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WTO head's COVID IP proposal stirs contention

With the WTO still unable to put together an agreement to overcome the intellectual property (IP) constraints on supply of COVID-19 medical products, the trade body's Director-General has herself released a draft text towards this end. This proposal does not entail a waiver of IP rights as mooted by many developing countries but instead envisages recourse to non-voluntary licensing – an approach seen as complex, cumbersome and ill-suited to tackling a global pandemic.

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WTO DG sends controversial IP proposal to TRIPS Council

The WTO Director-General has put forward, on her own responsibility, a proposal on addressing intellectual property barriers to the supply of COVID-19 vaccines.

GENEVA: WTO Director-General (DG) Ngozi Okonjo-Iweala has sent a proposal to the WTO's Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) related to discussions the WTO secretariat has been facilitating in the past few months among the United States, the European Union, India and South Africa, despite the fact that only one member of the so-called Quad (the EU) has actually signed off on the proposal, said people familiar with the development.

On 3 May, the TRIPS Council Chair circulated an official communication (WTO document IP/C/W/688) containing a letter from the DG presenting the proposal to the WTO membership on the DG's own responsibility.

The proposed outcome with respect to the TRIPS waiver called for by 65 developing-country members of the WTO appears to be mostly the same as a leaked draft posted on Statnews.com on 15 March (see below).

In her letter, the DG stated that she saw a need for "additional impetus to the TRIPS waiver discussions given the impasse in the TRIPS Council."

She said that "working with DDG [Deputy Director-General] [Anabel] Gonzalez, we have tried to support an informal group of Ministers to come together around what could be a meaningful proposal, without prejudice to their respective positions, that could provide a platform to be built upon by the membership."

The DG noted that she had "assured Members that whatever outcome emerged from this informal process would be put forward transparently to the full membership for discussion in the TRIPS Council."

Nowhere in the DG's letter is there any mention of any Quad member or their agreement on any aspect of the proposal.

In fact, the US Trade Representative (USTR), Ambassador Katherine Tai, had told members of the Ways and Means Committee of the US House of Representatives on 30 March that she was aware of the leaked text but asserted that there was no agreement on the text.

Responding to the TRIPS Council communication on 3 May, US Ambassador to the WTO Maria Pagan issued a rather terse statement that avoided expressing support for the proposal.

"For nearly a year, the United States, as part of its comprehensive effort to end the pandemic, has worked constructively with other WTO Members to facilitate discussions and bridge differences that might lead to an outcome on intellectual property that can achieve consensus across the 164 Members of the World Trade Organization to help end the pandemic," Pagan said.

"In the days ahead, as part of the Biden-Harris Administration's goal to get as many safe and effective vaccines to as many people as possible, we look forward to continuing our engagement with members of Congress and stakeholders as all WTO Members consider the text as released by the WTO Director-General," she added.

India and South Africa have also not agreed to the DG's proposal.

Only the EU has publicly endorsed the DG's proposed outcome, according to some media reports. This is unsurprising as the proposal is premised on the EU's declared positions over the past year. A confidential communication of the European Commission that motivated support from its members for the leaked text argued that "the basis is the same as in the draft declaration put forward by the Commission in June 2021".

The apparent lack of agreement among the Quad did not, however, prevent the WTO secretariat from issuing a public statement that misleadingly referred to the DG's proposal as the "Quad's outcome document".

Text of proposal

The full text of the proposed outcome as contained in document IP/C/W/688 is as follows:

"1. Notwithstanding the provision of patent rights under its domestic legislation, an eligible Member [1] may limit the rights provided for under Article 28.1 of the TRIPS Agreement (hereinafter 'the Agreement') by authorizing the use of patented subject matter [2] required for the production and supply of COVID-19 vaccines without the consent of the right holder to the extent necessary to address the COVID-19 pandemic, in accordance with the provisions of Article 31 of the Agreement, as clarified and waived in paragraphs 2 to 6 below.

"2. For greater clarity, an eligible Member may authorize the use of patented subject matter under Article 31 without the right holder's consent through any instrument available in the law of the Member such as executive orders, emergency decrees, government use authorizations, and judicial or administrative orders, whether or not a Member has a compulsory license regime in place. For the purpose of this Decision, the 'law of a Member' referred to in Article 31 is not limited to legislative acts such as those laying down rules on compulsory licensing, but it also includes other acts, such as executive orders, emergency decrees, and judicial or administrative orders.

"3. Members agree on the following clarifications and waivers for eligible Members to authorize the use of patented subject matter in accordance with paragraphs 1 and 2:

"a) [With respect to Article 31(a), an eligible Member may issue a single authorization to use the subject matter of multiple patents necessary for the production or supply of a COVID-19 vaccine. The authorization shall list all patents covered. In the determination of the relevant patents, an eligible Member may be assisted by WIPO's patent landscaping work, including on underlying technologies on COVID-19 vaccines, and by other relevant sources. An eligible Member may update the authorization to include other patents.] [3]

"b) An eligible Member need not require the proposed user of the patented subject matter to make efforts to obtain an authorization from the right holder for the purposes of Article 31(b).

"c) An eligible Member may waive the requirement of Article 31(f) that authorized use under Article 31 be predominantly to supply its domestic market and may allow any proportion of the authorized use to be exported to eligible Members and to supply international or regional joint initiatives that aim to ensure the equitable access of eligible Members to the COVID-19 vaccine covered by the authorization.

"d) Eligible Members shall undertake all reasonable efforts to prevent the re-exportation of the COVID-19 vaccine that has been imported into their territories under this Decision. All Members shall ensure the availability of effective legal remedies to prevent the importation into their territories of COVID-19 vaccines produced under, and diverted to their markets inconsistently with, this Decision.

"e) Determination of adequate remuneration under Article 31(h) may take account of the humanitarian and not-for-profit purpose of specific vaccine distribution programs aimed at providing equitable access to COVID-19 vaccines in order to support manufacturers in eligible Members to produce and supply these vaccines at affordable prices for eligible Members. In setting the adequate remuneration in these cases, eligible Members may take into consideration existing good practices in instances of national emergencies, pandemics, or similar circumstances. [4]

"4. Nothing in Article 39.3 of the Agreement shall prevent a Member from taking measures necessary to enable the effectiveness of any authorization issued as per this Decision.

"5. For purposes of transparency, as soon as possible after the adoption of the measure, an eligible Member shall communicate to the Council for TRIPS any measure related to the implementation of this Decision, including the granting of an authorization. [5]

"6. An eligible Member may apply the provisions of this Decision until [3][5] years from the date of this Decision. The General Council may extend such a period taking into consideration the exceptional circumstances of the COVID-19 pandemic. The General Council will review annually the operation of this Decision.

"7. Members shall not challenge any measures taken in conformity with this Decision under subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994.

"8. No later than six months from the date of this Decision, Members will decide on its extension to cover the production and distribution of COVID-19 diagnostics and therapeutics."

Footnote [1] to the text reads: "[For the purpose of this Decision, all developing country Members are eligible Members. Developing country Members with capacity to export vaccines are encouraged to opt out from this Decision.] [For the purpose of this Decision, developing country Members who exported more than 10 percent of world exports of COVID-19 vaccine doses in 2021 are not eligible Members.]."

Footnote [2] reads: "For the purpose of this Decision, it is understood that 'patented subject matter' includes ingredients and processes necessary for the manufacture of the COVID-19 vaccine."

Footnote [3] reads: "This paragraph is under further consideration as to whether to keep or delete."

Footnote [4] reads: "This includes the Remuneration Guidelines for Non-Voluntary Use of a Patent on Medical Technologies published by the WHO (WHO/TCM/2005.1)"

Footnote [5] reads: "The information provided shall include the name and address of the authorized entity, the product(s) for which the authorization has been granted and the duration of the authorization. The quantity(ies) for which the authorization has been granted and the country(ies) to which the product(s) is (are) to be supplied shall be notified as soon as possible after the information is available."

The main differences between the

above proposal and the 15 March leaked draft are the addition in the former document of an option to footnote 1 with respect to the definition of "eligible Member"; the addition of square brackets to paragraph 3(a); and a footnote that clarifies that the paragraph is under further consideration as to whether to keep or delete. *(D. Ravi Kanth/SUNS9569/TWN)*

The next issue of TWE *will report on the TRIPS Council discussions on the DG's proposal.*

DG's proposed solution unsuitable for global public health crisis

Before the WTO DG's TRIPS proposal was distributed, it was already expected that it would be grounded in the use of non-voluntary licences instead of an actual intellectual property waiver. Writing ahead of the proposal's circulation, *Sangeeta Shashikant* contends that this approach falls woefully short of what is required to deal with COVID-19 and future public health shocks.

LONDON: Non-voluntary licences, or compulsory licences as they are commonly known, form the core of the proposed intellectual property solution that Ngozi Okonjo-Iweala, the Director-General of the WTO, is expected to be introducing to the WTO membership in the coming days.

The WTO secretariat headed by Okonjo-Iweala has in the past few months been facilitating discussions among the European Union, the United States, India and South Africa. However, there is no agreement among these so-called Quad members on the proposed outcome, which is widely considered to have been drafted by the secretariat.

Following a media leak in mid-March, the proposed outcome has been unpacked and scrutinized by experts globally. There is consensus that the proposed solution is too meagre to make a positive difference to access to COVID-19 goods, with elements that introduce further conditions and uncertainties with respect to use of non-voluntary licences, and harmful precedents on how to address global public health emergencies.

As opposition to the proposed outcome builds, the Director-General's sales pitch has ranged from "it's a workable solution" to the WTO not being "a diktat forum". And if that fails to convince, it is said that "no one likes it", with reference to resistance to the text from all sides, including civil society and Big Pharma, though for very different reasons.

Desperate for relevance, the WTO is ready to push forward any outcome. Whether or not it will meaningfully contribute to scaling up production and to bridging access gaps for COVID-19 products or provide a credible solution for further health emergencies, appears to be a secondary issue for the secretariat.

The raison d'etre of the TRIPS waiver proposal co-sponsored by 65 WTO members and supported globally is to address the massive supply-demand gap for COVID-19 medical tools and chart the way forward for how a world working in solidarity could address health emergencies.

In 2020, global demand outstripped supply, resulting in many developing countries facing acute shortages of all medical tools needed to contain COVID-19 as supply to the rich countries was prioritized. In October 2020, the United Nations Conference on Trade and Development (UNCTAD) highlighted the "staggering" difference in access whereby each resident of high-income countries benefited on average from an additional $10 per month of imports of COVID-19 products, compared with just $0.10 to $1.00 worth of imports for developing countries. The lower the income, the less access a country had.

The vast inequity continued in 2021 and persists even today.

The World Health Organization (WHO) has once again sounded alarm bells over the repeat of inequality, this time with regard to therapeutics. In a statement on 22 April, WHO said it was "extremely concerned that – as occurred with COVID-19 vaccines – low- and middle-income countries will again be pushed to the end of the queue" when it comes to accessing Pfizer's oral antiviral drug Paxlovid, which it deemed "the best therapeutic choice for high-risk [COVID-19] patients to date".

The statement also pointed out that the average daily testing rate in low-income countries was as low as one-eightieth the rate in high-income countries, emphasizing that "Improving access to early testing and diagnosis in primary health care settings will be key for the global rollout of this treatment".

In anticipation of continued inequities, when submitting their TRIPS waiver proposal, the proponents flagged concerns over how, as new diagnostics, therapeutics and vaccines for COVID-19 are developed, "these will be made available promptly, in sufficient quantities and at affordable price to meet global demand".

The co-sponsors of the waiver proposal and experts have concluded that diversifying and scaling up manufacturing globally is the crucial solution to facilitate the timely availability and affordability of medical products to all countries in need. For this to happen, the barriers of intellectual property (patents, trade secrets and beyond) have to be temporarily waived.

What is a non-voluntary licence?

Article 31 of the WTO Agreement

on Trade-Related Aspects of Intellectual Property Rights (TRIPS) governs the issuance of a non-voluntary licence (NVL) (also referred to as a compulsory licence). Essentially it is a licence issued by a government to a third party or third parties to allow exploitation of a patent without the consent of the patent holder. When the purpose of the licence is for "public non-commercial use" (e.g., for supply to government hospitals), such a licence is also commonly referred to as a "government use licence". Article 31 does not use any of these terms, however; its title simply refers to "other use without authorization of the right holder", meaning non-voluntary licensing.

The use of an NVL is subject to several conditions under the TRIPS Agreement.

Prior to issuance of an NVL, the user of such a licence would have to show that efforts to obtain a voluntary licence from the patent holder on reasonable terms have not been successful. However, this requirement of prior negotiations is waived in situations of "national emergency, or other circumstances of extreme urgency or in cases of public non-commercial use" under Article 31(b) of the TRIPS Agreement.

The Doha Declaration on the TRIPS Agreement and Public Health adopted by the WTO Ministerial Conference in 2001 has also clarified the right of each WTO member to determine "what constitutes a national emergency or other circumstances of extreme urgency" [paragraph 5(c) of the Declaration].

Nowhere in Article 31 of the TRIPS Agreement is there any requirement to identify all patent holders or to list all patents. In fact, Article 31(b) only requires the right holder to be "notified as soon as reasonably practicable" where an NVL is issued in situations of "national emergency, or other circumstances of extreme urgency". Where an NVL is issued for "public non-commercial use", the obligation is only to inform the patent holder promptly but only to the extent the government knows about the existence of a patent "without making a patent search".

The issuance of an NVL has to be considered on its "individual merits", i.e., based on assessing the particular situation. Importantly, the TRIPS Agreement is not prescriptive as to the details that should be included in the NVL.

Article 31(f) states that any use authorized under the NVL should be "predominantly for the supply of the domestic market". While this limitation does not prevent exports altogether, it does prevent the export of the majority or all of the production.

In 2001, the concern that this limitation would create a challenge for countries with insufficient manufacturing capacity was captured in paragraph 6 of the Doha Declaration. Subsequently, on 30 August 2003, the WTO General Council adopted a decision to waive Article 31(f), but subject to numerous procedures which unfortunately have largely made that decision effectively unworkable. However, despite the numerous criticisms of the decision, it was converted unchanged into a permanent amendment of the TRIPS Agreement in the form of Article 31bis.

The use of an NVL also requires payment of "adequate remuneration" to the patent holder, and governments have full discretion to determine the amount. In practice, remuneration of as low as 0.5% of sales value has been offered to the patent holder.

The proposed outcome complicates use of NVLs

The proposed outcome expected to be put forward by the DG could have simplified the use of NVLs by putting in place straightforward waivers of the conditions attached to their use. Such a move would have been welcome in a global pandemic. Instead, however, the proposed outcome further complicates use of NVLs for COVID-19 by introducing additional onerous conditions such as the following:

- The use of NVLs is linked to "patents necessary for the production or supply of a COVID-19 vaccine", in paragraph 3(a) of the proposed outcome. A "necessity" test is a difficult standard to meet in the WTO and its inclusion throughout the proposed outcome should be a cause for concern. Such a test has never been the basis for using Article 31 of the TRIPS Agreement, which allows NVLs for any patent.
- The same paragraph requires listing of "all patents covered" by the authorization. This is another impossible condition to comply with, given the hundreds of components involved in the development of a vaccine and a complex patent landscape that is often not publicly visible and is constantly evolving. Such a requirement leaves potential manufacturers unprotected, for there is always a risk of infringement if a particular patent is not listed in the authorization.
- Anti-diversion measures are linked to the use of NVLs for COVID-19, although such measures are not required under Article 31. It is bewildering that restrictions on re-export are being applied when pooled procurement and sharing of doses are important aspects of equitable access especially during a pandemic.
- There are notification measures that require information about authorized entities, products, quantities and countries supplied to be provided to the TRIPS Council, although such measures are not required under Article 31. While on first sight these may seem harmless, in practice they may have a deterrent effect, as even prior to such measures, pressure to not use NVLs is already significant (see below).

On a positive note, the proposed decision waives Article 31(f), which subjects non-voluntary authorizations under Article 31 to the condition that the authorization be "predominantly for the supply of the domestic market". This waiver could be useful when most of the production is for export. Its utility is however hindered by other conditions attached to the use of NVLs for production, as without production, there cannot be any export. In addition, the absence of clarification on the inapplicability of Article 31bis and related procedures may also be a hindrance.

Why are NVLs insufficient to address global public health crises?

The TRIPS waiver proponents have described at great length the unsuitability of simply relying on NVLs to address a global public health crisis, arguing that "Article 31 will not leverage uninterrupted collaboration for countries to share production and supply capacity and to walk out of this pandemic together".

Article 31 offers a country-by-country, case-by-case solution: whenever and wherever there is a patent barrier, each country will need to issue an NVL to manufacture, import or export the product or its components. Manufacturers and procurement agencies will wait for government action to issue an NVL before any production or procurement of "generic" versions can take place. In many countries, inter-ministry coordination, other national procedures, as well as pressure from Big Pharma and even developed countries, often mean that NVLs are not realized. In contrast, in countries with full freedom to operate (in the absence of patents), as soon as there is indication that a pharmaceutical could work, a manufacturer is immediately able to produce the product.

Furthermore, NVLs under Article 31 only override patents, but do not address other intellectual property barriers such as trade secrets, copyright and industrial designs.

To be sure, NVLs are an extremely important tool to override patent barriers. Over the years, their use has enabled access to affordable medicines. However, unwarranted procedures in national and regional legislation and practices, largely the result of ill-advised technical assistance and persistent pressure from developed countries, in particular the US and the EU, as well as Big Pharma, have obstructed the use of NVLs on a wide basis. There can also be disputes over whether to grant an NVL or over the legal validity of the authorized NVL, impeding expeditious production and supply.

The co-sponsors of the TRIPS waiver proposal have thus argued that "In the current situation [meaning during a global public health emergency such as COVID-19] where every country is suffering and in desperate need of adequate supplies, relying mainly on Article 31 to address [intellectual property] challenges in ensuring global access is seriously ill-advised", stressing that the "country-by-country, case-by-case approach offered by compulsory licences hinders North-South, South-South, regional and international collaboration to achieve economies of scale and ramp up global manufacturing and supply."

In contrast, as argued by the co-sponsors, the proposed waiver requires only a "one-time implementation and, for the duration of the waiver, will remove legal barriers and facilitate collaboration at the regional and global levels, allow the inclusion of multiple technologies in its scope, allow economies of scale to be achieved, motivating further manufacturing, and consequently lower prices. With a waiver, the administrative and procedural delays and conditions linked to Article 31 and 31bis will be avoided, meaning that countries will have full freedom to collaborate, manufacture and supply the required products".

Disputes and pressure against using NVLs

Pfizer's opposition to a petition by Knowledge Ecology International (KEI) for a government use and an open public interest NVL in the Dominican Republic to manufacture, import, sell and export nirmatrelvir (PF-07321332) perfectly illustrates the challenges in using NVLs to meet access needs.

> "In the current situation ... relying mainly on Article 31 to address challenges in ensuring global access is seriously ill-advised."

The nirmatrelvir/ritonavir combination marketed by Pfizer as Paxlovid has been recommended by WHO "for patients with non-severe COVID-19 who are at highest risk of developing severe disease and hospitalization, such as unvaccinated, older, or immunosuppressed patients".

In November 2021, Pfizer entered into a voluntary licence with the Medicines Patent Pool to facilitate the global production and distribution of PF-07321332, but the licence contains restrictive provisions regarding the sale and use of this medicine, in particular excluding the Dominican Republic and many other developing countries from supply under the licence.

KEI's petition dated 3 December 2021 has been vehemently resisted by Pfizer and five months on, the petition continues to be pending at the National Industrial Property Office.

This is not an isolated incident.

In May 2021, Canadian company Biolyse agreed to produce and supply Bolivia 15 million doses of COVID-19 vaccine should a compulsory licence for exportation be issued by Canada. However, to date there has been no progress or decision from the Canadian government with respect to the issuance of the licence. In any case, according to an analysis by the medical humanitarian organization Médecins Sans Frontières (MSF), Canada's implementation of Article 31bis to allow NVLs for export "contains over 19 sections and over 100 clauses and sub-clauses" and "[s]imply understanding the legislation requires legal training or support".

Thus, the history of non-voluntary licensing under the TRIPS Agreement is littered with attempts to frustrate the use of NVLs. In 2017, faced with high prices of the hepatitis C drug sofosbuvir, Malaysia issued an NVL for government use that allowed the government to import affordable generic sofosbuvir from Egypt. There were many attempts to get the Malaysian government to withdraw the NVL, with the government facing relentless hostility from the patent holder, US pharmaceutical company Gilead Sciences, as well as various agents of Gilead and the US, including the American Malaysian Chamber of Commerce (AMCHAM), the US Chamber of Commerce, the Global Innovation Policy Center, the White House Coordinator for Intellectual Property, and the Office of the US Intellectual Property Enforcement Coordinator.

In 2015, Livia Leu, the Swiss Head of Bilateral Economic Relations and Delegate of the Federal Council for Trade Agreements, sent a letter to Colombia's Ministry of Health with the intent to block the issuance of a compulsory licence on imatinib, a leukaemia medicine that costs approximately $20,000 in Colombia, a country with a per capita income of only $7,780.

In various WTO submissions, the co-sponsors of the TRIPS waiver proposal have highlighted these pressures that happen at the behest of pharmaceutical corporations, including the annual US Special 301 Report on intellectual property enforcement that has over the years threatened trade sanctions against many developing countries for issuing NVLs to access lower-priced versions of desperately needed medicines. The European Commission has also issued repeated warnings to countries deterring the use of NVLs.

Proposed solution for vaccines only

WHO and global health experts including from the US and the EU are all in agreement that therapeutics and diagnostics are equally important to control COVID-19 and save lives. US President Joe Biden himself has launched the "test to treat" initiative domestically. Dr David Kessler, Chief Science Officer for the Biden Administration's COVID-19 Response, acknowledged that "An easily administered oral antiviral drug would be an important part of our therapeutic arsenal that would complement the great success of our vaccine efforts."

The EU's COVID-19 therapeutic strategy also states that "vaccines will not eliminate the disease overnight and therapeutics will still be needed for patients in hospitals and at home, including people suffering from 'long COVID' (the long-term effects of COVID-19 infection)".

Yet, astoundingly, the proposed WTO solution applies only to vaccines.

To appease critics, the proposed outcome adds the possibility that the same (flawed) solution may be extended to therapeutics and diagnostics in no later than six months. However, those who understand the WTO know that the possibility of another decision in the organization concerning public health within the next six months is extremely slim. The WTO is notorious for its false promises and missed deadlines.

To date, most WHO-recommended treatments for COVID-19 (with patents filed/granted in many jurisdictions) are either unavailable and/or unaffordable in most developing countries.

In July 2021, WHO recommended IL-6 receptor blockers (tocilizumab or sarilumab) for patients with severe or critical COVID-19 infection, but many developing countries, such as Kenya, Jamaica, India and South Africa, have struggled with affordable access to tocilizumab. In South Africa, despite an expert panel finding that tocilizumab reduced deaths, the recommendation was for the drug to not be used because it is "not affordable at the current offered price". At a cost of around $2,000 per patient, this life-saving therapy is largely out of reach for African populations, according to WHO's regional director for Africa, Matshidiso Moeti.

In September 2021, WHO issued a non-conditional recommendation for the use of a combination of neutralizing monoclonal antibodies (casirivimab and imdevimab) in non-severe COVID-19 patients at the highest risk of severe disease and in severe and critically ill COVID-19 patients with seronegative status. Recognizing the problem of access, it urged "producing companies and governments to address the high price and limited production of the Regeneron antibody combination".

Baricitinib, patented in 50 developing countries, is a WHO-recommended oral treatment for severe COVID-19. In countries where it is patented, it is priced prohibitively by Eli Lilly: $1,109 (list price), $886 (Argentina), $551 (UK) and $371 (France) for a 14-day course. The estimated generic price for the same course, including 10% profit margin and 26.6% tax on profit, is $2.

Another example is the abovementioned nirmatrelvir/ritonavir combination. Much of Pfizer's supply has been bought up by high-income countries. Pfizer's voluntary licences exclude the majority of Latin American countries and several other middle-income countries from getting supply. In any case, any generic supply under the licence is only expected to happen in 2023, if the conditions of the licence are met by the licensees.

Supply constraints can be unlocked if generic manufacturers in developing countries are engaged by providing more straightforward legal options to address the barrier of intellectual property, i.e., a meaningful TRIPS waiver. With more suppliers in the market, affordability would also increase as prices drop with an increase in competition.

A false solution like the proposed approach, which denies access challenges and intellectual property barriers on therapeutics and diagnostics in a global pandemic, "puts lives at risk while setting a negative precedent for future health emergencies", the MSF Access campaign has warned.

Eligibility criteria

It is sheer common sense that during a public health emergency, there can be no place for criteria that deliberately exclude countries with production capacity from using the system to support other countries. From this perspective, the inclusion of a criterion that arbitrarily excludes any developing-country WTO member that exports more than 10% of world exports of COVID-19 vaccine doses in 2021 and all developed countries from using the proposed system, not only as importing countries but also as exporting countries, is reprehensible. Clearly, petty politics are in play.

Such a criterion is a major step backwards for addressing global public health concerns and a significant departure from the Doha Declaration that was adopted at the height of the HIV/AIDS crisis and that is applicable to all WTO members. Even Article 31bis of the TRIPS Agreement is applicable to all WTO members, with countries having the option to self-opt out from using the mechanism for purposes of importing products. There is no exclusion of any country for purposes of exporting products.

Not fit for purpose

COVID-19 brought most countries to a standstill, shutting down schools, economies, lives and livelihoods with massive socio-economic consequences. And it is still far from over. Continued timely and affordable access to vaccines, therapeutics and diagnostics is at the heart of keeping economies and schools open, controlling infections, managing hospitalizations and limiting the emergence of a new and more lethal variant.

The lesson we should be learning is that the current system for producing vaccines, therapeutics and diagnostics is highly concentrated and unsuited to respond to access needs for COVID-19 and for future global health emergencies. We need to create a robust enabling environment to diversify and expand production in developing countries and that will expedite timely and affordable access, hence the urgent need for a meaningful TRIPS waiver outcome that reflects the direction and vision as proposed by the co-sponsors.

For this, the WTO Director-General's proposed solution is not fit for purpose. *(SUNS9566)*

Stocktaking meeting planned for end May before MC12

Whether the WTO's upcoming 12th Ministerial Conference will yield any substantive outcomes remains up in the air, amid persistent differences among the membership on a host of issues under negotiation.

by D. Ravi Kanth

GENEVA: A stocktaking meeting is apparently being planned for later in May to make clear whether the World Trade Organization's 12th Ministerial Conference (MC12) scheduled for 12-15 June will be a negotiating meeting or a non-negotiating session, said people familiar with the development.

During closed-door meetings in the week of 25 April, the chair of the WTO General Council (GC), Ambassador Didier Chambovey from Switzerland, was asked by members whether MC12 will be a negotiating or non-negotiating session in order to make preparations for the respective capital-based delegations, particularly for ministers, said people who took part in the meetings.

The GC chair avoided providing a clear answer, but apparently suggested that a clear picture could emerge by the end of May during a likely stocktaking meeting.

One member reportedly asked the chair whether there is any point in bringing her minister to Geneva if MC12 will be a non-negotiating meeting without any major decisions taken. The chair apparently remained silent in response to this query.

There appears to be no clarity whether progress can be made in the run-up to MC12 on the major issues such as fisheries subsidies, agriculture and the WTO's response to the pandemic, said people who asked not to be quoted.

On fisheries subsidies, there are substantial sticking points such as fuel subsidies, territoriality, forced labour in the fisheries sector, and parity between the carve-outs provided to the big subsidizers and special and differential treatment for developing countries. During the past two months, the fisheries subsidies negotiations seem to have been somewhat dormant, and the differences remain as they were before the last scheduled meeting was postponed due to the eruption of the Omicron variant of the SARS-CoV-2 virus.

On agriculture, there has been little or no progress due to differences over the draft agriculture text issued by the negotiating chair, Ambassador Gloria Abraham Peralta from Costa Rica, last November. At the latest meeting of the agriculture negotiating body in the week of 25 April, the differences on the issue of a permanent solution for public food stockholding programmes came into the open, with members alleging that the draft text is "rigged" and "imbalanced", said people familiar with the discussions.

On the WTO's response to the pandemic, which includes trade-related measures and the proposed TRIPS waiver, there are sharp differences on both these issues. It remains unclear whether the differences can be resolved in the lead-up to MC12, said people who asked not to be quoted.

Even on other issues, including the moratorium on levying customs duties on electronic transmissions and the e-commerce work programme, as well as the legal status of the Joint Statement Initiatives on digital trade, investment facilitation, disciplines for micro, small and medium enterprises (MSMEs), domestic regulation in services, and trade and gender, it is going to be a tough battle to secure any decision, said people who asked not to be quoted.

Another "elephant in the negotiating room" is the demand on issues such as WTO reforms, trade and environment, multilateral versus plurilateral negotiations revolving around the issue of the WTO's negotiating function, and trade for peace among others.

Given Russia's ongoing war against Ukraine and the COVID-19 pandemic, it remains unclear as to how these two events would influence the negotiations at the eleventh hour, said people who asked not to be quoted. *(SUNS9568)*

IMF, WB, WTO and OECD advance agenda on industrial subsidies

Four international economic institutions have voiced concern about the market-distortive effects of subsidies, even as development experts recognize their utility in supporting industrial growth.

by D. Ravi Kanth

GENEVA: The heads of the International Monetary Fund (IMF), the World Bank, the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD) have called for tackling subsidies, particularly industrial subsidies, due to their alleged economic and trade distortions.

At a virtual meeting on "Preserving

Open Trade: Subsidies, Geopolitics, and International Cooperation" in Washington DC on 22 April, IMF Managing Director Kristalina Georgieva, World Bank President David Malpass, WTO Director-General Ngozi Okonjo-Iweala and OECD Secretary-General Mathias Cormann, who called themselves the "Gang of Four", stated their joint goal to discipline and design subsidies to curb growing distortions and market failures. They voiced their respective positions on subsidies, which seem to have converged on a rather questionable architecture.

The WTO DG, in her interventions at the meeting, suggested that agricultural subsidies and industrial subsidies for the semiconductor industry and infrastructure among others could pose trade-distorting effects and reinforce growing "mistrust" among countries.

Equating the farm subsidies provided by the US and the European Union with those provided by China and India, the two developing countries with the largest populations, the four organizations said in a report issued at the meeting that around $447 billion was provided annually by the EU, the US, China and India.

However, observers have noted that while the EU and the US manage to protect their trade-distorting domestic farm subsidies and have engaged in what is called "box-shifting" (shifting their trade-distorting domestic subsidies throughout the past 30 years from the "Amber Box" category to the "Green Box"), China and India have not taken any scheduled commitments for AMS (Aggregate Measurement of Support or "Amber Box" subsidies). China and India also have hundreds of millions of low-income farmers, who need to be supported through their limited entitlements, as compared with the subsidies provided by the US and the EU to their rich farmers, said people who preferred not to be quoted.

On the issue of industrial subsidies, the target appears to be China, said people who asked not to be quoted.

The WTO's Okonjo-Iweala said at the meeting that growing subsidies in different sectors and economies "constitute the most frequent type of intervention since the financial crisis in 2008, more than tariffs and non-tariff measures."

According to the DG, subsidies "can distort trade and investment and undermine other trade policy commitments and erode public support for open trade."

She said that currently subsidies are "main drivers of tensions" among trading partners.

She added that subsidies "can have significant macro-economic costs and trigger retaliatory actions", as shown by increasing countervailing investigations that have quadrupled over the last decade.

The WTO DG said addressing the issue of subsidies is "of central importance to the global trading system at this juncture."

She stressed on transparency in the provision of subsidies by countries, suggesting that there is no data on several categories of subsidies provided by various governments.

She called for "building a coalition of interests across borders" to make it "possible to improve the effectiveness of subsidies and limit any negative international spillovers from their use."

She added that a "better grasp on the prevalence of subsidies programmes and their effects can help develop and shape the necessary rules."

IMF-WB-WTO-OECD report

A 41-page report prepared by the staff of the IMF, World Bank, WTO and OECD, titled "Subsidies, Trade, and International Cooperation", said that "the growing use of distortive subsidies alters trade and investment flows, detracts from the value of tariff bindings and other market access commitments and undercuts public support for open trade."

The report added that "sharp differences over subsidies are contributing to global trade tensions that are harming growth and living standards."

According to the report, "the renewed drive toward industrial policies to promote 'strategic' sectors may distort international competition, especially against smaller, fiscally constrained developing countries."

It pointed out that "below-market borrowings average about 3 to 4 percent of recipient firms' revenue in sectors such as aluminum, cement, glass and ceramics and semiconductors."

The report said that "unlike in agriculture, evidence on the scope and scale of government support in industrial sectors remains relatively scarce." However, "insights into the magnitude of industrial subsidies can nevertheless be gained from studies of selected sectors. Over 2014-18, 306 large firms in 13 industrial sectors received (conservatively) government grants and tax concessions worth $48 billion and $108 billion, respectively. Additionally, the same firms also borrowed more than $66 billion on below-market terms."

Also, "many subsidy programs are related to services, although comprehensive data on their nature and extent are lacking."

According to the report, "subsidies provided by or to SOEs (state-owned enterprises) appear to be important, although information can be difficult to compile."

The report further said that "subsidies appear to be widespread, growing, and often poorly targeted at their intended policy objectives."

It said that "broad-based cooperation on subsidies is needed to bring greater transparency, openness, and predictability to global trade."

Rethinking industrial subsidies

In comparison to the IMF-WB-WTO-OECD view, another perspective on subsidies is offered by the United Nations Conference on Trade and Development (UNCTAD).

In an update of its *Trade and Development Report 2021*, UNCTAD said that "while massive financial subsidies are being rolled out in the North to sustain its businesses during the pandemic, developing countries, who cannot afford comparable bailouts, will, at all levels, need to revive the use of strategic trade and industrial policies."

The update suggested that "learning how to successfully implement these policies can begin through closer South-South arrangements."

Contrary to the narrative articulated by the IMF-WB-WTO-OECD, UNCTAD said that "industrial subsidies including financial support to specific industries, tax credits, rent rebates to small and medium enterprises, export subsidies, debt forgiveness etc. are important policy instruments which will be needed by developing countries to provide additional support to their domestic producers during and post pandemic."

According to UNCTAD, "these

subsidies can enable the rebuilding of labour-intensive and export-oriented industries like textile and clothing, footwear etc., which are expected to take the hardest hit and lead to massive unemployment."

The UNCTAD report said that "developing countries do not have enough policy space to support their economic recovery given the existing multilateral trade agreements, especially with respect to industrial subsidies."

Therefore, it suggested, "a sensible place to explore the judicious mix of liberalizing and subsidizing measures in support of economic diversification would be through South-South agreements which could be subsequently used as a model for reform of the multilateral rules in this area."

"Meanwhile, a temporary 'WTO peace clause' to use industrial subsidies for reviving their industrial growth and subsequently their exports is desirable to ensure enough policy space during and after the crisis to developing countries," said UNCTAD. *(SUNS9562)*

Ukraine war, arms spending undermine development aid

The conflict in Ukraine could redirect rich-country spending away from already underfunded development needs in the Global South.

by Thalif Deen

NEW YORK: The unprecedented flow of arms to Ukraine, and the rising military spending by European nations to strengthen their defences, are threatening to undermine development aid to the world's poorer nations.

Chee Yoke Ling, Executive Director of the Third World Network, told Inter Press Service (IPS) the escalating military spending will definitely have a direct impact on a range of spending that the North has committed to developing countries – from official development assistance (ODA) to climate finance, "that is a legal obligation under the climate treaties".

Even before the Russia-Ukraine war, she pointed out, the North had been reducing development financing. "So, we expect the regression to worsen," she added.

A UN report titled *Financing for Sustainable Development Report 2022: Bridging the Finance Divide*, released 12 April, says that ODA increased to its highest level ever in 2020, rising to $161.2 billion. "Yet, 13 countries cut ODA, and the sum remains insufficient for the vast needs of developing countries." The UN also fears "the fallout from the crisis in Ukraine, with increased spending on refugees in Europe, may mean cuts to the aid provided to the poorest countries".

In the face of a global crisis, near-time actions and additional international support are needed to prevent debt crises and address the high cost of borrowing, the report warns. "However, the vast majority of developing countries will need active and urgent support to get back on track to achieve the Sustainable Development Goals."

The report estimates that in the poorest countries a 20% increase in spending will be required for key sectors.

A *New York Times* report on 29 March said that across Europe and Britain, Russia's invasion of Ukraine is reshaping spending priorities and forcing governments to prepare for threats thought to have been long buried – from a flood of European refugees to the possible use of chemical, biological and even nuclear weapons by a Russian leader who may feel backed into a corner.

"The result is a sudden reshuffling of budgets as military spending, essentials like agriculture and energy, and humanitarian assistance are shoved to the front of the line, with other pressing needs like education and social services likely to be downgraded," said the *Times*.

Frederic Mousseau, Policy Director at the Oakland Institute, told IPS that "whereas combination of droughts and conflicts result in massive human suffering and hunger in a number of countries, UN humanitarian appeals for these acute crises are chronically underfunded." Last year, he pointed out, only 45% of the UN appeal for Yemen and the Horn of Africa was funded, and only 29% for Syria.

With such shortfalls amidst the war on Ukraine, it is critical that all donor countries ensure that their solidarity and support is focused on all victims.

An increase in military budgets in Europe will automatically result in more sales for the major Western arms exporters, i.e., the US, France and Germany. The military-industrial complex yields increased economic returns for these countries, and fuels conflicts across the world.

In 2021, the second largest humanitarian aid requirement was for Yemen, whereas Saudi Arabia, waging war on this country, is the leading importer of weapons from Western countries. It is to be seen how actual aid budgets will be affected by the war in Ukraine, said Mousseau.

"But regardless of what happens in Europe, a major issue that undermines our ability to promote peace and stability in the world – and reduce the need for international assistance – is the US military budget that continues to increase under the Biden administration to reach an all-time record of $813 billion this year."

This is more spending than the next 11 countries combined, Mousseau pointed out. "The USA [has] not just the highest military budget in the world, it is also the largest arms exporter and coincidently the largest aid donor. US international aid, however, represents just 4% of the US military spending. Priorities have to change drastically to meet the humanitarian and environmental challenges of the world," he declared.

Vitalice Meja, Executive Director of Reality of Aid Africa, told IPS: "We support the humanitarian efforts going towards the Ukrainian people and remain in solidarity with them. We, however, believe that donors must still meet their other obligations on other global wars of poverty, and climate crisis on humanity."

It is important especially for Africa that ODA remains focused on catalyzing development and tackling the ravaging climate change crisis and rising inequalities, she said.

"Donors must allocate additional resources towards Ukraine and not simply by militarizing aid or shifting budget items and priorities from other global development challenges in response to the war in Ukraine."

It is key that donors, at the same time without shifting resources, should focus on building and strengthening Africa's resilience in these times of harsh climate change and mass crop failure. "They must secure sustainable climate finance and development resources to address the rising cases of inequality, extreme hunger and poverty in this part of the world."

"This is our war and it remains important and relevant. It must aggressively be fought and won as well," Meja declared.

People's rights and needs

Jennifer del Rosario-Malonzo, Executive Director of IBON International, told IPS: "We stand in solidarity with the peoples of Ukraine who are bearing the losses from the war. People's rights and needs – in Ukraine, in Asia, and the rest of the global South – should be a priority over military spending."

She asked: "If some developed countries are lavish with their arms spending and military budgets today, while their 'humanitarian' response involves cutting from other aid programmes, are they saying that security interests come before long-term, public needs?

"Outside the Ukraine war, developed countries have already broken their promise of providing $100 billion of climate finance by 2020. Sacrificing development aid budgets and climate finance will deepen poverty, inequalities, adverse climate impacts and exclusion felt in the global South.

"Lack of ambition here risks reinforcing the economic and political grievances at the root of armed conflicts in Asia and elsewhere. Solidarity and justice today call for ambition.

"We challenge developed countries to fulfil their existing aid commitments (minimum of 0.7% of gross national income as ODA), together with providing new funding for people's needs in Ukraine. We call for new and additional grants-based climate finance to indemnify the most affected peoples and communities suffering from losses and damages due to climate change."

Meanwhile, the UN's *Financing for Sustainable Development Report* also points out that while rich countries were able to support their pandemic recovery with record sums borrowed at ultra-low interest rates, the poorest countries spent billions servicing debt, preventing them from investing in sustainable development.

"The pandemic shock plunged 77 million more people into extreme poverty in 2021, and by the end of the year many economies remained below pre-2019 levels."

The report estimates that one in five developing countries' per capita gross domestic product (GDP) would not return to 2019 levels by the end of 2023, even before absorbing the impacts of the Ukraine war.

"As we are coming up to the halfway point of financing the world's Sustainable Development Goals, the findings are alarming," UN Deputy Secretary-General Amina Mohammed said.

"There is no excuse for inaction at this defining moment of collective responsibility, to ensure hundreds of millions of people are lifted out of hunger and poverty.

"We must invest in access for decent and green jobs, social protection, healthcare and education leaving no one behind," she warned. *(IPS)*

Third World ECONOMICS No. 744, 1-15 April 2022

The world can stop capital flight now

Jomo Kwame Sundaram underscores the need to staunch illicit financial outflows from the developing world.

Curbing capital flight from developing countries is long overdue. New sanctions against Russian oligarchs show this can be done with the requisite political will. Recent research also shows how to more effectively stop capital flight.

Capital flight is widespread, with resource-rich countries more vulnerable. "Mis-invoicing" exports and embezzling export earnings of state-owned mineral companies have been central to such wealth appropriation.

Capital flight is enabled not only by national conditions but also by transnational facilitators. Internationally, capital flight is aided by institutions and professional enablers such as bankers, lawyers, accountants and consultants.

Capital should flow to investments yielding the most returns. But economic theory suggests making more depends on appropriating what economists call "rents". These rents may be secured by many means, legal or otherwise.

Developing countries – especially resource-rich economies – are generally more susceptible to abuse. Wealth buys power and influence, enabling further accumulation. Thus, in the real world, natural resource endowments become a curse, not a blessing.

Since the 1990s, the International Monetary Fund (IMF)'s sixth Article of Agreement – authorizing national capital controls – has been "flexibly re-interpreted" by management and staff. Instead of protecting national economies, they have eased trans-border capital flows – and flight.

To add insult to injury, advocates falsely claim that more capital will thus flow into rather than out of developing countries. After all, conventional economic theory insists that capital flows from "capital-rich" to "capital-poor" countries.

The reality of capital flowing "upstream" – to rich countries – underscores how mainstream economic textbooks mislead. Clearly, the real world is very different from the one that such economists believe should exist.

Enabling illicit outflows

Unsurprisingly, the wealthy – especially the "crooked" – want to keep their assets abroad – beyond the reach of national authorities, and rivals. As such wealth has often been acquired illicitly, owners want to protect themselves from investigation, prosecution and expropriation.

Capital flight is enabled not only by national conditions but also by transnational facilitators.

Capital flight is enabled by transnational financial networks with considerable influence. These involve global banks and financial institutions, auditors and accounting firms, tax lawyers and consulting firms for hire. Along with corporate executives and government officials, they facilitate capital flight, sharing in the spoils.

With both states and markets at their disposal, transnational financial networks successfully overcome national constraints. Prerogatives of national sovereignty are also abused to obscure their transactions and operations from surveillance. Capital flight is enabled, even incentivized, by national environments allowing the wealthy to surreptitiously sneak financial assets offshore.

Instead of helping developing countries protect their meagre assets, international financial institutions have facilitated, even worsened, the haemorrhage.

Elites influence the law and its enforcement, typically by employing enabling professionals and friendly legislators. After all, laws and governments are neither impartial nor efficient, constantly reshaped by influence, often connected to wealth. Hence, some illicit activities and wealth may be unlawful while others may not be.

National legal jurisdictions have been changed to ease cross-border flows. Rules, norms and practices have been changed to hide wealth transfers from national and international authorities, rules and regulations. Hence, natural resource endowments especially enable capital flight.

Such outflows may even be triply illicit – in terms of mode of acquisition, concealment from tax authorities, and transfer across borders. But not all illicitly transferred flight capital is illicitly acquired. Conversely, illicitly obtained wealth "laundered" before being transferred abroad legally, is not deemed capital flight.

Some capital flight involves legally acquired wealth illicitly transferred abroad. This may be reported as trade-related payments on the current account – not involving capital account transfers. They may thus bypass or even contravene capital controls and foreign exchange regulations.

They strive to evade detection, prosecution, litigation, fines, charges and taxes by various revenue authorities. Illicit foreign exchange outflows secretly transferred abroad and not recorded in official national accounts may not be deemed illegal.

Hence, the volume and significance of capital flight estimates tend to be understated. Capital flight is easier from most developing economies, which have become more open in the last four decades with economic liberalization, often demanded by structural adjustment programmes.

Why stop capital flight?

Corruption across national borders undermines governance and national resource mobilization needed to enhance productive investments. But many advocates of opening capital accounts justify capital flight by blaming it on allegedly predatory or incompetent governments.

The international financial system features enabling capital flight often also facilitate tax avoidance and evasion by the wealthy. Thus, capital flight doubly undermines domestic resource mobilization by leaching both investible and government resources.

Trans-border capital flows avoid or minimize taxes paid, while hiding beneficiaries' identities and wealth in secretive offshore tax havens. Government finances are also directly hit when externally borrowed funds or state-owned enterprises and natural resources are embezzled. Worse, government or public foreign debt has often been abused to directly finance capital flight. Meanwhile, illicit offshore flight capital goes untaxed.

This shifts the tax burden to the middle class and domestic businesses unable to sneak their assets abroad or to otherwise avoid revenue authorities.

Many developing countries continue to suffer significant resource outflows, largely due to illicit capital flight. *On the Trail of Capital Flight from Africa: The Takers and the Enablers*, edited by Leonce Ndikumana and James Boyce, studies this blight in sub-Saharan Africa. The world has much to learn from their forensic analysis.

The volume estimates haemorrhage from African countries since 1970 at $2 trillion! Of this, almost 30% has been lost in the 21st century. Adding interest, cumulative offshore assets were $2.4 trillion by 2018 – more than thrice Africa's external debt!

The West's piecemeal approach to sanctions targeting individuals is recognized as costly, time-consuming and ineffectual. Instead, the editors recommend a pre-emptive, across-the-board effort to undermine transnational networks enabling illicit financial flows. This should begin with closing financial system loopholes. *(IPS)*

__Jomo Kwame Sundaram__, a former economics professor, was United Nations Assistant Secretary-General for Economic Development, and received the Wassily Leontief Prize for Advancing the Frontiers of Economic Thought in 2007.

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The SDR solution

Last year's landmark issuance of Special Drawing Rights by the International Monetary Fund has been made use of to beneficial effect by developing countries, a new report finds. With the global economy continuing to face serious challenges, a fresh allocation of this reserve asset would provide much-needed assistance, say the authors of the report, the executive summary of which is reproduced below.

by Kevin Cashman, Andrés Arauz and Lara Merling

On 23 August 2021, the International Monetary Fund (IMF) allocated a historic $650 billion worth of Special Drawing Rights (SDRs) to its 190 member countries. It was the largest ever such allocation, and has already had a very important impact on developing countries that were hit by the pandemic and world recession, saving possibly hundreds of thousands of lives.

SDRs are an international reserve asset that can be exchanged for hard currency or donated among IMF member countries. The value of SDRs is derived from a basket of currencies comprised of dollars, euro, pounds, yen and renminbi.

A report published by the Center for Economic and Policy Research (CEPR), "Special Drawing Rights: The Right Tool to Use to Respond to the Pandemic and Other Challenges" [of which this is the executive summary] looks at the available evidence of how these reserve assets issued by the IMF have been used, since August, by developing countries. An assessment of how SDRs have been used is of particular importance at this current critical juncture, as the global economy is rocked by daunting new challenges that have generated renewed appeals for another issuance of SDRs from around the world.

Policymakers in the US, which has the most powerful voice of any country at the IMF and a veto on many major Fund decisions, have been voicing support for another allocation. This support can be decided by the US Congress, where the House of Representatives has already approved another allocation; or by the US Treasury, which represents the US government at the Fund. (An allocation in which US support at the IMF is decided by the Treasury, without a vote of Congress – like the August allocation – is limited to about $680 billion worth of SDRs. However, Congress can approve much more, and the House has done so recently, but this was blocked by Republicans in the Senate.) US support for another allocation, along with support from a significant part of the rest of the world, is critical to obtain a new allocation.

The World Food Programme currently estimates that 44 million people in 38 countries are on the brink of famine. Even before the war in Ukraine, 811 million did not have enough to eat. The war has pushed up food prices and threatened millions more people with starvation. Financial support from the IMF is therefore badly needed. Ukraine itself, for example, has an estimated 4 million refugees, 6.5 million internally displaced persons, and one-third of the population in need of humanitarian assistance. The country would get $2.75 billion from a Treasury-supported allocation, while the legislation in Congress, after approval by the IMF, would bring Ukrainians more than three times that amount. All of this would incur no cost to the US government.

SDRs are by far the fastest way to get this magnitude of aid to all the developing countries that need it. Last year, the IMF Board of Governors officially approved the $650 billion worth of SDRs on 2 August and credited member-country accounts on 23 August. Unlike loans, SDRs do not add to a country's debt, and there are no conditions attached to them.

Another potential ongoing use of SDRs has been proposed by Barbados Prime Minister Mia Mottley. In the context of the COP26 UN climate conference in November 2021, she called for an annual $500 billion allocation of SDRs to finance a transition to climate change mitigation and adaptation policies. Mottley's proposal is in line with a recent article co-written by IMF Managing Director Kristalina Georgieva which notes "[t]he world is not short of money or ideas needed to fight climate change" and calls for action from the international community.

Making use of SDRs

Having more reserve assets can allow governments greater fiscal space to respond to economic challenges – as they have during the COVID-19 pandemic – with reduced balance-of-payments constraints and less chance of economic crises. The increase in reserves also reduces exchange rate risks and interest costs when borrowing. Of course, the majority of countries are vastly more constrained in using expansionary fiscal or monetary policy to counteract economic downturns, as compared with many high-income countries. The central banks of high-income countries – mostly in the United States and Europe – have created $25 trillion through quantitative easing since the Great Recession. In the past two years, the United States has run fiscal deficits of more than 15% and 12% of gross domestic product (GDP), respectively. Developing countries generally cannot do these things; therefore, their economies get hit vastly harder than high-income countries do when the world economy falls into recession or slows down. And the consequences of any economic downturn for them are far more lethal.

SDRs can do much to close this gap – because they are recognized as international reserves, and therefore increase the amount of these reserves held by countries that receive them; and they can be exchanged for hard currency.

When the IMF allocates SDRs to its member countries, these countries can exchange those reserve assets for hard currency, in particular the US dollar, euro, yen, pound or renminbi. This currency can be used for various purposes, including finance of cross-border payments or for spending on imports. This allows countries to import vaccines, personal protective equipment and other necessities; they can use the money to support domestic spending – for example, to provide payments directly to residents or businesses – and they can use the money to cover debt obligations.

This addition to import capacity, in addition to directly saving lives by allowing for health-related spending such as for food, medicine and water or sanitation infrastructure needs, is also vital in allowing for imports that the economy is dependent upon for production, e.g., fertilizers for food crops. Data show that 155 of 173 countries saw their imports fall from 2019 to 2020.

SDRs that are not exchanged for hard currency still help stabilize economies in their capacity as international reserves. These lower the risk of economic crises, including balance-of-payments, debt and fiscal crises.

The CEPR report tracks how countries made use of SDRs after the IMF issued $650 billion worth to member countries, from 23 August 2021 until 31 March 2022. It identifies four main ways that countries have used SDRs:

- To supplement their existing reserves
- To acquire hard currency by exchanging them
- For fiscal uses, e.g., to support their domestic budgets or to reduce their external, non-IMF debt
- For IMF debt relief.

The data show that during this period:

- Ninety-eight low- and middle-income countries have used SDRs in at least one way (acquiring hard currency, for IMF debt relief, or fiscal uses); 30 countries have used SDRs in at least two ways; and 10 countries, three ways.
- Forty-two countries have exchanged a large portion of the SDR allocation for hard currency; this amounted to a total of $17.0 billion.
- Fifty-five countries have used SDRs for IMF debt relief, totalling about $7.6 billion. The new SDRs were a lifeline for 23 of those countries, which would not have had enough resources in their holdings to pay the IMF without the new SDRs.
- At least 69 countries have included SDRs totalling $81.0 billion worth in their government budgets or used them for fiscal purposes.

The data show that sub-Saharan Africa is the region that has most benefited from the use of SDRs, with 41 of 45 countries using SDRs in some way. Additionally, countries have used SDRs to procure vaccines and for other pandemic relief; for ration cards, welfare payments, and wages; and for budget support, among other things.

Need for new allocation

However, the amounts received by low- and middle-income countries are still insufficient to prevent widespread and unnecessary loss of life from a global pandemic and/or economic downturn. Some high-income countries have committed to channelling their SDRs as additional support for poorer countries. However, current proposals for vehicles for such reallocation incorporate conventional IMF lending mechanisms involving new debt and conditionality. Bilateral lending or bilateral donations of SDRs are permitted under the Fund's Articles of Agreement, but to date there is little indication that this is being considered by high-income countries' governments, some of which face domestic legal or legislative hurdles that may prevent them from engaging in bilateral SDR transfers. Therefore, the most accessible, costless and rapid way to get desperately needed aid to developing countries is through a new allocation of SDRs. No significant downside risks to a new allocation have been identified, or appear in the results of the last allocation or in any prior allocation.

Many developing nations still face major economic challenges, including unsustainable debt levels and other fiscal constraints. While more than half of an SDR allocation goes to high-income economies that do not need them, this does not lead to waste or maldistribution, because high-income countries do not use SDRs. The SDRs that go to high-income countries therefore do not involve any costs or use of resources; they are an accounting entry that is required by the IMF rules when an allocation is made. Although it can be argued that these rules should be changed, there is no argument that they undermine the positive impact that SDRs have on the developing countries which need them.

Although high-income countries do not use their SDRs, they still benefit indirectly from the SDR allocation. It is estimated that the United States lost more than 2 million export-related jobs from January 2020 to May 2021, due to the falloff in demand from the rest of the world, including much from developing countries. The US economy, and workers in the US, therefore benefit significantly from the stabilizing impact of an SDR allocation on aggregate demand from the rest of the world for US exports.

The countries that have an actual need for the resources that SDRs can provide are those that use them. Furthermore, the available evidence shows that countries targeted by broad economic sanctions, or governments that are not recognized by the United States and its allies at the IMF, are unable to access SDRs. This is mainly because sanctions deter countries that could serve as counterparties in transactions from engaging in transactions with the sanctioned countries' central banks or other representatives. For example, this has been true for the Central Bank of Iran, which has been under sanctions since the Trump administration's withdrawal from the Joint Comprehensive Plan of Action, as well as Syria and, more recently, Russia and Belarus. There is therefore no basis for the concerns that some have expressed that SDRs will be used by sanctioned countries.

And despite the unequal distribution of SDRs among member countries, the $650 billion allocation in 2021 still accounted for the most substantial debt-free form of support for low- and middle-income countries during the pandemic. Data available about other initiatives, including the Debt Service Suspension Initiative (DSSI) from the Group of 20, and the Catastrophe Containment and Relief Trust (CCRT) from the IMF, show that these programmes amount to a small fraction of the support received from SDRs.

It is instructive to compare the magnitude of the SDR allocation for developing countries against these prominent multilateral programmes to help these countries cope with the COVID-19 pandemic and/or other public health disasters. The DSSI suspends – but does not cancel – "debt service payments from the poorest countries (73 low- and lower-middle-income countries) that request the suspension. It is a way to temporarily ease the financing constraints for these countries and free up scarce money that they can instead use to mitigate the human and economic impact of the COVID-19 crisis." The amount of debt suspension under this initiative for the two years 2020-21 is an estimated $6.9 billion. The 2021 SDR allocation to these countries, by comparison, was nearly four times as much, at $26.3 billion. And again, the $6.9 billion was not debt relief, but only suspension, so it is not nearly comparable to the SDRs in terms of resources made available.

The CCRT is better in the sense that it "allows the IMF to provide grants for debt relief for the poorest and most vulnerable countries hit by catastrophic natural disasters or public health disasters." But in 2021, it provided a total of just under $1 billion in debt relief to the 31 countries. This compares to $8.1 billion that those same countries received in SDRs that year.

The global economy is facing serious shocks, including price increases for food, fuel and other commodities, resulting from the war in Ukraine. Monetary and fiscal policy are also tightening in some countries in response to these shocks, and there is uncertainty about the continued course of the COVID-19 pandemic. Given the already extremely high levels of hunger, malnutrition and risk of famine, much of the world is in dire need of the help that another allocation of Special Drawing Rights can bring. This policy has proven its effectiveness since last year.

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