information flows and localization requirements.

The US has said that "governments should not prevent services suppliers of other countries or customers of those suppliers, from electronically transferring information internally or across borders, accessing publicly available information, or accessing their own information stored in other countries". Further, governments must not give priority or preferential treatment to national suppliers of information and communications technology (ICT) services in the use of local infrastructure, national spectrum or orbital resources.

The US has also underscored the need to reconsider the utilization of "localization requirements" such as protecting personal data or restricting cross-border data flows, including measures that require consumers' personal data to be processed and stored within their borders.

These measures, according to the US, "have the potential to impede economic activity and do not necessarily provide data security that they ostensibly seek to achieve".

Canadian firm Research in Motion ran into trouble over its BlackBerry devices and service in India over this issue.

During the meeting at the Australian mission, the US and the EU separately urged some countries in the TiSA talks to come on board in addressing "non-politically sensitive issues" (technical standards) in areas such as telecommunications, according to a TiSA participant.

Mexico called for discussion on institutional issues, including the dispute settlement mechanism, during the next round of negotiations. "It is time that TiSA members started talking about the institutional issues in which dispute resolution mechanism is a central pillar as it is in other regional trade agreements and free trade agreements," Mexico's trade envoy Fernando de Mateo told his colleagues, according to the participant.

But concerns about uneven progress in different services sectors, particularly the high level of ambition on the one side and modest market access on the other, continued to surface during the negotiations.

While telecommunications, e-commerce and financial services have moved ahead rapidly, progress in Mode 4, air transport, maritime transport and road transport lags far behind, TiSA negotiators acknowledged.

"There are some issues moving more rapidly than others," a TiSA envoy told *SUNS* after the meeting. "But some areas are complicated while other areas are relatively easier, which would happen in any negotiations involving some 23 members."

It is an open secret in the TiSA negotiations that the US and the EU have continued to resist even modest market access openings in both Mode 4 and transport services sectors.

In short, the litmus test for the so-called high-level and comprehensive TiSA will come when members table their revised offers on 6 May. This will conclusively demonstrate who are the major beneficiaries and the losers.

All indications until now suggest that the US, the EU and other developed countries will walk away with another plurilateral deal that will turn a blind eye to the demands of developing countries in Mode 4, transport and other sectors, according to trade envoys familiar with the TiSA negotiations. *(SUNS8223)* ❐

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Cambridge Institute for Sustainability Leadership, 2014: 17-18 and Appendix B). However, the scope of such incorporation varies in its coverage, often not going beyond general guidelines on environmental management and reporting requirements.

Explicit coverage of environmental risk in Basel III is scanty: the reference in paragraph 510 to the need to monitor the risk of environmental liability in respect of collateral is often cited in this context. It could of course be argued that environmental risk is also implicitly covered by references to risk management elsewhere in the capital framework, and that variants of such risk can be included in the scenarios of banks' stress testing. While it would not be accurate to characterize the coverage of environmental risk in Basel III as consisting of nothing more than *obiter dicta*, eventually such risk seems likely to figure more prominently in further revisions of the capital framework.

How can Persaud's scheme contribute to regulatory rules on this subject? His emphasis on the need for wariness concerning variations in correlation risk is obviously highly pertinent since increased correlation and the resulting contagion within the financial sector have been major features of systemic environmental risk in the past. More generally his criticisms of the overly static view of banking risks in current regulatory guidelines should continuously be borne in mind.

But perhaps most important is his suggestion that regulation should as far as possible allocate risk among financial institutions according to their absorptive capacity. In this way it can be argued – and would no doubt be argued by Persaud – that the assets and liabilities of financial institutions' balance sheets can be matched with the sort of risks – often large and difficult to predict – that are classified as environmental. This would be more difficult for banks that must operate with liabilities much of which are unavoidably short-term and more volatile and are thus not the institutions best suited for meeting exposures to environmental risks. ❐

Andrew Cornford is with the Observatoire de la Finance in Geneva.

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What the Panama Papers mean for global development

The Panama Papers leak shines a light on the murky world of tax havens and offshore dealings that are depriving poor countries of sorely needed resources.

by Tharanga Yakupitiyage

NEW YORK: The financial secrecy and tax evasion revealed by the Panama Papers have an extraordinary human cost in developing countries and threaten the realization of the UN's ambitious Sustainable Development Goals.

The leak – made public by media outlets including German newspaper *Suddeutsche Zeitung* and the International Consortium of Investigative Journalists (ICIJ) – has already prompted protests and investigations around the world.

The papers connect thousands of prominent figures to secretive offshore companies in 21 tax havens and reveal the inner workings of the offshore finance industry.

The documents focus on Panamanian law firm Mossack Fonseca, with its 210,000 entities, and have led to allegations that the firm aided public officials and multinational corporations to avoid taxes.

Mossack Fonseca says that media reports have misrepresented the nature of its work and its role in global financial markets.

In one case, leaked emails contained in the Panama Papers suggest that the Heritage Oil and Gas Ltd Company (HOGL) sought help from Mossack Fonseca to sidestep tax laws in Uganda. According to ICIJ, upon the sale of an oil field, the company received a tax bill of $404 million. In an effort to avoid paying the taxes, the entity fought the Ugandan courts and meanwhile tried to relocate to Mauritius, according to the leaked emails.

Mauritius has a double tax agreement with Uganda, allowing companies such as HOGL to only pay taxes in one of the two countries.

In 2000, the International Monetary Fund (IMF) listed Mauritius as a preferred location for companies due to its minimal tax laws.

These havens deny developing countries such as Uganda of much-needed tax revenue for essential services, Oxfam's Senior Tax Policy Advisor Tatu Ilunga told Inter Press Service (IPS).

"Tax havens are at the heart of a global system that allows large corporations and wealthy individuals to avoid paying their fair share, depriving governments – rich and poor – of the resources they need to provide vital public services and tackle rising inequality," said Ilunga.

In Uganda, approximately 37% live on less than $1.25 per day. The East African nation also has one of the highest rates of maternal and under-five mortality rates in the world. According to the World Health Organisation (WHO), Uganda is one of the top 10 countries that account for the majority of global maternal deaths.

In a country that lacks access to health services, HOGL's $404 million in taxes represents more than the country's health budget.

Former governor of Nigeria's oil-rich Delta State James Ibori was also implicated in the Panama Papers, allegedly using Mossack Fonseca as an agent for four offshore companies in Panama and Seychelles.

These entities provide anonymity, hiding true owners' names and actions and thus allowing for finances and assets to be undeclared and untaxed.

Though he was detained in 2012 for diverting up to $75 million out of the country, Nigerian authorities estimate that Ibori stole and stored over $290 million in tax havens.

Like Uganda, Nigeria ranks low in health indicators, contributing to some 10% of global maternal, infant and child deaths. Poverty has increased in the country, with 61% living below the poverty line, according to the most recent Nigerian Bureau of Statistics report.

The Niger Delta region in particular, despite being a significant contributor to the country's economy through oil production, remains the poorest and least developed region in Nigeria. In Ibori's Delta State alone, 45% of people live in poverty.

A UN Development Programme (UNDP) report found that the majority of people in the region lack access to potable water, electricity, health facilities and infrastructure including roads and telecommunications.

"Have you seen any taps here? ... Water used to run in public taps, but that had stopped 20 years ago. We basically drink from the river and creeks ... hygiene is secondary," a Niger Delta resident told UNDP.

Pervasive problem

Though Ibori's stashed money represents only a slice of Nigeria's budget, it is indicative of a global and pervasive problem that goes beyond Mossack Fonseca.

Transparency International's Senior Policy Coordinator Craig Fagan told IPS: "If you think about the millions of files that have been released and the number of high-profile individuals [in the Panama Papers], this is just one law firm in Panama."

"We can be certain that there are many other law firms whether in London, Hong Kong, New York, Miami that are operating similar structures," he said.

According to Oxfam estimates, at least $18.5 trillion is hidden in tax havens worldwide.

The organization found that two-thirds of this offshore wealth is hidden in European Union-related tax havens while a third is in UK-linked sites where it is left undeclared and untaxed.

Oxfam said that its estimate is a conservative one.

The Swiss Leaks, also released by ICIJ in 2015, revealed how over 106,000 clients from Venezuela to Sri Lanka hid more than $100 billion in Swiss HSBC bank accounts.

Another analysis from the Tax Justice Network (TJN) reveals that between $21 trillion and $32 trillion is being diverted into offshore companies.

This has enormous effects in developing countries, costing poor nations over $100 billion in lost tax revenues every year, according to Oxfam.

The charity also found that tax dodging by multinational corporations alone costs the developing world between $100 billion and $160 billion per year.

Added with profit shifting, approximately $250 billion to $300 billion is lost.

This "missing" money could lift every person above the $1.25-per-day poverty threshold three times over, according to Brookings Institution calculations.

Oxfam added that for every $1 billion lost through commercial tax evasion, 11 million people at risk across the Sahel

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Learning from history for progress

After over 30 years of regression under the neoliberal Washington Consensus, there is a need to recommit to the more inclusive and egalitarian ethos which underpinned the postwar Golden Age.

by Jomo Kwame Sundaram

The Chinese character for "crisis" combines the characters for "danger" and "opportunity".

Our ability to improve the human condition depends critically on our ability to recognize and address dangers, but also to seize opportunities made possible by recognizing that crises offer rare opportunities to pursue extraordinary options not normally available.

World War II was a case in point. The Bretton Woods Conference in July 1944 committed to creating the conditions for enduring peace through postwar reconstruction and post-colonial development through sustained growth, full employment and reducing inequality.

Thus, Bretton Woods created the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF).

The IBRD, better known as the World Bank, was created to support long-term investment and development. The IMF would help countries not only to overcome balance-of-payments difficulties but also "to direct economic and financial policies toward the objective of fostering orderly economic growth with reasonable price stability".

Similar concerns were behind the International Labour Congress two months earlier. On 10 May 1944, the Congress had adopted the historic Philadelphia Declaration which emphasized that "lasting peace can be established only if it is based on social justice".

For decades after the war, labour's share of output and gross income increased as other inequalities declined.

This Golden Age also saw greater investment in health, education and public services, including social protection.

The underlying post-WWII consensus endured for over a quarter-century before breaking down in the 1970s.

The Marshall Plan

As the Cold War began, US Secretary of State General George Marshall announced a reindustrialization plan for war-torn Europe. Politically, the Marshall Plan was intended to create a *cordon sanitaire* to contain the spread of communism.

Generous infusion of US aid and support for national developmental policies ensured the rebirth of modern Europe. For many Europeans, this is still seen as America's finest hour.

In the decades that followed, the Marshall Plan developed into what is probably the most successful economic development assistance programme in history.

Similar economic development policies and assistance were introduced in Japan, Taiwan and South Korea, especially following the establishment of the People's Republic of China and the outbreak of the Korean War.

This experience offers valuable lessons today. Europe and Northeast Asia rebuilt quickly, industrialized and achieved sustained and rapid growth through policies including economic interventions such as high duties, quotas and other non-tariff barriers. Free trade was only pursued as international competitiveness was achieved.

George Marshall knew that shared economic development is the only way to lasting peace, as John Maynard Keynes had warned in his criticisms of the impact of the Treaty of Versailles on Germany after the First World War.

Marshall also emphasized that aid should be truly developmental, not piecemeal or palliative. National economic capacities and capabilities had to be nurtured to ensure sustainable development.

Counter-revolution

Each era, no matter how successful, sows the seeds of its own end. The celebration of markets and private property were the major new economic norms invoked from the 1980s to undermine the postwar consensus.

Nobel laureate Simon Kuznets's hypothesis – suggesting the inevitability of inequality rising with growth before its eventual decline – was invoked to justify related inequality.

The higher propensity to save of rentiers and profiteers, compared to wage earners, became the pretext for the tolerance, if not deliberate promotion, of inequality in favour of the former, ostensibly to accelerate investment and growth.

Conversely, progressive redistributive measures were deemed bad for growth, as they allegedly not only lowered savings and investment rates but also deterred investors.

From the early 1980s, the so-called "Washington Consensus" – the policy consensus on developing countries uniting the American government and the Bretton Woods institutions located in the US capital city – emerged to rationalize the counter-revolutions against development economics, Keynesian economics and progressive state interventions.

Macroeconomic policies became narrowly focused on balancing the annual budget and attaining low inflation – instead of the previous emphasis on sustained growth and full employment with reasonable price stability.

A relentless push for deregulation, privatization and economic globalization followed.

Such measures were supposed to boost growth, which would trickle down, thus reducing poverty – hence, we were not to worry about inequality.

But the "neoliberal" measures largely failed to deliver sustained growth. Instead, financial and banking crises have become more frequent, with more devastating consequences, exacerbated by greater tolerance for inequality and destitution, which have undermined effective demand, in turn forming a vicious cycle, impeding sustained economic recovery and growth.

Global New Deal

The new global priorities from the end of the Second World War remain very relevant today. Empirical evidence has disproved the previous conventional wisdom that progressive redistribution retards growth.

Instead, inequality and social exclusion have been shown to be detrimental to development.

After the last three-and-a-half decades of regression, we have to recommit ourselves to the more inclusive and egalitarian ethos of the Philadelphia Declaration, Bretton Woods and the Marshall Plan with a global New Deal for our times. *(IPS)* ❐

Jomo Kwame Sundaram was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

The rise of ISDS in the extractive sectors

A proliferation of investor-state dispute settlement (ISDS) cases related to extractive industries in Africa could jeopardize African countries' efforts to fully harness the development potential of the mining sector.

by Kinda Mohamadieh and Daniel Uribe

African countries have been active in concluding international investment treaties. According to the United Nations Conference on Trade and Development (UNCTAD), as of end-2013, 793 bilateral investment treaties (BITs) were concluded by African countries, representing 27% of the total number of BITs worldwide.

UNCTAD reports as well that several African countries are actively negotiating additional agreements. For example, the Southern African Customs Union is negotiating with India and the East African Community, including Burundi, Kenya, Tanzania and Uganda, are in discussions with the United States.

Moreover, African countries are increasingly subject to investor-state dispute settlement (ISDS) cases, including claims that challenge the regulatory actions of host countries in a wide range of areas, including public services and race relations.

Sub-Saharan Africa accounts for 16% of all cases registered under the International Centre for Settlement of Investment Disputes (ICSID). In 2014, cases against sub-Saharan Africa amounted to 20% of the overall number of new cases brought under ICSID during that year.

At the same time, African states have developed the Africa Mining Vision, which is aimed at introducing policy and regulatory frameworks intended to maximize the development of the region through the use of natural resources as a catalyst for industrial development in order to diversify the economy.

Africa is one of the most important producers of mineral commodities; however, most of the minerals are exported in raw form (ores, concentrates or metals). In response, the Africa Mining Vision is intended to promote value-added mechanisms within the region with a view to fully benefiting from the potential of mining.

The approach reflected in the Africa Mining Vision is similar to policies several other developing countries have been considering in order to increase their participation in strategic sectors and enhance benefits from resource wealth in order to serve development and industrialization objectives.

For example, several Latin American countries, including Ecuador, Bolivia and Venezuela, have applied active policies to regain the state's policy space to develop, plan, regulate and actively participate in strategic sectors such as mining, water, energy and telecommunications in order to guarantee the use of natural resources for an economically, environmentally and socially sustainable development of the state.

Since 2006, several African countries, including Ghana, Congo DR, Zambia, Liberia, Zimbabwe, Guinea, Cote d'Ivoire, Malawi, Sierra Leone, Burkina Faso, Kenya, Tanzania and Madagascar, have taken actions in terms of regulatory or institutional changes – including amending laws or initiating the renegotiation of contracts with mining firms – or indicated an intention to take one or both steps [Yao Graham, "Escaping the winner's curse: The Africa Mining Vision (AMV) and some challenges of the international trade and investment regime", Third World Network Africa, available online at www2.warwick.ac.uk/fac/soc/law/research/clusters/international/dev conf/participants/papers/graham_-_escaping_the_winners_curse.pdf].

Graham points out as well that a number of countries are debating approaches to the conception of domestic/local content within the context of the Africa Mining Vision.

Policy space under threat

However, the expansion of international investment agreements could carry significant risks to policy space and policy tools necessary for industrialization and development. In the case of African countries, this implies risks to the potential use of sectoral policies, such as policies in the extractive industries and the Africa Mining Vision, to support and promote African countries' industrialization objectives.

Much of the recent debate and controversy in regard to the international investment protection regime has revolved around its implications on the policy space that developing countries need to promote development. The rising number of ISDS cases reveals how the rules established under international investment agreements, and the way they have been expansively interpreted by private investment arbitrators, encroach on government's ability to regulate in the public interest.

The majority of the ISDS cases registered at ICSID are in the gas, oil and mining sector; out of all the cases registered until 2014, 26% were concentrated in this sector. The figure is 35% for the year 2014 alone. By contrast, in 2000, there were only three pending ICSID cases related to oil, mining or gas (see: Sarah Anderson and Manuel Perez Rocha, "Mining for Profits in International Tribunals: Lessons for the Trans-Pacific Partnership", Institute for Policy Studies, April 2013).

Through resorting to the ISDS mechanism, investors are challenging a broad range of government measures, not only outright expropriation. Investors have brought cases in relation to revocations of licences (e.g., in mining, telecommunications, tourism), alleged breaches of investment contracts, alleged irregularities in public tenders, changes to domestic regulatory frameworks (gas, nuclear energy, marketing of gold, currency regulations), withdrawal of previously granted subsidies, tax measures and other regulatory interventions [source:unctad.org/en/Publications Library/webdiaepcb2013d3_en.pdf (2012)].

Similarly, ISDS has increasingly been used by investors in the extractive industries in several African countries, challenging governmental reform actions such as policies against speculation

in the oil industry as well as tax measures. For example, Canadian oil company Vanoil threatened to bring a case against Kenya after it failed to secure the extension of a pair of production-sharing contracts for onshore oil exploration in the country.

African Petroleum Gambia Limited brought a case (contract-based) against Gambia disputing the termination of hydrocarbon licences for oil exploration. Total E&P Uganda BV, a subsidiary of French company Total S.A., brought a claim in relation to a stamp duty imposed by the Uganda Revenue Authority on the acquisition of stakes from London-listed Tullow Oil (source: Reuters Africa, "Uganda: Total seeks arbitration over Uganda tax dispute", 22 March 2015, available at af.reuters.com/article/investingNews/idAFKBN0MR0SI20150331?sp=3Dtrue).

Shortcomings of investment regime

The problem with the investment protection regime is multi-layered and rooted in the following deficiencies:

- an imbalance in the provisions of the investment treaties [including broad definitions of investment and investor, free transfer of capital, right to establishment, the national treatment and the most-favoured-nation (MFN) clauses, fair and equitable treatment, protection from direct and indirect expropriation, and prohibition of performance requirements], which focus on investors' rights and neglect investors' responsibilities, while often lacking express recognition of the need to safeguard host states' regulatory authority;
- vague treaty provisions, which allow for expansive interpretation by arbitrators and for systemic bias in favour of investors in the resolution of disputes under investment treaty law. Such trends are often not in line with the original intent of the states negotiating the treaty;
- the ISDS mechanism, which is led by a network of arbitrators dominated by private lawyers, whose expertise is often in the area of commercial law. Arbitrators have asserted jurisdiction over a wide range of issues, including regulatory measures on which constitutional courts had made a decision in accordance with the national law. The way the ISDS system has operated so far generates deep concerns in regard to democratic governance and accountability;
- the lack of transparency and available public information on ISDS procedures limits the space for public participation and accountability. Currently, 608 ISDS cases are known. However, since most international investment agreements allow for fully confidential arbitration, the actual number is likely to be higher. Within this context, claims or threats by investors to bring forward a claim against a particular state are increasing.

Several countries, both developed and developing, have been reviewing their approach to investment treaties, including looking at ways of reducing their legal liability under BITs, especially given the surge in ISDS cases stemming from these treaties.

According to UNCTAD, at least 40 countries and four regional integration organizations are currently or have been recently revising their model of international investment agreements. UNCTAD points out that "the question is not whether to reform or not, but about the what, how and extent of such reform".

Developing countries seeking to reform their approach to investment protection treaties have reviewed their existing international investment agreements and their implications. Some have set a moratorium on signing and ratifying new agreements during the time of the review.

Some countries like South Africa, Indonesia, Ecuador and Bolivia chose to withdraw from all or some treaties. South Africa chose to replace BITs with a new national Promotion and Protection of Investment Bill that clarifies investment protection standards consistent with the South African constitution. Indonesia chose to develop a new model BIT, as did India. Ecuador reverted to investment contracts as the main legal instrument defining the relation with investors, including setting clear obligations on the investor such as performance requirements. Some states are pursuing alternatives at the regional level, through developing model rules that take into consideration developmental concerns. *(IPS)* ❐

Kinda Mohamadieh is a Research Associate and Daniel Uribe is a Visiting Researcher at the South Centre in Geneva. This article is based on their South Centre Research Paper (No. 65, February 2016), "The rise of investor-state dispute settlement in the extractive sectors: Challenges and considerations for African countries", available at www.southcentre.int/research-paper-65-february-2016.

(continued from page 6)

region could have enough to eat, 400,000 midwives could be paid in sub-Saharan Africa which has the highest maternal mortality rates, and 200 million insecticide-treated mosquito nets could be purchased to reduce child mortality from malaria.

In addition to lost development finance, Ilunga also noted to IPS that such actions have exacerbated inequality in the world, stating: "This is the same rigged system that has created the situation where ... the wealth of the richest 1% surpasses the combined wealth of the rest of the world."

Though the use of offshore companies is not illegal, Ilunga asserted that the legality of such actions is precisely the issue.

"Tax dodging exists in a legal gray area with some activities clearly violating the spirit of the law even though those activities are not technically illegal. But the fact that these activities are legal is precisely the scandal we are most concerned with," Ilunga said.

Fagan told IPS that it does not matter whether it is legally acceptable to have tax avoidance schemes. "Just because it's not illegal does not mean it is not a form of manipulation, form of corruption," he said.

Ilunga and Fagan noted that the Panama Papers are a wake-up call and urged governments to end harmful tax practices and close loopholes.

They highlighted the need to institute a public registry which lists companies' true owners, where money is being earned and how much is being earned.

Ahead of the United Kingdom's anti-corruption summit to be held in May 2016, Oxfam and TJN also called on the UK to lead the fight by halting its large network of tax havens including in the British Virgin Islands and the Cayman Islands.

"The anti-corruption summit provides an opportunity to dismantle the financial secrecy that threatens the [Sustainable Development Goals'] progress against poverty before it even begins," said Oxfam Policy Advisor Luke Gibson and TJN's Director of Research Alex Cobham in a briefing paper.

Cobham told IPS that though global reforms are essential, domestic stakeholders must also ensure that tax revenues will be used to help meet the recently adopted Sustainable Development Goals.

Included in the Goals are commitments to reduce illicit financial flows and corruption by 2030 and to strengthen domestic resource mobilization including improving capacity for tax and revenue collection. *(IPS)* ❐

Avinash Persaud's reinvention of financial regulation

Andrew Cornford **reviews a new book by a leading commentator on global financial regulation which surveys the regulatory landscape and which sets forth proposals for dealing with systemic risk in the sector.**

The work of governments and intergovernmental organizations on financial regulation rolls on with final outcomes promised but seemingly always just over the horizon. Overviews are few, owing no doubt both to the complexity of the agenda's components and to the difficulty of analyzing a target still subject to continuous revision. So a new book by Avinash Persaud – *Reinventing Financial Regulation: A Blueprint for Overcoming Systemic Risk* (New York: Apress, 2015) – which attempts such an overview is a particularly welcome event though his assessment is inevitably provisional.

Persaud's career has spanned executive positions at a number of major banks, teaching and managerial positions in academe, and analysis and proposals concerning the financial system for both official and non-governmental bodies. Since the Global Financial Crisis (GFC) he has been one of the highest-profile commentators on the global regulatory agenda.

His book pays special attention to the mitigation of systemic risk but also takes up other regulatory issues with only indirect implications for systemic financial stability. His proposals span the range from what some may consider excessive indulgence towards the financial sector to the more radical, including some likely to appeal to those who consider that financial regulation in emerging-market and other developing countries has received insufficient attention in post-GFC work by global regulators. The open-mindedness of the book includes commentary on issues concerning which the positions mostly taken by advanced economies (AEs) have not achieved global consensus. These include the benefits of cross-border banking and capital flows as well as the conditions which countries impose on the legal form of the former when according market access. Nonetheless, like the global agenda of financial reform itself, the book's commentary is shaped primarily by issues posed by the experience of AEs during the GFC.

The standards enunciated by the Financial Stability Board (FSB), which has been entrusted by the G20 major economies with overall coordination of the implementation of the reform agenda, and by the Basel Committee on Banking Supervision (BCBS), which has principal responsibility for reforms of rules for bank regulation, are still emerging from a drawn-out drafting process. Persaud's critique of the standards for the reform of bank regulation starts from foundational assumptions of the BCBS concerning the treatment of credit risk, similar flaws in the treatment of market risk, the respective roles of capital and liquidity in bank regulation, and the appropriate distribution of financial risks between institutions with different capacities for risk absorption. He also addresses issues under the heading of banks' capital and risk management which have figured prominently in discussions of the reform agenda beyond the standards enunciated by the BCBS but nonetheless within the purview of the FSB. These issues include banks' size and complexity, the structural simplification of banks through measures such as the ring-fencing of retail operations, bankers' remuneration, bankers' ethics, taxes on financial transactions, controls over the introduction of new financial products, the institutional set-up of financial regulation, and the appropriate tasks of cross-border regulatory cooperation.

Credit, market and liquidity risk in the Basel capital framework

Basel II (published in 2004), like its predecessor Basel I, consisted largely of rules for the capital requirements, risk management and transparency of individual banks. Effective microprudential regulation of this kind, which applies primarily to individual financial institutions, can also be expected to strengthen the banking system as a whole. But in Basel I and Basel II the size of institutions and the extent of interrelations between them were the subject of only limited attention. The extensions and revisions of Basel I in Basel II were to provide an inadequate defence against the stresses and systemic risks faced during the GFC.

Basel III has built on Basel II with revisions designed to respond to weaknesses exposed by the GFC, including some of a systemic nature requiring macroprudential responses. Basel III has already been incorporated in the financial regulation of some countries. However, the BCBS continues to work on further revisions of Basel III in response to the results of studies of, and industry representations concerning, the current draft's likely effects.

In Persaud's view, although the revision of the rules of Basel II in Basel III is designed to be a response to the GFC, the existing approach to reform of banking regulation continues to suffer from the flaw of being based on too static a conceptual foundation. The approach takes insufficient account of the way in which the character of banking risk changes in response to potentially dangerous situations and to crises. At such times exposures originally classified as safe become unsafe; correlations between risks and between institutions change; convergence among banks of the techniques of risk management, encouraged by regulators, can result in the herding which is a major feature of systemic risk in practice; and threats to banks' solvency manifest themselves initially more often in liquidity problems rather than in insufficient capital. The resulting flaws in the regulation of banks have been reinforced by an ill-designed matching of risks and the capacity for absorbing them of the different institutions of the financial sector (including non-bank financial institutions).

The rules for credit risk of Basel III (like those of Basel II) provide for capital requirements against exposures which are classified either in the text of the framework itself by major categories of counterparty or according to banks' own esti-

mates from internal modelling of major determinants of credit risk. In these rules, in Persaud's view, Basel III underestimates the importance to risk management of banks' natural tendency to avoid risky exposures and to deploy techniques of risk mitigation such as collateral and hedging. Moreover the classification of credit-risk sensitivity in Basel III is based on previous experience. This is a major source of the danger already mentioned that exposures originally considered safe prove to be much more risky in more difficult conditions, to the point of frequently becoming themselves potential sources of systemic risk. Likewise a backward-looking approach based on recent experience also compromises the effectiveness of the framework's rules concerning capital allocation and management for market risk – the risk due to exposures in a bank's trading book, i.e., its positions in financial instruments held with the intention of resale to profit from changes in prices and interest rates or for hedging purposes.

Like some other commentators, Persaud believes that the initial emphasis of the Basel capital accords on capital as the key vehicle for banks' protection against risk led to underemphasis of liquidity risks, i.e., those due to a bank's inability to obtain needed funds at an affordable price within a reasonable period to meet obligations as they become due. Liquidity risks are typically the starting point for threats to the solvency of individual banks through their impact on the value of assets on their balance sheets, eventually becoming a source of systemic risk if the threats to several institutions cluster. The management and regulation of liquidity risk requires primary attention to mismatches between a bank's assets and liabilities.

This criticism requires qualification in the light of ongoing revisions. Basel I and Basel II did indeed pay excessive attention to capital at the expense of liquidity in their treatment of risk management. However, in Basel III this imbalance has been significantly rectified. The rules now contain a Liquid Coverage Ratio and a Net Stable Funding Ratio. Under the first, high-quality liquid assets convertible to cash at little or no loss to the bank must exceed net cash outflows anticipated during the next 30 days. Under the second, exposures over a one-year time horizon must be funded with a minimum amount of stable liabilities, i.e., equity and other financing expected to be reliable sources of funds over a one-year time horizon under conditions of extended stress. The Net Stable Funding Ratio is the ratio of available to required stable funding and must exceed one.

On liquidity risk Persaud has had to finetune his text in response to the changes already made by the BCBS in Basel III. He acknowledges that through its new rules on liquidity management Basel III has now covered an important gap in the Basel framework, while noting ruefully that the Net Stable Funding Ratio is vehemently opposed by the banking lobby.

But he would still go further than the BCBS. Protection against financial risks, including those of liquidity, should involve not only rules for a bank's risk management but also a redistribution of risks amongst institutions to enable the risks to be assumed by those best equipped to bear them. Here he would like to see placement of a larger share of long-term exposures on the balance sheets of institutions with correspondingly long-term liabilities such as insurance companies and pension funds – institutions which he views as having a greater capacity for absorbing such risks than most banks.

Persaud's approach is intended to cover both short-term and long-term exposures, amongst the latter exposures to equities, bonds and longer-term loans. For the exposures still uncovered after implementation of this approach, he proposes appropriately designed diversification and hedging as well as risk-absorbing capital. Such an overall approach seems close to longstanding, pre-Basel-framework best practices for banks' financial management (Stigum and Branch, 1983: Chapters 7 and 8).

The rationale of Persaud's alternative scheme of regulation and risk management is set out at the level of principle. Capital, as just noted, would still be allocated for residual exposures to credit risk after the deployment of his preferred alternatives. However, the discussion could have been usefully supplemented with more on the scheme's practical side. For example, how would such allocation of capital work?

A similar comment applies to his proposal – perhaps the most novel of the book – that different financial risks should be redistributed as far as possible amongst institutions according to their risk-absorptive capacity. As explained below, Persaud does describe the way in which existing approaches to regulation impede such allocation in the case of insurance companies and pension funds. Moreover, in favour of the single regulatory agency which he would like to see given responsibility for systemic risk not only of banks but also of other financial institutions, he notes that it would be better suited than typical present arrangements for carrying out the transfers necessary for such allocation. But the diversification of the activities of some of today's financial conglomerates, which include both insurance and banking, can blur distinctions between different categories of financial institution. Thus Persaud's proposal might require mandatory separation of certain activities of banks and insurance institutions.

Moreover, the discussion in his book would have benefitted from more detail concerning the methods of sale and transfer used to achieve the institutional redistribution of risks which he proposes. Since the publication of his book, Persaud has in fact elaborated the way in which this redistribution might be carried out (Persaud, 2016: 6-7). This is more easily explained as part of the treatment of the regulation of insurance companies and pension funds.

The regulation and risk absorption capacity of insurance companies

Persaud devotes most of a chapter to the regulation of life insurance companies and pension funds. This is clearly connected to his views as to the appropriate distribution of different risks amongst institutions according to their intrinsic capacity for absorbing them. From the perspective of systemic risk, he sees the stability of banks and of insurance companies as "simply different sides of the same coin" and believes that "to view them as separate endeavours is a grave mistake". In other words, the specialized skills of the two categories of institution in the management of risks are different but complementary.

Yet he fears that insurance regulation as embodied in the European Union's rules for the solvency of insurance companies (Solvency II), heavily influenced by the Basel capital framework for banks, is moving in the wrong direction. A major focus of this regulation is setting capital levels to offset the

market risk due to short-term fluctuations in value of the insurance companies' assets. Less liquid and long-term assets are mostly subject to higher capital requirements.

This approach, Persaud argues, is misguided. The largest proportion of assets held by insurers are those of life insurance companies, whose liabilities are mostly long-term. For such institutions attribution of central importance to short-term asset values – the price of the insurer's assets tomorrow or at the end of the year – is misguided. Their key risk is that of a shortfall of returns to their assets when they are needed, mostly several years hence, as liabilities to policy holders fall due. Thus the appropriate focus of insurers' risk management is not short-term market and liquidity risk but what Persaud calls "shortfall risk". This reflects the statistical likelihood that the value of an institution's assets falls short of the liabilities they are set against when these liabilities fall due, and would serve as the basis for insurers' capital requirements. Such a procedure, where regulatory capital would depend on the mismatch of the maturities of an institution's assets and liabilities rather than official sectoral classification, would deal with the worry that an insurance company is being regulated as an insurer while much of its operations are in fact those of an investment bank.

Persaud acknowledges that the best time is past for regulatory change in the direction he would like to see. European insurance companies are already embarked on the process of adapting their balance sheets to Solvency II. Nonetheless he still believes that over time his proposal could encourage transfers of assets between banks and insurance companies that would improve the financial sector's resilience and provide insurance companies with better investment opportunities.

Large and complex banks

Persaud's comments on the size and complexity of banks are ambivalent and questionable. On the one hand, small and medium-sized banks he views as having played a large role in triggering the GFC not only in the United States but also in Germany, Spain and the United Kingdom. Large banks, by contrast, he considers well suited to the management and financing not only of credit risks but also of market and liquidity risk in the diversified portfolios which their size makes possible. Thus actions to increase the number of banks through size caps might actually increase financial instability by spreading more widely the use of standardized metrics in risk management and thus increasing the danger of herding, which has frequently been an important source of systemic risk.

As part of his argument, he points to large, complex banks like Deutsche Bank, HSBC and JPMorgan which seemed to weather the GFC relatively successfully. He acknowledges that some large banks were engulfed by the crisis. But he ignores that some large banks and others not perhaps qualifying as large but nonetheless as complex faced serious problems in the GFC, sometimes requiring various forms of state support.

In particular he ignores here Citibank, the precariousness of which led to its being one of the largest recipients of government aid during the crisis. Even before the crisis Citibank was the subject of adverse comment on the problems which its scale posed for its internal controls. In a book drawing upon his first-hand experience after the merger with Travelers, a manager of trading at Citibank commented on consequences of the inadequacy of available accounting data for large banks' management decision making as well as for investors as follows: "With large [financial] organizations, it can become difficult to determine who is making the decisions, and momentum can take hold and move the process with a life of its own" (Bookstaber, 2007: 134). This remark rings true also for revelations since the outbreak of the GFC concerning flaws in the risk management of large banks other than Citibank – flaws which raise serious questions about the possibility of satisfactory internal control and effective supervision for such institutions.

Given his acceptance of the arguments concerning the benefits of size and diversification, Persaud is unsurprisingly sceptical as to the benefits of simplifying banks' structure through the ring-fencing of their retail operations. Under the heading of ring-fencing, he focuses only on that which would allow banks to do both retail and investment banking but only in legally separate entities. Presumably because recourse to banks whose assets would be restricted to holding only a narrow range of safe liquid instruments against their deposits is not a politically realistic prospect, there is no discussion of the pros and cons of narrow banks subject to such restrictions, proposals for which have been around since the 1930s (of which a celebrated example is to be found in Simons, 1948, Chapter X).

Persaud acknowledges potential benefits to taxpayers from ring-fencing owing to their reduced exposure to bank bailouts, which would no longer be available for activities outside the ring-fence. However, he sees the likely consequences as including a diversion of attention from other, more effective means of risk mitigation such as his especially favoured proposal for a shift of some of banks' risks to institutions elsewhere in the financial system with a better risk absorption capacity.

Bankers' pay

There is widespread agreement amongst commentators on the GFC that the link of bankers' pay packages to their institution's stock price (for example, in the form of payment with stock options) led to risk taking which contributed to and amplified the GFC. As Persaud puts it, "Astronomical pay has produced astronomical risks rather than astronomical results with massive subterfuge to hide the fact." Nonetheless he argues that there is no alternative to incentivizing pay in banking. This should take the form of a structure which would complement other measures designed to propagate a sense of achievement and to check a culture of "get rich quick" – a culture associated with frequent moves of bankers between institutions. For this purpose he proposes high salaries with only a small proportion in the form of discretionary bonuses.

This is broadly in line with the response of the FSB, the EU and national governments which have focused on the use of bonuses in relation to the fixed component of remuneration and on delays in the receipt of bonuses with provisions for clawback – reductions after the initial award or vesting – in the light of subsequent performance.

There is another possibility which might have merited a mention. This would be a return to greater use of unlimited liability for certain banking activities such as trading. Partnerships with unlimited liability, which were still a fairly com-

mon institutional form for investment banking until recently, would ensure that incentivization at upper levels took the form of individual responsibility for losses as well as profits.

However, unlimited liability has not figured prominently in recent discussion of the reform agenda. There are probably various reasons for this. The reintroduction of unlimited liability would be a more radical departure from current practices than those measures which have figured prominently in the reform agenda. Moreover, such a step would require changes in the legal structure and corporate governance of banks going beyond the current tinkering with the fixed and variable proportions of bankers' pay as well as prescribing more stringent rules for the latter.

Checking speculation through a Tobin tax

Financial crashes with their associated systemic risks follow eventually unsustainable financial booms. Such booms, especially in their later phases in AEs, are to a significant extent propelled by a preponderance of short-term speculative traders in markets for financial assets – characterized as "noise" as opposed to the "fundamental" traders in a seminal article by DeLong and colleagues on the relative importance of these two groups in the forces driving such booms (DeLong et al., 1990).

For Persaud a financial transaction or Tobin tax could serve as a prophylactic since even at very low proportions of the value of transactions for both buyers and sellers, such a tax is capable of absorbing most or all of the profits of short-term trading. In an admirably concise but wide-ranging review, he not only explains the tax's rationale but also demonstrates its feasibility – in the process disposing of most of the arguments commonly raised against it such as the location of financial transactions in jurisdictions where the tax is not applicable. Feasible though a Tobin tax may be, there is a long history of fierce and so far mostly successful opposition by banking and industry lobbies.

Accounting rules and financial cycles

It has long been recognized that accounting rules are capable of exacerbating financial cycles. The focus of attention here concerns the effects on decision taking of fair valuation of assets and liabilities (fair value being defined by the International Accounting Standards Board as "the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction"). In a 2009 report on procyclicality in the financial system, the Financial Stability Forum (FSF, the predecessor body of the FSB) drew attention to the way in which fair-value accounting "encouraged market practices that contributed to excessive risk-taking or risk-shedding activity in response to observed changes in asset prices" (FSF, 2009: 26).

Persaud has his own slant on the procyclicality of accounting rules. This covers not only the effects of fluctuations in accounting valuation on decision taking but also the contribution of the uniformity of accounting rules to herd behaviour. Uniform valuation resulting from accounting rules which ignore differences among disparate market participants in balance sheets and business models increases the – in his view – inappropriate homogeneity of behaviour on the part of financial institutions during periods of market stress. Imbalances between the numbers of buyers and sellers are the likely result of homogeneity at such times, with the former outnumbering the latter in booms and the latter outnumbering the former in busts.

His proposal for dealing with this problem posed by accounting practice entails a marked departure from the reliance of existing accounting rules on the three basic alternatives, historic cost, marking the values of assets and liabilities to their market price, and estimates of the discounted cash flows which an item is expected to generate. He would substitute for these alternatives "mark to funding". Groups of assets funded with liabilities of up to 6 months and, according to the choice of the institution, groups funded with liabilities of between 6 and 36 months would be subject to mark-to-market valuation. Other assets – those which the institution does not expect to sell in the immediate term – would be valued on the basis of their future discounted cash flows. Such "mark to funding" he expects to have the beneficial effect of restraining asset sales and of incentivizing purchases of cheapened assets by long-term savers during crises. Moreover, there would be fewer transactions based on artificial rules-based homogenization of market behaviour, Persaud's bugbear owing to its potential for increasing herding and thus systemic risk.

Interestingly this proposal seems to parallel – but with greater detail – a change in accounting rules suggested by the BCBS in 2009 which would link bank accounting to the bank's business model, to its risk management strategy and practices, and to the economic substance of its transaction (BCBS, 2009). Such a shift would be compatible with, though it would not assure, less homogeneity in market behaviour.

Ethics and consumer protection

Major cases of unethical behaviour in financial sectors in recent years, publicized particularly in the United Kingdom and the United States, have involved failures – sometimes egregious – to comply with principles of consumer protection. Persaud's suggested reforms focus principally on consumer protection in the form of rules concerning the investments of those on moderate incomes. Here he is avowedly paternalist and would like to see restrictions on the shares of investments in financial instruments graded by levels of risk in which investors with different levels of wealth can place their money.

Ethics in the financial sector more generally Persaud considers a problem best treated under the heading of incentives. That instances of criminal behaviour on the part of individuals have been exposed in the aftermath of crises he acknowledges. But he views them as minor contributors to the crisis in comparison with the pervasive response by a large number of people to ill-designed incentives and regulatory lapses.

Persaud's comparatively indulgent attitude towards ethical lapses and serious violations of fiduciary standards as well as arguably criminal conduct in banks may be understandable in the light of his overriding concern with systemic risk rather than with the general functioning and reputation of the banking sector. Distinctions between fiduciary lapses and more serious criminal conduct are often difficult to draw in practice, and greater post-GFC recourse to prosecution of bankers in the United States and certain West European countries would no doubt have posed complex legal problems. None-

theless Persaud's position is at odds with the views of many concerned with regulation and the conduct of bankers. For example, the United States Financial Crisis Inquiry report attributed a significant role to mortgage fraud in the United States housing bubble, and the bubble in turn is viewed as triggering the chain of events which led to the country's financial crisis (National Commission on the Causes of the Financial and Economic Crisis in the United States, 2011: 187 and 230).

In the longer run, ethical standards in the financial sector seem difficult to abstract from its smooth functioning and its transaction costs. Moreover, continuing use by banks of their formidable lobbying power to avoid the imposition of greater accountability regarding standards of conduct seems potentially inimical to the public's respect for the political process in countries with overweening banking sectors. The design of remuneration packages may well contribute to inducing more ethical behaviour. But on its own this does not seem sufficient. Other observers have emphasized, for example, the potential role of codes of conduct. Ethics will also be affected directly and indirectly by many of the other subjects covered by a reform agenda such as the size and complexity of banks and rules concerning corporate governance, accounting and transparency.

Controls over derivatives and financial innovation

Persaud is sceptical as to the usefulness of controls at the product level as part of the reform agenda. Under the same broad heading his scepticism is also directed to the benefits of the bias in new regulatory rules in favour of simple as opposed to complex instruments and contracts, the wholesale transfer of over-the-counter (OTC) contracts on to exchanges, and controls over the introduction of new financial products – derivatives being a common target of advocates of such controls. He acknowledges the abuses driving the arguments in favour of such initiatives but believes that they are overdone.

Regarding the complexity of instruments and contracts, as in his proposal for the transfer of risks to the institutions with the best capacity for absorbing them, Persaud appears to prioritize regulation which matches the complexity and other terms of assets and of liabilities rather than legislating and regulating in favour of simplicity. As he puts it, "If existing liabilities are complex and changing, forcing the purchase of simple assets will result in unmatched risks." To the extent that complex instruments and contracts among banks' liabilities unduly complicate risk management and the resolution of banks in crisis situations, Persaud would have recourse to higher capital requirements for such contracts and to financial transactions taxes.

But on its own this approach seems to pose its own difficulties. Setting capital requirements and taxes in response to the complexity of derivatives could prove problematic, especially for contracts and instruments designed – as derivatives can be – to mitigate or evade the measures in question. As Persaud acknowledges, complex derivative instruments are generally constructed as combinations of simpler ones. But this means that the objectives of hedging with complex instruments can also be achieved through positions in the simpler instruments taken singly. In the light of the inadequate risk management and supervision of complex instruments during the GFC, an alternative which avoids dependence on the need for complex rules seems advantageous.

Persaud's arguments querying the superiority of exchange trading of derivatives have a certain force. Commodity futures exchanges are the outcome of long historical experience and of trial and error as to trading methods. However, ever since the official recognition of the rice futures market in Osaka in the 18th century, exchange trading has not met consistently the objectives ideally attributed to it of transparency, price discovery and institutional arrangements for restraining extreme instability.

Moreover, derivatives exchanges, now available for financial instruments as well as for commodities, have become mainly profit-maximizing institutions continuously jockeying for position. Massive derivatives transactions, if carried out on exchanges, owing to limited liquidity, can move prices to the disadvantage of the originating party. Contrary to Persaud, it can nonetheless be argued that exchange trading still has advantages in terms of transparency even once universal *ex post facto* reporting of private OTC transactions becomes mandatory. Moreover, as the sheer scale of derivatives trading increases and, with it, the associated systemic risk, centralized trading on an exchange should be easier to regulate than a heterogeneous mass of customized derivatives.

As for a mandatory approval process for new financial products (opposed by Persaud), supporters have cited the analogy of the testing of new drugs by the United States Food and Drug Administration before they can be prescribed by doctors. In fact regulatory approval for new financial contracts and products has a long history. Moreover, for exchange-traded contracts, recourse to the analogy of drug testing seems unnecessary in the light of historical precedents for mandatory approval from the trading world itself. Under a 1974 amendment of the Commodity Exchange Act (enacted after a lengthy debate in the United States Congress), United States exchanges were to include guidelines as to the public-interest requirements (understood to include a test of economic purpose) which should be met by new contracts (Johnson and Hazen, 1997: 2-17 to 2-19). However, since the deregulation of derivatives markets at the beginning of the new millennium, the reference to public interest has been watered down to a simpler requirement for contracts of contributing to price discovery. Thus a mandatory approval process for new financial products would not be so radical a departure from tried regulatory practice as some proponents of this idea seem to think. Tightening the requirements which should be met by new financial products in fact seems a useful weapon in the regulatory armoury.

The institutional framework of regulation

Persaud's views as to the appropriate institutional set-up for national regulation are closely connected to his proposals on the substance of regulation. Thus the principal headings of bank regulation, systemic risk, consumer protection and financial crime (a subject which does not figure prominently in the book's discussion), would each have its own regulator. The different tasks of regulation would be distributed between the three entities.

A separate authority either as a standalone agency or as a part of the central bank would have responsibility for systemic risk. Its institutional remit would cover not only banks but also other financial institutions capable of being a source of such risk. Moreover, it would be the logical place for subjects of prudential regulation such as incentives and transparency with a significant but only indirect connection to systemic risk.

Different skill sets – legal and forensic – are required for consumer protection and financial crime. Under the last heading, Persaud emphasizes the importance of avoiding the danger that the extremely complex requirements of successful control of money laundering and terrorist financing clog the other tasks of financial regulation through inclusion in regulatory authorities with mandates in other areas.

Persaud is wary of the current direction being taken by cross-border regulatory cooperation, driven as it is by major developed countries' belief in global homogenization of many regulatory rules. He welcomes the expansion of the membership of the old G7 to the G20 and the establishment of the FSB. He views as beneficial the resulting shift of influence to a group of countries "that share little other than economic power and have diverse experiences, challenges, cultural perspectives and starting points". He is also open to what he regards as the inevitable increase in emphasis in the aftermath of the GFC on local regulation and – in the case of cross-border banks – enhanced powers for host as opposed to home regulators (i.e., regulators of the parent institutions of cross-border banks). Home-country regulation – often poorly designed and inadequately enforced – he considers as having actually facilitated financial contagion during the early stages of the GFC.

Persaud would like the FSB to shift its focus from the enunciation of global – and to a great extent uniform – regulatory rules to four different subjects: monitoring internationally systemic developments and serving as an information hub for national regulators; policing financial protectionism to ensure that national regulation does not discriminate against financial institutions on the basis of their nationality as opposed to their activities; regulating market infrastructure such as those for commodities, derivatives and foreign exchange when this has an important cross-border dimension; and promoting convergence of rules and consolidation of financial instruments where this is necessary to avoid "a closed jungle" of national regulations which do not correspond to genuine differences in levels of development and financial culture.

Such a shift would mean that the FSB would no longer be the vehicle for enunciation of global norms ("the level playing field") which international banks view as an essential prerequisite for continued extension of their cross-border operations. Interestingly but logically, Persaud's reservations as to standardized cross-border norms extend to the initiatives in the EU "to create a single financial space with a single regulator". A common resolution policy and common funds for this purpose are to be essential elements of this system. The "quid pro quo of sharing the banking crisis costs is greater centralization and standardization of banking regulation". But this is unlikely to make it easier to quell the national credit booms that eventually produce crises. As he comments, "Bigger credit booms with attendant bigger crashes, however evenly costs are shared, are a more existential threat to the euro area than the odd sovereign default."

Cross-border finance

The sceptical tone of Persaud's attitude towards many of the results of ongoing multilateral cross-border regulatory initiatives reflects broader scepticism about greater liberalization of cross-border financial transactions and banking operations, and a generally favourable view of movement towards greater national – and therefore host-country – control over banking regulation, regardless of any consequent drag on international capital flows. As he puts it, "The benefits of openness in financial markets are conditional, complex, and in places suspect and should therefore not be the altar upon which we sacrifice host country regulation of finance."

Here he is at odds with the overall thrust of the current agenda not only for issues traditionally covered by regulation but also for subjects such as "international trade" in financial services as they figure in the WTO's General Agreement on Trade in Services (GATS) and trade and investment agreements. According to the GATS, for example, limitations on legal form (such as according market access only to banking subsidiaries and not to cross-border branches, a policy which Persaud would be likely to favour) must be specified for activities included in a country's schedule of commitments. Such limitations have been targeted by advanced economies for elimination from the schedules of emerging-market and other developing countries. The negotiating pressure on this front reflects a perspective according to which further cross-border financial liberalization – with some mainly temporary exceptions – is a rarely questioned desideratum.

How widely applicable are Persaud's proposals?

Inevitably there are questions concerning the applicability of Persaud's proposals at a global level, which includes the many – principally developing – countries not represented in the bodies with primary responsibility for the design of the reform agenda.

In the background of revisions of Basel II and of the official agenda for financial reform since the GFC have been flaws in financial regulation identified principally in advanced economies. The same set of flaws has also shaped much of the thinking in Persaud's blueprint. Various chronic problems affecting bank regulation in many emerging-market and other developing economies (EMEs) are not addressed by either. These include, for example, the shortage of trained supervisors – a shortage accentuated by the ability of the private sector to offer higher salaries to those with the relevant training – and the challenges to meaningful regulatory cooperation when banks, as in many EMEs, are much smaller than their counterparts in AEs and their regulators consequently carry less weight.

Nevertheless, as should by now be evident, Persaud's argumentation does not always start from the same premises as the official agenda. He also points to novel approaches to reform not in accord with dominant thinking in AEs. Thus his blueprint is worth looking at from a perspective which incorporates conditions and concerns in EMEs. But the remarks which follow, it should be emphasized, are illustrative and make no pretension of comprehensiveness.

Key subjects in Persaud's treatment of banking regulation discussed above are risk correlations, mismatches between the maturities of assets and liabilities, the appropriate distribution of risks between institutions according to their capacity for absorbing them, banks' own risk management and hedging, and revisions of accounting rules for the purpose of measuring regulatory exposures.

The emphasis on the importance to risk management of variations in correlations between different banks' exposures and between banks' exposures to different financial instruments is pertinent for banks in EMEs as well as in AEs. This subject is important for all approaches to risk measurement based on historical experience but especially for banks whose estimation of exposures for the purpose of setting their capi-

tal requirements explicitly incorporates risk correlations through the use of internal models. As already mentioned, variations in correlations during crises can be a major reason for the transformation of loans originally classified as safe into risky. Persaud's solution for this problem is not what he would probably consider to be a futile attempt by regulators to adjust correlations with a lag in line with changes in risks, but rather greater reliance on liquidity management and on structural measures of risk such as the leverage ratio. These, he would argue, are less risk-sensitive and less likely to have unfavourable procyclical effects.

The appropriateness and practicality of such proposed alternatives will vary amongst countries according to the level of sophistication of their financial sectors. This is true more generally of his suggested substitutes for reliance on capital requirements determined by measures of credit risk, namely improved regulation of liquidity risk, better hedging of banks' portfolios, and institutional redistribution of exposures according to risk-absorptive capacity.

Evidence is lacking concerning the potential for fuller liquidity regulation and improved diversification and hedging by banks in EMEs in comparison with those in AEs. As already mentioned, Basel III contains stronger standards than Basel II for liquidity regulation. But successful implementation of even these standards depends on effective supervisory controls over the liquidity of banks' assets and liabilities – controls which may prove more difficult to apply than the definitions may seem to imply at first sight. Hedging possibilities are constrained by the availability of appropriate collateral and appropriate financial instruments for the purpose. It seems plausible that both will tend to be less available in EMEs than in AEs. Moreover, vetting of banks' hedging and portfolio diversification by supervisors can be complicated by related and connected lending which is often commoner in EMEs than in AEs but more difficult to identify owing to the confusing nomenclature of borrowers and to concealed business connections amongst them.

Thus constraints on the applicability of Persaud's alternatives may make it difficult in many EMEs to avoid continuing reliance on estimates of credit risk for setting capital requirements to the same extent as in Basel III. Not that the problems causing these constraints will be definitively solved through reliance on capital requirements for credit risk, since in making estimates for this purpose, supervisors will be handicapped by much the same weaknesses in data availability and banks' internal controls as they would be for Persaud's alternatives.

The proposal for redistributing exposures amongst financial institutions according to their risk-absorptive capacity clearly assumes a substantial presence of institutions such as life insurance companies with appropriate balance sheets. This proposal may be more difficult to apply to EMEs than to AEs owing to the smaller size of their insurance sectors. To some extent, alternatives such as development banks may be capable of serving as replacements for insurance companies, long-term investments on the asset side of their balance sheets being the counterpart of liabilities with similar average maturities. Reliance on such alternatives would mean that the institutional risk redistribution proposed by Persaud would be less novel and closer to pre-existing ideas and practice regarding development finance. Nonetheless the attention he draws to the potential of such institutional redistribution to improve financial risk management provides a useful perspective on the way in which long-term development finance and improved regulation can be mutually reinforcing.

Initiatives to draft international accounting standards have long generated debate over the degree to which convergence to uniform rules should be the preferred target. Critics have raised the question whether uniformity would have the effect of stifling useful experimentation and the development of valid alternative models (Scott and Gelpern, 2012: 231-232). Persaud's scepticism concerning convergence, which he views as a source of behavioural homogenization likely to accentuate procyclcality in financial markets, and his suggested valuation based on "mark to funding" are thus compatible with significant currents of thinking concerning accounting standards. "Mark to funding" would indeed represent a break with existing methods of valuing financial instruments under International Financial Reporting Standards which are now required in 105 jurisdictions according to a recent survey of the IFRS Foundation (2014). However, valuation for regulatory purposes has not always slavishly followed international accounting standards so that the shift proposed by Persaud would not be unprecedented.

Systemic environmental risks

Persaud does not address the challenges posed by environmental problems for the future design of financial regulation. These problems have begun to attract substantial intergovernmental attention. They entail important sources of systemic financial risk. Despite the absence of environmental issues from Persaud's scheme, some of his ideas, appropriately adjusted to the different context, point in potentially fruitful directions for the design of regulation.

Many experts have argued that systemic environmental risks are amongst the biggest risks currently faced by humanity. Various recent and more distant historical events exemplify their potential scale: damages of at least $200 billion due to Hurricane Katrina in the Southern region of the United States in 2005 leading amongst banks to widespread loan losses and additional provisioning – distress for the financial sector which matched that occasioned by dust bowls in farm-belt states due to unsustainable farming methods in the 1880s, 1890s and 1930s – and the devastating effects of earthquakes, hurricanes and volcanic eruptions elsewhere in the world. Projections of unsustainable economic activities suggest that costs could rise to $28.6 trillion by 2050, with substantial implications for the financial sector.

Yet in a recent report of the University of Cambridge Institute for Sustainability Leadership for the UNEP Finance Initiative, the view is expressed that "with some notable exceptions, systemic environmental risks appear to be in the collective blind spot of bank supervisors" (University of Cambridge Institute for Sustainability Leadership, 2014: 7-11). Since these words were written, there have been signs of increased concern amongst regulators. At the beginning of 2016, the first meeting of the newly established G20 Green Finance Study Group (GFSG) took place in Beijing and the FSB announced the membership of a Task Force on Climate-related Financial Disclosures.

Several countries, of which the Cambridge/UNEP study singles out China, Brazil and Peru, have incorporated sustainability goals in their bank regulation (University of

(continued on page 5)